WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

NANCY SHAVER,
Grievant,

v. **Docket No. 2008-1292-DOA**

OFFICE OF TECHNOLOGY
AND DIVISION OF PERSONNEL,
Respondent.

D E C I S I O N

Grievant Nancy Shaver filed a grievance against the West Virginia Office of Technology (hereinafter "OT") and the West Virginia Division of Personnel (hereinafter "DOP") on March 12, 2008. Grievant's case is centered upon an allegation of inappropriate classification. The Statement of Grievance reads: "I am working out of my job class. I believe that I am inappropriately classified as an Information Systems Assistant and should be reclassified to an Information System Specialist 1." As relief sought Grievant requested that: "I would like to immediately be reclassified to an Information Systems Specialist 1 and receive back pay with interest - the difference between an Information Systems Assistant and an Information Systems Specialist 1 and be made whole." [1]

A conference regarding the issue(s) of this grievance was held at level one on March 18, 2008, and the grievance was denied at that level on March 27, 2008. Grievant appealed to level two on April 4, 2008 and a mediation session was held on November 13, 2008. Grievant appealed to level three on December 23, 2008. This matter was placed in abeyance for a period of time prior to commencement of level three hearings. The initial

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[1] The terms "Reclassification" and "Reallocation" are not synonymous, but are used by many mistakenly as such. Grievant requests a reclassification, however Grievant actually seeks a reallocation of her position. *See* W. VA. CODE R. §§143-1- 3.75 and 3.76.

level three hearing was held on September 2, 2009, before Administrative Law Judge Mark Barney. At the beginning of this level three hearing, the issues were clarified. In consultation with the parties, ALJ Barney determined that the evidence in the hearing would be limited to whether Grievant was improperly classified from February 1, 2007, to September 1, 2008. A second day of hearing was necessary. For administrative reasons, the case was reassigned to the undersigned Administrative Law Judge who reviewed the September 2, 2009 audio recording and conducted the additional day of hearing on January 5, 2010, in the Grievance Board's Charleston office. Grievant appeared *pro se*, to represent and protect her interest. Respondent West Virginia Office of Technology was represented by counsel, Stacy DeLong, Assistant Attorney General and Respondent Division of Personnel was represented by Karen O'Sullivan Thornton, Senior Assistant Attorney General. This matter became mature for decision on or about February 16, 2010, on receipt of the last of the parties' proposed findings of fact and conclusions of law.

Synopsis

Grievant contends that her classification as an Information Systems Assistant and the actual job duties and responsibilities she was performing during the time period of February 1, 2007, to September 1, 2008 more closely match that of an Information Systems Specialist 1. The Division of Personnel is charged with making classification determinations. After reviewing the documents related to Grievant's position and duties regularly performed, the Division of Personnel determined that reallocation of Grievant's position was not warranted. Grievant did not prove that the Division of Personnel's classification decision was arbitrary, capricious or clearly wrong. Grievant did not prove

that she had been entitled the classification of Information Systems Specialist 1 during the time period in discussion. This grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is a seasoned state employee working as an Information Technology Client Technician for Respondent OT based in Region 2, Parkersburg, WV. Grievant was officially classified as an employee in this position effective September 1, 2008.

2. For a period of nineteen (19) months, February 1, 2007 to September 1, 2008, Grievant was employed by Respondent OT as an Information Systems Assistant. At all times relevant to this grievance Grievant was employed by the OT in a position classified as an Information Systems Assistant (hereinafter "ISA").

3. Prior to February 1, 2007 Grievant was employed by the WV Department of Health and Human Resources as an Information Systems Assistant/Equipment Coordinator and Back-up Operations Supervisor at the Wood County (Parkersburg) Office. Grievant was involuntarily transferred from the WV Department of Health and Human Resources to the Office of Technology effective February 1, 2007.

4. In February 2007, with Grievant's assignment to OT came some degree of new duties and tasks. With regard to the degree of change in assigned duties, Grievant specified four differences: Grievant began performing work for out-stationed locations after her transfer to OT. Grievant traveled more, made site visits, handled call tickets, and went to more advanced training/seminars.

