

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ELIZABETH COOPER,

Grievant,

v.

Docket No. 2022-0209-DOA

**DEPARTMENT OF ADMINISTRATION/PURCHASING DIVISION
AND DIVISION OF PERSONNEL,**

Respondents.

DECISION

Grievant, Elizabeth Cooper, is employed by Respondent, Department of Administration within the Purchasing Division. On September 16, 2021, Grievant filed this grievance against Respondent stating, "I am filling this grievance because I was unfairly denied reallocation from an Administrative Services Manager 3 to an Administrative Services Manager 4. I was originally denied in July and I received a denial of my appeal on September 16." For relief, Grievant seeks "I want to be reallocated to an Administrative Services Manager 4 (ASM4). I want all the back wages and benefits that I am entitled to for the time that I have been performing ASM4 duties."

The grievance was improperly filed directly to level two of the grievance process and was transferred to level one by order entered September 21, 2021. Following the September 28, 2021 level one conference, the grievance was denied by an undated level one decision. Grievant appealed to level two on September 29, 2021. The Division of Personnel was joined as a necessary party by order entered December 13, 2021. Following unsuccessful mediation, Grievant appealed to level three of the grievance process on March 4, 2022. A level three hearing was held on July 7, 2022, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant was

represented by Abraham J. Saad, Glazer Saad Anderson L.C. Respondent Purchasing Division appeared by its Director, Michael Sheets, and was represented by its General Counsel, James D. Meadows. Respondent Division of Personnel appeared by its Assistant Director, Wendy Mays, and was represented by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on August 18, 2022, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL").¹

Synopsis

Grievant is employed by Respondent Purchasing Division within its Program Services section in a position classified as an Administrative Services Manager 3. Grievant sought reallocation of the position she occupies to Administrative Services Manager 4 and protests the Division of Personnel's determination that the position is properly classified as an Administrative Services Manager 3. Grievant failed to prove that the Division of Personnel's interpretation of classification specification at issue is clearly erroneous. Grievant failed to prove that the Division of Personnel's classification determination was arbitrary or capricious or that the Administrative Services Manager 4 classification is the best fit for the position she occupies. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

¹ Respondent Purchasing Division elected not to file PFFCL.

Findings of Fact

1. Grievant is employed by Respondent Purchasing Division within its Program Services section in a position classified as an Administrative Services Manager (“ASM”) 3.

2. Grievant was promoted into the position following the posting of the position on March 6, 2012.

3. The posting specified that the position would serve as an Assistant Director for the Purchasing Division and as the manager of the Program Services Section. The position was responsible for the state and federal surplus property programs, the fixed assets program, travel management, and for overseeing the Purchasing Division’s accounting and budget.

4. Grievant first sought review of the position by the Division of Personnel (“DOP”) in 2014.

5. “Reallocation” is the “[r]eassignment by the Director of a position from one class to a different class on the basis of a significant change in the kind and/or level of duties and responsibilities assigned to the position or to address a misalignment of title and duties.” W. VA. CODE ST. R. § 143-1-3.72.

6. Classification specifications are “[t]he official description of a class of positions for the purpose of describing the nature of work, providing examples of work performed, and identifying the knowledge, skills, and abilities required while stating the generally accepted minimum qualifications required for employment.” W. VA. CODE ST. R. § 143-1-3.19

7. The DOP makes classification determinations based on the current, permanently assigned, predominant duties of the position as compared to the current class specifications. The process is begun by the completion of a Position Description Form ("PDF").

8. The PDF is the official document detailing the duties and responsibilities of a position and it is used by DOP to properly allocate positions within the classified service. W. VA. CODE R. § 143-1-4.5.b.

9. The PDF is initially completed by the person occupying the position. The supervisor of the position then reviews the PDF and provides comments. The appointing authority last reviews the PDF and provides additional comments and then forwards the PDF to the DOP.

