# THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**NADINE R. HAMILTON,**

**Grievant,**

**v.** **Docket No. 2010-1016-DOC**

**WEST VIRGINIA DIVISION OF NATURAL RESOURCES and DIVISION OF PERSONNEL,**

**Respondents.**

## DECISION

Grievant, Nadine R. Hamilton, is employed by the West Virginia Division of Natural Resources ("DNR") and classified as an Office Assistant 3. Ms. Hamilton filed a level one grievance form dated February 3, 2010, stating:

> I disagree with the decision by Sara P. Walker, DOP [Division of Personnel] Director that my position is correctly classified as an Office Assistant 3 (9007); therefore, I seek to exercise my appeal rights as provided in W. VA. CODE § 6C-2-1 et seq. through the grievance procedure.

As relief Ms. Hamilton seeks:

> . . . a position reallocation to be correctly classified as an Administrative Service Assistant 1 (9404), with class specifications that are more comparable to [her] duties and responsibilities, reflecting the significant accountabilities changes that have occurred since FY2001 in sustaining compliance with WVFARS and the rulings of GASB34.

On February 5, 2010, a decision was entered by the DNR Director that he was without authority to grant the relief requested and the grievance would have to advance to level 2. A level two mediation was held between Grievant and Respondent DNR on June 24, 2010, and an order was entered related to the mediation on June 28, 2010. Grievant

filed a timely appeal to level three and an Order was entered on July 12, 2010, joining the West Virginia Division of Personnel ("DOP") as an indispensable party to the grievance.

A level three hearing was held in the West Virginia Public Employees Grievance Board Charleston office on November 8, 2010. Grievant appeared *pro se*. Respondent DNR was represented by William R. Valentino, Assistant Attorney General and Respondent DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General. At the level three hearing, the parties noted that Grievant had applied for and accepted a position as a Secretary 1 with the DNR. Grievant started her new position on June 1, 2010. This grievance is not related to the new position. Grievant does not, at this time, contend that position is misclassified. Therefore, the issues to be addressed in this grievance are: whether Grievant's prior position as an Office Assistant 3 was properly allocated; and, whether she would be entitled to back pay if the position was misclassified for the time she held it.

At the close of the level three hearing, all parties waived the right to submit proposed findings of fact and conclusions of law. Consequently, the grievance became mature for decision on November 8, 2010.

**Synopsis**

Grievant has been employed as an Office Assistant 3 by the Respondent DNR since June 5, 2000. She alleges that her position has been misclassified for a number of years because she believes her work is administrative rather than clerical. Accordingly, Grievant seeks a reallocation of her position to the Administrative Services Assistant 1 classification. Respondents were able to prove that Grievant's duties were clerical even though they were

complex and complicated. Respondent DOP demonstrated that the best fit for the position is the Office Assistant 3 classification and the Grievance is denied.

After a thorough review of the entire record in this matter, the following facts are found to have been proven by a preponderance of the evidence.

**Findings of Fact**

1. Grievant, Nadine Hamilton, was originally employed by the Respondent DNR on April 5, 2000. She worked in the Office Assistant 3 ("OA 3") classification until May 31, 2010.

2. On June 1, 2010, Grievant began work for the DNR in a Secretary 1 position. Grievant applied for and received this position and does not contest the classification of that position in this Grievance.

3. In 2001, the DNR changed their accounting system from the cash accounting method to the accrual accounting method pursuant to GASB 34.[1] This change required the DNR to record infrastructure such as buildings and other facilities it owns and manages on the agency's annual financial reports.

4. Grievant was given the task of obtaining and recording data related to the DNR fixed assets and infrastructure in databases and on spread sheet reports. These

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[1] The Governmental Accounting Standards Board (GASB) is a nonprofit entity responsible for establishing accounting standards—or generally accepted accounting practices (GAAP)—for state and local governments. GASB is operated by the nonprofit, privately funded Financial Accounting Foundation. In 1999, GASB published an official statement entitled "GASB 34." GASB 34 requires state and local governments to begin reporting the value of their infrastructure assets, including roads, bridges, water and sewer facilities, and dams, in their annual financial reports on an accrual accounting basis in order to be in compliance with generally accepted accounting practices. *See Technology News,* January -February 2000.

duties were in addition to Grievant's initial duties related to tracking and recording data related to leasing of real estate owned and managed by the DNR. Grievant's Exhibit 1.

5. Grievant completed and submitted a Position Description Form[2] ("PDF") to Respondent West Virginia Division of Personnel[3] ("DOP") in an effort to have her position reallocated to the Administrative Services Assistant 1 ("ASA 1") classification. Respondent's Exhibit 1. The PDF was signed by Grievant on March 31, 2009 and signed by the DNR Director on September 10, 2009. Thereafter, the PDF was forwarded to the DOP. Respondent's Exhibit 1.

6. By memorandum dated November 18, 2009, the DNR Division of Human Resources was advised by the DOP that Grievant's position was deemed to be correctly classified as an OA 3 position. In the PDF, Grievant had listed her predominate duties as follows:

- Processing office mail, answering phone calls, answering general inquiries related to purchasing, leasing, fixed asset transactions, property insurance, vehicles, vender registration and FIMS;
- Coordinating leases and preparing them for signatures;
- Tracking and recording current capital assets and infrastructure projects by creating reports using the FIMS and some accounting procedures; maintaining records and inputting data into FIMS and preparing year end Construction in Progress forms;
- Researching existence, value and depreciation of historical assets; input data into related databases; calculating depreciation and maintaining related reports.