5. On March 23, 2009, Grievant completed a Position Description Form (hereinafter "PDF") which was later routed to the DOP for review.[2] (DOP Ex. 1). A Position Description Form is intended to detail the duties of an employee. Further, Grievant's 2009 PDF had attached to it PDFs filled out by Grievant for the years 2007 and 2008.

6. Grievant's 2007 and 2008 PDFs did not go through official review process when they were first completed; however, they were considered by DOP along with the 2009 PDF submitted by Grievant for review.

7. Based upon a review of the 2009 PDF and all the attachments thereto, the DOP determined that Grievant's position was properly allocated to the ISA classification at all times relevant to this grievance.

8. The West Virginia Division of Personnel (DOP) is the State Agency charged with classifying positions in the West Virginia Classified Service. *See* W. VA. CODE §§ 29-6-1 *et seq*.

9. Barbara Jarrell, Senior Personnel Specialist, with the Classification and Compensation section of the DOP since 1989, having over 30 years experience in State government personnel work, testified at the level three hearing.

10. The classification specification ("class spec") for the ISA classification provides, in part, as follows:

INFORMATION SYSTEMS ASSISTANT - Paygrade 9

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[2] The Position Description Form is a document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information utilized by the DOP to allocate the position to the proper classification. *See* 143 C.S.R. 1 § 3.70 and §143-1-4.5 *et seq*.

Nature of Work
Under general supervision, performs full-performance level technical work in assisting a systems administrator or technical specialist with maintaining office automation equipment and software. Assists technical staff in purchasing, installing and monitoring a computer system. Troubleshoots basic software and hardware problems and pulls cable. May set-up spreadsheets and database applications, produce complex documents and reports, and enter data. May be on a 24-hour on-call schedule. Performs related work as required.

Distinguishing Characteristics
This class is intended to function in a support role for a technical staff requiring a working, broad knowledge of computer hardware and software. The predominant portion of the work is maintaining personal computer, office automation equipment, not creating spreadsheets and database files and/or manipulating data.

Examples of Work
Assists with managing computer system; monitors and reads the system; responds to prompts.
Maintains security for the system; creates, changes and deletes user profiles.
Troubleshoots basic hardware and software problems and resolves these problems.
Performs data back-up and recovery procedures; keys in commands; loads tape into the drive.
Assists with training new users in equipment operations; coordinates scheduling of training classes.
Installs computer equipment; moves and or replaces terminals, printer cables and other equipment.
Provides assistance in purchasing of hardware and software.
Maintains logs of equipment and software problems.
Maintains inventory of hardware and software.
Creates spreadsheets, electronic calendars and database files.
Operates a personal computer terminal using standard commands to enter, access and update or manipulate data to produce reports.

11. The classification specification ("class spec") for the Information Systems Specialist 1 (ISS 1) classification provides, in part, as follows:

INFORMATION SYSTEMS SPECIALIST 1- Paygrade 17

Nature of Work
Under direct supervision, performs entry level technical work in installing, implementing and maintaining multiple platforms and multiple applications

and/or assists in the development of a computer literacy curriculum and training for a large agency or multiple agencies. Depending upon the assignment, may specialize primarily with Local Area Network/Wide Area Networks. Troubleshoots hardware and software problems which occur in various networked micro and mini computer systems. Evaluates overall effectiveness, strengths and weaknesses of software systems and compatibility with the hardware and software of current installations. May specialize in an area of technical expertise such as networking technologies, data communications, hardware support, software support, training or information technology forensic examinations and conducting investigations of computerized accounting or other computerized records systems. Performs related work as required.

Distinguishing Characteristics

This is entry level work where the incumbent is given less complex assignments and the work is reviewed regularly. However, as skills are demonstrated, the incumbent advances to less routine assignments and performing independently. This class series is distinguished from the Information Systems Coordinator in that Information Systems Specialist plans, installs and maintains network components for the entire department(s) and provides technical support to network users. May include full performance information technology forensic examinations of computer hardware, software or records systems. NOTE: Promotion from this class may occur only if and when the job duties and responsibilities change significantly enough to make a higher level classification more appropriate.

