

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**TIMOTHY LEE TRAIL and JIMMY LEE ARTIS, JR.,**

**Grievant,**

**v.**

**Docket No. 2022-0347-CONS**

**DIVISION OF REHABILITATION SERVICES and  
DIVISION OF PERSONNEL,**

**Respondents.**

**DECISION**

Grievants Timothy Lee Trail and Jimmy Lee Artis, Jr. are employed by Respondent, Division of Rehabilitation Services (“Rehab”). Both Grievants work in Rehab’s Human Resources Department (“HR”). Grievant Trail’s predominate duties are related to the division’s pay roll and Grievant Artis is the Benefits and Retirement Coordinator. Due to a cross-training initiative, both Grievants are learning the duties of others in this department. Therefore, each Grievant occasionally will perform the duties normally assigned to the other Grievant. Mr. Trail and Mr. Artis filed level one grievance forms dated September 13, 2021, challenging Respondent Division of Personnel (“DOP”) determination that their positions were properly allocated in the Human Resources Associate (“HR Associate”) classification and not the Human Resources Generalist 1 (“HR Generalist 1”) classification. Both Grievants seek for their positions to be reallocated to the HR Generalist 1 classification.

A level one hearing was held on September 19, 2021, and a decision denying the grievances was issued on September 30, 2021. Grievants appealed to level two by forms dated October 7, 2021. DOP was joined as a party respondent by Order dated October

16, 2021, and the two grievances were consolidated by order dated October 21, 2021. A mediation was conducted on January 19, 2022.

Grievant Trail filed an appeal form to level three dated January 26, 2022, and Grievant Artis filed level three appeal form dated February 2, 2022. A level three hearing was held in the Charleston office of the West Virginia Public Employees Grievance Board on September 19, 2022. Grievants Trail and Arvis appeared *pro se*.<sup>1</sup> Respondent Rehab was represented by Adriana L. Marshall, Assistant Attorney General and Respondent DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General. The parties waived the right to submit Proposed Findings of Fact and Conclusion of Law and the matter became mature for decision at the end of the hearing.

### **Synopsis**

Grievant's Trail and Arvis hold positions which are placed in the HR Associate classification. They argue that their positions should be reallocated to the HR Generalist 1 classification which they believe better fits their duties and responsibilities. After several reviews, the DOP determined that Grievants' positions were properly allocated to the HR Associate classification. Grievants challenge that determination. DOP demonstrated that the positions held by both Grievants were all allocated to the HR Associate classification when they were fully examined in 2018 as a result of the State Personnel Board ("SPB") approving a new classification series for Human Resource positions. Grievants did not prove that a significant change had occurred in the duties of the position which would require reallocation, or that the DOP's determination that the best fit for the positions is in the HR Associate classification was clearly wrong.

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<sup>1</sup> For one's own behalf. BLACKS LAW DICTIONARY 1221 (6<sup>th</sup> ed. 1990).

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

### **Findings of Fact**

1. Grievant Trail has been employed by Respondent Rehab for seventeen years, five in accounting and twelve involved in agency payroll and accounting work. His position is in the Human Resource Associate ("HR Associate") classification. Grievant Trail completed and signed a Position Description Form ("PDF"), dated June 6, 2021, in an effort to have his position reallocated to the Human Resources Generalist 1 ("HR Generalist 1") classification.<sup>2</sup>

2. Grievant Trail's predominant duties center around processing documents to ensure the payroll is correct for all Rehab employees. Among the duties he performs to accomplish that responsibility are:

- Entering and maintaining all employee records within the OASIS system including new hires, transfers, and rehires, lateral moves, demotions, temporary upgrades, internal equity increases, reallocations and employee separations such as retirements, resignations, dismissals and deceased employees.
- Meeting strict guidelines for the entry of these documents to ensure time for processing and a timely payroll.
- Providing documentation with the transactions which must be complete.
- Adhering to all rules and legal requirements for payroll documentation.