10. The DOP's review process for a PDF entails a Specialist initially inspecting the PDF, determining the predominant duties of the position, and comparing those duties to the class specifications contained in the Classification Plan and any other historical documents related to the position to determine if a significant change in the permanently assigned predominant duties of the position has occurred. Once the first review is complete, a recommendation is submitted to the manager who conducts a second full review of the position before making a recommendation to Assistant Director Mays who undertakes a third and final review of the position before making the final classification determination.

11. The class specifications at issue read in pertinent part as follows:

ASM 3

Nature of Work

Under administrative direction, manages an organizational section providing administrative and support services in a division. The operations, policy, work processes, and regulatory requirements of the section are complex, varied, dynamic, and requiring substantial depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Involves the supervision of professional, technical and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Performs related work as required.

Distinguishing Characteristics:

The Administrative Services Manager 3 is distinguished from the Administrative Services Manager 2 by responsibility to manage a statewide administrative support function of the department. Positions having responsibility to manage a department-wide support function involving an established professional field (i.e., accounting) including the supervision of a significantly large staff of professional, technical, and clerical employees may also be allocated to this class.

Example of Work

- Plans, develops and executes through professional, technical, and clerical staff, a statewide administrative support program or a primary department-wide program of considerable complexity.
- Directs the daily operations of the staff and may direct regional or other field staff.
- Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.
- Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.
- Evaluates the operations and procedures of the unit for efficiency and effectiveness.
- Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.
- Determines need for training and staff development and provides training or searches out training opportunities.

- Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.
- Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.
- Compiles a variety of data related to the operation of the unit and/or the agency.
- Interprets statutes, regulations and policies to staff, other managers, and the public.
- Represents the division or department in grievance hearings and serves as a witness in same.
- Prepares reports reflecting the operational status of the unit and or agency programs.
- May participate in local conferences and meetings.

ASM 4

Nature of Work

Under administrative direction, performs administrative work at the advanced level, managing an organizational section providing administrative and support services in a department where operations, policy, work processes, and regulatory requirements of the section are complex, varied, dynamic. Work requires substantial depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Duties involve the supervision of managerial, professional, technical and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Positions at this level report to the division head and have primary responsibility for the administrative support functions for a large state division. Performs related work as required.

Distinguishing Characteristics:

The Administrative Services Manager 4 is distinguished from the Administrative Services Manager 3 by responsibility to manage a statewide administrative function of the largest state divisions. Positions in this class have responsibility for managing multiple units of a diverse administrative support function (i.e., accounting, purchasing, printing, etc.) in the largest state divisions and where significant federal relationships are involved in the fiscal and administrative

function. Typically, positions in this class manage the section through subordinate Administrative Services Managers.

Example of Work:

- Plans, develops and executes through managerial, professional, technical, and clerical staff, a statewide administrative support program of considerable complexity.
- Directs the daily operations of the staff and may direct regional or other field staff.
- Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures. Renders decisions in unusual or priority situations; consults with superiors and other state managers in reviewing same.
- Evaluates the operations and procedures of the unit for efficiency and effectiveness.
- Recommends the selection and assignment of staff to superiors; conducts interviews and background evaluations for prospective employees.
- Determines need for training and staff development and provides training or searches out training opportunities.
- Develops the section and division program and administrative budget.
- Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.
- Directs the compilation of a variety of data related to the operation of the unit and/or the agency. Interacts effectively with national and state officials on the granting and use of federal funds for program and administrative needs.
- Interprets statutes, regulations and policies to staff, other managers, and the public.
- Prepares reports reflecting the operational status of the unit and or division programs.
- Participates in national, state and local conferences and meetings.

12. Grievant completed the first PDF for review of the position on June 5, 2014.

She identified the predominant duties of the position as responsibility for management of the state and federal surplus property programs and the fixed assets program. The supervisor at the time, Dave Tincher, former Director of Purchasing, indicated on his

portion of the PDF, that the responsibility relating to the federal surplus property program had increased at that time.