Examples of Work

Supports end-users via telephone and/or site visit regarding system problems such as access and/or security, printer access and operations (through LAN, mid-range computer or IS&C system control units), server based and PC standalone applications, and/or general system(s) problems on LAN, mid-range system, and/or access to other systems (for example IS&C's mainframe, federal systems), internet access, private time-sharing computer services, or external dial-up/dial-in access to various systems.

Uses diagnostic and/or monitoring software to identify problems and takes appropriate corrective action, either by repairing unit or contacting appropriate vendor.

Participates in the review and/or production of office automation plans and requests for hardware/software; reviews needs analysis and determines applications which could streamline the process; may meet with users to clarify work flow or procedures; researches alternative hardware/software which could further enhance the system; reports to superiors any problems with recommended course of action. Plans, conducts or assists in group and one-on-one training of computer applications and operations software and proper use of hardware in the state data processing facility, excluding

personal computer support.
Develops training modules and instructional materials.
Trains co-workers on networking setup and operations and develops and maintains current LAN documentation.
Maintains current knowledge level by researching technical literature and attending classes/seminars, contact technical staff in other state, federal and private agencies for information; may write or supply users with information to complete requisition requests or specifications.
Tests new hardware or operating software supplied by vendors to determine the scope of capabilities, accuracy of functions, and level of user literacy required to operate the system; writes documentation on hardware and software which have been tested in-house.
Maintains detailed inventory of hardware and software.
Serves as a forensic examiner responsible for planning, coordinating and directing forensic activities; inventories and examines computer-related evidence such as magnetic media storage devices, floppy/hard disks, optical disks, memory cards and magnetic strip cards.
Provides technical guidance and assistance to investigators to prevent data and equipment damage.
Trains federal, state and local law enforcement personnel on computer examination/investigation techniques.
May be required to testify in court on the procedures and methods used to obtain data.

12. The few new duties and responsibilities Grievant listed as changes in her employment were not viewed by DOP as constituting a significant change in duties and responsibilities necessary to require a reallocation of the position. It was DOP's determination the duties specified did not raise the level of complexity of the job beyond the position's predominant duty of user support and set up of new personal computers.

13. Call tickets are assigned based on severity level.[3] Although on occasion an employee can get a call ticket directly, Grievant was not regularly assigned critical tickets.

14. During the time period in discussion, the predominant duties of Grievant's position was user support, which included the set up of new personal computers.

[3] A call ticket is an official request for assistance made by a "customer", i.e. State employee.

Grievant's predominant duties remained essentially the same at all times relevant to the grievance.

15. While Grievant *may have* been called upon from time to time to assist with more complicated jobs, these occasional events did not alter the majority of Grievant's duties and responsibilities. For most projects, a higher level employee would do the more complex work and Grievant would do what would be considered the lower level work required for the job. On an incidental occasion when Grievant might perform more complicated tasks, there generally was a person with particular expertise who directed and/or was responsible for Grievant's conduct.

16. DOP classifies a position based on predominant duties, not duties that are performed on an occasional and intermittent basis. DOP determined that the duties performed by Grievant were of the same level of complexity as those associated with Grievant's then assigned classification or were of an occasional and intermittent nature.

17. DOP determined that Grievant's position, at all times relevant to this grievance, was properly allocated to the ISA classification. DOP did not classify the duties performed by Grievant from February 1, 2007 to September 1, 2008 to warrant an ISS 1 classification.

18. An agency-wide reclassification occurred in OT, subsequent to the time Grievant filed this grievance.[4] Grievant's position was affected by the reclassification

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[4] "Reclassification" is defined as the revision by the State Personnel Board of the specifications of a class or class series which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, pay grade, or minimum qualifications for the classes involved. W. VA. CODE R. §143-1-3.76.

action. As of September 2008, Grievant's position was classified in a newly created classification of Information Technology Client Technician. Grievant does not contest the Information Technology Client Technician classification.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Grievant asserts she was misclassified.[5] Grievant argues that as a result of her assignment to new duties which were substantially and significantly different in both duties and responsibilities, she was working outside of her job classification. Grievant contends that her position as an Information Systems Assistant and the actual job duties and responsibilities she was performing more closely match those of an Information Systems Specialist 1. In an effort to establish her contention, Grievant highlighted that the day to day functions she performed for the 19 month period in question is and was comparable to other employees who held the Information Systems Specialist 1 position.[6]

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[5] Grievant seeks reallocation to Information Systems Specialist 1. *See* W. VA. CODE R. §143-1-3.75

[6] During the level 3 proceedings, Grievant was repeatedly made aware that classification determinations are not made based upon comparison to other employees, but upon which classification description is the best fit for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999).