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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.

[3] The DOP is the State Agency charged with classifying positions in the West Virginia Classified Service. W. VA. CODE § 29-6-1 *et seq*.

Respondent's Exhibits 1 & 2.

7. Grievant confirmed that the duties and responsibilities listed on her PDF were fair and accurate. She also summarized her predominate duties by stating that the majority of her time was spent gathering information related to leases, fixed assets and infrastructure; making copies of the information; checking the accuracy of the information; entering the information into appropriate databases and spread sheets; and producing reports from the information.

8. Grievant appealed DOP's initial classification. By letter dated January 15, 2010, DOP Director, Sara Walker, informed Grievant that the DOP considered Grievant's duties to be complex clerical duties which best fit into the OA 3 classification.

9. The DOP classification specifications for the OA 3 classification state, in-part, the following:

> **OFFICE ASSISTANT 3**
>
> **Nature of Work**
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> Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.
>
> **Distinguishing Characteristics**
>
> Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Respondent's Exhibit 4.

10. The DOP classification specifications for the ASA1 classification state in-part the following:

## ADMINISTRATIVE SERVICES ASSISTANT 1

**Nature of Work**

Under general supervision, performs administrative work in providing support services such as fiscal, personnel, payroll or procurement in a small division or equivalent organization level. May function in an assist role or in a specialized capacity in a large agency or department. Develops or assists in developing and implements plans/procedures for resolving operational problems and in improving administrative services. Work is typically varied and includes inter- and intra-governmental and public contact. Performs related work as required.

Respondent's Exhibit 5.

## Discussion

Grievant contends that her duties changed significantly in 2001 when she was required to track and report DNR capital and infrastructure related to leasing in order to insure compliance with generally accepted accounting procedures as required by GASB 34. Grievant alleges that her predominate duties are administrative rather than clerical which she believes requires her position to be reallocated to the ASA 1 classification.

Respondent DOP agrees that Grievant's duties and responsibilities involve complicated and complex recording and reports but that they are clerical duties nonetheless. DOP also notes that there has not been a significant change in Grievant's duties since 2001. Without a significant change in the predominate duties DOP opines that a reallocation is inappropriate.

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).

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 DNR, 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 must determine whether reallocation is appropriate. *Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009). The key to the analysis is whether Grievant's current classification constitutes the "best fit" for the duties Grievant performs. *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 are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606 through 609 (Aug. 31, 1990). 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).

Grievances contesting a grievant's current classification are therefore decided under rules of law which give DOP's interpretation of classification specifications great weight

unless that interpretation is shown to be clearly erroneous. 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 & Div. of Pers.* Docket No. 07-INS-299 (June 27, 2008).

Grievant asserts her position is misclassified. She has requested her position be reallocated to an ASA 1 and placed in a higher pay grade. The DOP Legislative Rule defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." 143 C.S.R. 1 § 3.75. To receive a reallocation, an employee must demonstrate "a significant change in the kind or level of duties and responsibilities." Additionally, Grievant 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). Additionally, Section 26 of the standard Position Description Form requests that the employee "describe what duties have been added to or deleted from the position since the last review." This information is critical because a reallocation is defined as follows:

> Reallocation: Reassignment 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.

143 C.S.R. 1 § 3.75.

Grievant argues that her position changed dramatically with the addition of duties requiring her to research data related to real property infrastructure and record that data on databases and spread sheets so that it would be available to meet the accounting requirements of GASB 34. This change took place in 2001 and Grievant has performed those duties since that time. The change over from cash accounting to accrual accounting did require Grievant to locate and keep track of new data. However, it did not change the basic nature of the work Grievant performs. Her basic duties are data collection, verification of data, entry of the data into databases and making reports from that data. The DOP defines such duties as falling into the general area of clerical work because it is defined by specific procedures.[4] Clerical duties fall within the OA class series and the most complex and complicated clerical duties, such as those performed by Grievant are performed by an OA 3. *See* Finding of Fact 9 *supra.* While Grievant disagreed with DOP's determination, she did not present evidence to demonstrate that the interpretation of her duties made by DOP was clearly erroneous.

The Division of Personnel's interpretation and explanation of the classification specifications should be given great weight unless clearly erroneous. *W. Va. Dep't of*

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[4] Level three hearing testimony of Debbie Anderson, a Senior Personnel Specialist in the Compensation and Classification section of the DOP.

*Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993). The clearly wrong standard requires the reviewing authority to 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); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007). DOP's determination that Grievant's position fits better in the OA 3 classification is supported by the evidence. Grievant did not prove by a preponderance of the evidence that DOP's classification determination was not accurate.

Accordingly, the grievance must be DENIED.

**Conclusions of Law**

1. 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. The Division of Personnel's interpretation and explanation of the classification specifications should be given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993). The clearly wrong standard requires the reviewing authority to 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); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

3. 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. 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)).

4. The DOP determined that Grievant's duties and responsibilities were complex and complicated clerical tasks which fit best into the Office Assistant 3 classification. Grievant did not prove that the DOP classification determination was clearly wrong or arbitrary and capricious.

Accordingly, the 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: April 8, 2011.**

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**WILLIAM B. MCGINLEY**
**ADMINISTRATIVE LAW JUDGE**