13. Upon review, Respondent DOP determined that the position was correctly classified as an ASM 3.

14. Over the years, Grievant assumed additional duties. Originally, Grievant supervised the state travel manager position and an accountant. When the persons occupying those positions left the agency, the positions were not filled and Grievant directly assumed the duties of those positions. Grievant's division also acquired duties relating to the State's vehicle inventory. Respondent Purchasing's Director, Michael Sheets, views Grievant's position as the Chief Financial Officer for the agency.

15. Based on these changes, Grievant again requested review of the position in January 2021.

16. In her PDF, Grievant identified the predominant duties of the position as responsibility for management of the state and federal surplus property programs and the fixed assets program. Grievant stated that she directly supervised three positions: an Administrative Services Manager, a Supervisor 3, and an Administrative Services Assistant. She estimated that she spent 25% of her time managing the surplus property program, 20% managing the fixed asset program, and 20% managing the federal surplus property program. Grievant spent smaller percentages of time on her duties as chief financial officer (15%), managing the travel program (10%), and other miscellaneous and related duties (10%).

17. The fixed assets program, the state surplus program, and the state fleet duties all relate to administering property: tracking, warehousing, and/or disposing of property.

18. The federal surplus property program is somewhat different in that it must distribute the federal property it receives pursuant to criteria set by federal regulations in conjunction with several federal agencies but still essentially involves the tracking, warehousing, and disposition of property.

19. For accounting functions, the federal surplus program, and the travel program, Grievant performs the duties for those programs herself rather than managing the programs through subordinates.

20. On July 9, 2021, Respondent DOP determined that the position was correctly classified as an ASM3 because the position does not manage a statewide administrative function of the "largest state divisions." The DOP recognized the "significant federal relationships" of the position but determined that alone did not act to raise the level of authority and responsibility of the position to the ASM 4 level.

21. Grievant appealed Respondent DOP's classification determination.

22. When the DOP receives an appeal of a classification determination, the position undergoes another full review of the position, which is then reviewed by the Director of the DOP. In this review, a different Specialist completes the review of the PDF, also reviewing the appeal and any attached documents submitted with it, as well as all the other information available to the DOP about the position. The Specialist's classification recommendation is then reviewed by the division's manager who reviews all the documentation before making a recommendation to Assistant Director Mays.

Assistant Director Mays also reviews the appeal and all documentation before presenting her recommendation to the Director of the DOP. The Director also reviews the appeal and all the documentation relative to the position before making the final determination about the appropriate classification.

23. By letter dated September 15, 2021, Respondent DOP denied the appeal, again determining that the position should remain classified as an ASM 3. The DOP recognized the additional information provided in the appeal regarding the additional duties and responsibilities that had been added to the position but determined that the position was “managing a statewide administrative support function of the department, rather than managing a statewide administrative function of the largest state divisions.

24. After the grievance was filed, Respondent DOP again reviewed the position by conducting a job audit on February 14, 2022.

25. A job audit is a detailed review of the duties and responsibilities assigned to a position to include reviewing current and previous position description forms, organizational charts, reporting relationships and organizational setting. Audits may include a field audit where the personnel specialist interviews the employee and the supervisor at the work site where the position is located or may be a virtual audit requiring the employee to have access to a computer and the appropriate software.

26. After the job audit was completed, including a review of the additional Information Grievant submitted by letter dated December 8, 2021, Respondent DOP reaffirmed its determination that the position was properly allocated to the ASM 3 classification. In reviewing the position, the DOP also considered the Chief Financial Officer classification, but determined that, as those duties comprised only 15% of the

position's time, it was not the best fit. The DOP found that the position only supervised thirteen direct and indirect reports and that, although the position manages multiple units, those units were not diverse or large.