W. VA. CODE § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as the DHHR, which utilize such positions, must adhere to that plan in making their employees' assignments. *Toney v. W.Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994). When an employee believes she is performing the duties of a classification other than the one to which she is assigned, DOP determines whether reallocation is appropriate. *Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009).

In a misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they more closely match those of another cited classification specification than the classification to which she is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section of a classification specification is its most critical section. *See generally, Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the employee's current classification constitutes the "best fit" for his required duties. *Simmons v. W. Va. Dep't of Health and*

Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.,* Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See, W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

W. VA. CODE R. § 143-1-3.75 defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't of Environmental Protection,* Docket No. 06-DEP-307 (Apr. 20, 2007)*; Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301(Mar. 26, 1997); *See, Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007). To receive a reallocation an employee must demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in the number of duties does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). "The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*.

Grievant expressed dissatisfaction and disagreement with both Respondents in regard to recognition and assessment of her duties. However, Grievant did not establish that DOP's determination of the relevant best fit classification was erroneous. Further,

Grievant did not establish that either Respondent exercised their discretion in an arbitrary or capricious manner. The predominant duties of Grievant's position did not change during the time period in question. It was explained during the testimony of various witnesses that many times employees, regardless of classification, would be required to go to the same job site and work on a job.[7] There was a difference in the level of the complexity of the work performed by Grievant, as compared to others in higher classifications. Work would be assigned upon the level of complexity. The title "field tech" was a working title in the field that was used to identify a situation where a number of employees in a variety of different classifications would perform limited assigned duties. Work with switches, routers, software or networking was routinely assigned to higher level employees, not to Grievant. Grievant does not have the requisite computer certifications necessary to be qualified for a higher level information technology classification. E.g. Co-worker, Rick LeMasters did the technical work on computers and Grievant assisted. LeMasters was given the more difficult tasks when he and Grievant were working on the same job. For most projects, a higher level employee would do the more complex work and Grievant would do what would be considered the lower level work required for the job. It was not demonstrated that Grievant was required to perform higher level work on a routine basis.

Call tickets are assigned based on severity level. Although on occasion an employee can get the ticket directly, Grievant was not regularly assigned critical tickets and even on an incidental occasion when she might perform such, there would be a person with particular expertise who would give Grievant direction on how to carry out the

[7] Referencing testimony of Beverly Myers, Information Technology Client Analyst 3, Grievant's former supervisor, Beth Eklund and former co-worker Rick Lemasters.

necessary tasks. Done only periodically this practice is not inconsistent with the duties and specification of the ISA classification.

Grievant testified that prior to 2007, seventy-five percent of her time was spent doing user support activities, and that during the time period in question only fifty percent of her time was still spent doing user support activities. Barbara Jarrell, Senior Personnel Specialist, with the Classification and Compensation section of the DOP, testified that the four things Grievant listed as changes in job duties did not raise the level of complexity of her job. DOP classifies positions based on the predominant duties performed. Ms. Jarrell stated the predominant duties of Grievant's position did not change during the time period in question.

The predominant duties of Grievant's position was user support, which included the set up of new personal computers. Grievant's predominant duties remained essentially the same and that at all times relevant to the grievance, while she *may have* been called upon from time to time to assist with more complicated jobs, these occasional events did not alter the majority of Grievant's duties and responsibilities. Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their current classification. Grievant readily admits that she did not perform the overwhelming majority of duties listed in the "Examples of Work" section of the ISS 1 classification.

DOP is required by law to determine that a significant change in the work performed by a position has occurred when determining whether or not a reallocation is appropriate. The change has to be significant enough that it would cause the position to fit or match another job classification. Ms. Jarrell explained that the few new duties and responsibilities

Grievant listed as changes would not constitute a significant change in duties and responsibilities necessary to require a reallocation of the position. The identified duties did not raise the level of complexity of Grievant's job beyond the position's predominant duty of user support.

DOP's examination of the PDFs submitted by Grievant did not generate reallocation of Grievant's position. Lastly, Ms. Jarrell testified she heard nothing new in the testimony or evidence presented at the hearing that would cause her to believe Grievant's position should have been reallocated to the ISS1 classification. On a daily basis, year in and year out, DOP reviews PDFs for positions statewide to determine their appropriate classification. Ms. Jarrell herself has reviewed thousands of PDFs and made equally as many classification determinations during her tenure with the DOP.

Grievances contesting a grievant's current classification are decided under rules of law which give DOP's interpretation of classification specifications great weight unless that interpretation is shown to be clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) *per curiam*; *See also* Syllabus Point 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981), *appeal dismissed,* 454 U.S. 1131, 102 S. Ct. 986, 71 L.Ed.2d 284. Syllabus Point 1, *Dillon v. Bd. of Ed. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588 (1983). The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)).

It is fair to say that a grievant challenging her classification has an uphill battle. *Bennett v. Insurance Comm'n and Div. of Pers.* Docket No. 07-INS-299 (June 27, 2008). Respondent DOP has demonstrated rationale and reasonable justification of its actions and determination. Respondent DOP's determination in the facts of this case were not arbitrary, capricious or clearly wrong. Consequently, the grievance is DENIED.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. W. VA. CODE § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as the Department of Administration, which utilize such positions, must adhere to that plan in making their employees' assignments. *Toney v. W.Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994).

3. When an employee believes she is performing the duties of a classification other than the one to which she is assigned, DOP must determine whether reallocation is

appropriate. *Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009).

4. To receive a reallocation, an employee must demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in the number of duties does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). "The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*.

5. Additionally, in order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties more closely match another cited Division of Personnel classification specification than the one under which she is currently assigned. *See generally, Hayes v W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989). *See Campbell v. Dep't of Transp./Div. of Highways,* Docket No. 05-DOH-385 (May 26, 2009).

6. The goal of the reallocation analysis is to ascertain whether an employee's current classification constitutes the "best fit" for the required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). *See Hart supra; Falquero v. Dep't of Envtl. Prot.,* Docket No. 2008-1902-DEP (Feb. 3, 2010).

7. DOP's interpretation and application of the classification specifications at issue are given great weight unless clearly erroneous. *W. Va. Dep't of Health v.*

Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) *per curiam*; *See also* Syllabus Point 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981), *appeal dismissed,* 454 U.S. 1131, 102 S. Ct. 986, 71 L.Ed.2d 284. Syllabus Point 1, *Dillon v. Bd. of Ed. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588(1983).

8. Classification determinations are not made based upon comparison to other employees, but upon which classification description is the best fit for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999).

9. Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. The key in seeking reallocation is to demonstrate a significant change in the kind or level of duties and responsibilities. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96- HHR-301 (Mar. 26, 1997).

10. An employee who challenges the pay grade or classification to which his or her position is assigned, bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1995); *Bennett v. Dep't of Health and Human Res.*, Docket No. 93-HHR-518 (June 23, 1995); *Johnston v. Dep't of Health and Human Res.*, Docket No. 94-HHR-206 (June 15, 1995); *Thibault v. Div. of Rehab. Serv.*, Docket No. 94-RS-061 (May 31, 1995); *Frame v. Dep't of Health and Human Res.*, Docket No. 94-HHR-140 (Nov. 29, 1994). *See O'Connell v. W. Va. Dep't of Health and Human Res.*, Docket No. 95-HHR- 251 (Oct. 13, 1995).

11. Grievant has not shown by a preponderance of the evidence that during the time period in discussion, the duties of her position fell more closely within the ISS 1 classification than the ISA classification.

12. Grievant did not prove by a preponderance of the evidence that the DOP's classification determination regarding her position was clearly wrong.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: August 27, 2010

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Landon R. Brown
Administrative Law Judge