27. Purchasing was notified of this decision by letter dated September 15, 2021.

28. Purchasing is not one of the largest state divisions. The largest state divisions are the Department of Health and Human Resources, the Department of Homeland Security, and the Department of Transportation, each of which contains multiple divisions and has thousands of employees. Purchasing is a division within the Department of Administration and has few employees.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). "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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant asserts that the position she occupies should be reallocated from an ASM 3 to an ASM 4, citing her assumption of two additional roles within the section and the increase in federal contacts in her duties. Grievant asserts that Respondent DOP's application of the ASM 4 classification to only certain agencies is arbitrary and capricious. Respondent DOP asserts that the position is properly classified as an ASM 3 and that reallocation would be improper.

Respondent DOP has the responsibility for ensuring that all positions in the classified and classified-exempt service are appropriately classified. W. VA. CODE R. § 143-1-1 *et seq.* and W. VA. CODE § 29-6-10. Respondent DOP has discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Pers.*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001). The Division of Personnel's "interpretation and explanation of the classifications should [be] 'given great weight unless clearly erroneous.'" *W. Va. Dep't of Health & Human Res. v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993) (*per curiam*).

The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

The key to the analysis of allocation cases is to ascertain whether Grievant's current classification constitutes the "best fit" for their required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991); *Propst v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 93-HHR-351 (Dec. 3, 1993). In order to determine the best fit, the class specifications at issue must be analyzed. "In determining the class to which any position shall be allocated,

the specifications for each class shall be considered as a whole.” W. VA. CODE ST. R. § 143-1-4.4(b). Further. “[t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.” W. VA. CODE ST. R. § 143-1-4.4(d). Class 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 Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).” *Clark v. Ins. Comm’n & Div. of Pers.*, Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

The duties of the position Grievant occupies have changed somewhat over time. The position has assumed the duties of two subordinate positions, has new responsibilities regarding fleet management, and has expanded responsibilities regarding the federal surplus property program. It is clear Grievant is an asset to her agency and has taken on additional work for the benefit of the agency. It is understandable why Grievant believes she should be compensated at a higher rate due to the value she brings to the agency. However, the performance of the individual occupying a position is not relevant to classification determinations because it is the position that is classified, and

not the person. *Workman v. Dep't of Tax and Rev.*, Docket No. 98-T&R-519 (Feb. 25, 2000), *aff'd*, Kanawha Cnty. Cir. Ct., Docket No. 00-AA-53 (Apr. 17, 2003).

The central conflict of this grievance is the provision of the ASM 4 classification explaining the distinction between an ASM 3 and an ASM 4, which states that an ASM 4 has “responsibility to manage a statewide administrative function of the largest state divisions.” Duties within a classification series, such as is the case here, have a significant degree of overlap. Thus, the distinguishing characteristics are important when considering the best fit between positions of the same classification series. Respondent DOP, through the testimony of its Assistant Director, explained that the DOP has interpreted the largest state divisions to be the Department of Health and Human Resources, the Department of Homeland Security, and the Department of Transportation. The DOP does not consider the Division of Purchasing to be a large state division. Grievant asserts that Respondent’s interpretation is arbitrary and capricious because Respondent DOP provided no “rational explanation” for this position.

Grievant’s assertion fails in that, as an interpretation of its classification specifications, Respondent DOP’s interpretation of what constitutes the largest divisions is entitled to great weight unless clearly erroneous. It is Grievant’s burden to prove Respondent DOP’s interpretation is clearly erroneous, and not Respondent’s burden to justify its actions. The three agencies Respondent DOP considers the largest are all department-level agencies with many employees. The Division of Purchasing is only a division-level agency within the Department of Administration. Grievant provided no evidence to support that the Division of Purchasing should be considered one of the largest state divisions akin to agencies such as the Department of Health and Human

Resources.² In fact, it appears from the evidence presented that the Division of Purchasing is a relatively small agency. Grievant failed to prove that Respondent DOP's interpretation of what agencies constitute the largest state divisions is clearly erroneous.

The other two controverted issues in this case – the diversity of units managed and the extent of federal contacts – are ultimately irrelevant as the position is not housed within one of the largest state divisions. The ASM 4 classification specification states, "Positions in this class have responsibility for managing multiple units of a diverse administrative support function . . . *in the largest state divisions and* where significant federal relationships are involved in the fiscal and administrative function." (emphasis added). Even if Grievant manages diverse units with significant federal relationships it does not appear the position would qualify because it is required by the classification specification that a position performing those functions also be housed within one of the largest state divisions.

Regardless, while Respondent DOP recognized the significant federal relationships involved in the federal surplus property program, the other programs do not involve significant federal relationships and do not appear to have the diversity required for an ASM 4. Grievant manages three units: Fixed Assets, State Surplus, and Federal Surplus/Travel Management. While Grievant argues the federal surplus property program should be considered diverse from the state surplus property program, Respondent DOP's position that these are not diverse is not unreasonable. While the

² Grievant also appears to argue that her position should qualify as working for one of the largest state agencies because she performs work for all state agencies. Grievant does not perform work for all agencies; she performs work for Purchasing, her employer, which includes contact with all state agencies.

distribution of the federal property is more complex, both programs involve receiving, tracking, warehousing, and distributing property. The Fixed Assets unit also involves the tracking of property. These functions are not diverse.

The difficulty of the position Grievant occupies is one of volume. She has additional direct responsibilities as the Chief Financial Officer of the division, in performing direct accounting functions, and in performing direct duties for the federal surplus program and travel program. Although Grievant has taken on additional duties, to the benefit of her agency, these duties are not managerial. Instead, Grievant has assumed the duties of subordinate positions. As Grievant directly performs the duties of these subordinate positions, it actually reduces the level of responsibility of her position because Grievant is no longer managing subordinate positions, but rather doing the work herself. Likewise, her service as the Chief Financial Officer, which makes the position unique, is not managerial in nature because she simply does all the work herself. In testament to the small size of the agency, Grievant's duties as Chief Financial Officer take up only 15% of her time. It is undisputed that Grievant plays a key role within her agency but that role simply does not include the diversity of management responsibilities within a large agency contemplated by the ASM 4 classification specification. Grievant failed to prove Respondent DOP's classification determination was arbitrary and capricious or that the Administrative Services Manager 4 classification is the best fit for the position she occupies.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. The Division of Personnel has the responsibility for ensuring that all positions in the classified and classified-exempt service are appropriately classified. W. VA. CODE R. § 143-1-1 *et seq.* and W. VA. CODE § 29-6-10.

3. The Division of Personnel has discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. *See Bonnett v. West Virginia Dep’t of Tax and Revenue and Div. of Pers.*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff’d* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001).

4. The Division of Personnel’s “interpretation and explanation of the classifications should [be] ‘given great weight unless clearly erroneous.’” *W. Va. Dep’t of Health & Human Res. v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993) (*per curiam*).

5. The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. *See Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989).

6. An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex*

rel. Eads v. Duncil, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

7. The key to the analysis of allocation cases is to ascertain whether Grievant's current classification constitutes the "best fit" for their required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991); *Propst v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 93-HHR-351 (Dec. 3, 1993).

8. "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b).

9. "The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class." W. VA. CODE ST. R. § 143-1-4.4(d).

10. Class 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 Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989)." *Clark v. Ins. Comm'n & Div. of Pers.*,

Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff'd*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

11. The performance of the individual occupying a position is not relevant to classification determinations because it is the position that is classified, and not the person. *Workman v. Dep't of Tax and Rev.*, Docket No. 98-T&R-519 (Feb. 25, 2000), *aff'd*, Kanawha Cnty. Cir. Ct., Docket No. 00-AA-53 (Apr. 17, 2003).

12. Grievant failed to prove that the Division of Personnel's interpretation of classification specification at issue is clearly erroneous.

13. Grievant failed to prove that the Division of Personnel's classification determination was arbitrary or capricious or that the Administrative Services Manager 4 classification is the best fit for the position she occupies.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.³

Any such appeal must be filed within thirty (30) days of receipt of this decision. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the

³ On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.

appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

DATE: September 30, 2022

Billie Thacker Catlett
Chief Administrative Law Judge