These duties take make up approximately 30% of Grievant's work time.<sup>3</sup>

3. Another 10% of Grievant Trail's time is spent maintaining all the KRONOS records for Rehabs over 400 employees to ensure employees receive credit for all time worked, by performing the following activities:

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<sup>2</sup> 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.

<sup>3</sup> Respondent DOP Exhibit 1, Position Description Form ("PDF") for Timothy Trail.

- Process KRONOS weekly reports regarding employees' time in Kronos to evaluate completeness and overtime conflicts.
- Merge KRONOS weekly reports into the payroll by-weekly report.
- Distribute payroll reports to agency managers and supervisors according to strict deadlines.
- Audit leave entries for accuracy and maintain appropriate documentation for leave used by employees.<sup>4</sup>

4. Grievant Trail spends 5% of his worktime maintaining information regarding employee breaks in service, training proper position placement and paycheck withholdings.

5. Grievant spends 10% of his time composing communications to employees through regular mail and email which include, without limitation, notifications related to: acceptance, reallocation, promotion/lateral/demotion, new hire and employee transfer, "no-hardship" notification, breaks in service, donated leave, open enrollment and buy back. Included in this percentage is contacting outside employers to obtain employment information for employees with previous WV State Government service to update progression dates and create OASIS documents to make corrections within the system when needed. Grievant also assists supervisors and managers with certain processes related to hiring new employees, promoting/demotion/transferring existing employees, and separating employees from service.

6. Grievant Trial spends 5% of his time performing task in each of the four following activities:

- Performing position maintenance for Rehab by creating and altering documents related to new positions, and reallocations, as well as changes related to unit, titles, pay grades, and funding sources.
- KRONOS liaison for Rehab with entails granting access to timecards for managers and timekeepers, training timekeepers, and troubleshooting when problems occur.

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<sup>4</sup> *Id.*

- Assisting Supervisor and managers with the process for hiring new employees, as well as, promoting, demoting, and lateral transferring of current employees.
- Monitoring “no hardship” amounts owed to Rehab and documents related to reimbursements for separating employees. Entering documents into OASIS Financials related to the no hardship deduction and credit process.<sup>5</sup>

7. Finally, Grievant estimated that he spends roughly 25% of his time in cross training to learn how to perform duties in the related to the position which handles employee benefits including such things as PEIA, Unemployment and Workers Compensation claims. This is a recent initiative instituted by the HR supervisor so that HR employees can cover for absent colleagues in the HR department. These duties are temporary and occasional duties and not part of Grievant’s present job description.<sup>6</sup>

8. Grievant Trail testified that he spends roughly two hours each day working emails and telephone calls from employees seeking information regarding payroll or leave questions. This was not accounted for in Mr. Trail’s PDF but is a significant duty for an HR employee with specialized duties and information effecting employee pay and benefits.

9. While Grievant Trail processes all documents related to leave requests and other payroll issues, he does not have final authority to approve those requests and payroll documents he develops. Final authority rests with his supervisor or manager.

10. Grievant, Jimmy Lee Artis, Jr., has been employed by Respondent Rehab for 23 years. Grievant Artis is in a position which is classified as Human Resources Associate. (“HR Associate”). The working title of his position is Benefits and Retirement Coordinator. Grievant Artis also completed and signed a PDF, dated June 1, 2021, in an

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

effort to have his position reallocated to the HR Generalist 1 classification. (See footnote 2, *supra*.)

11. Pursuant to his PDF and testimony,<sup>7</sup> Grievant Artis spends 70% or more of his time performing the following activities:

- Advising new employees of Benefit packages, retirement, and related payroll deductions.
- Entering completed Packet Information and Verifications into the PEIA and OASIS systems in compliance with Federal and State laws.
- Communicating with existing employees to address concerns assist in alteration of their Benefit plans.
- Terminating Benefit packages and advising employees of their rights and options.
- Paying Workers Compensation premium, Division of Personnel billing, Unemployment Compensation billing, and PEIA premiums in compliance with State guidelines.<sup>8</sup>

12. Like Grievant Trail, Grievant Artis spends 10% of his time on the following activities:

- Processing KRONOS weekly reports regarding employees' time in KRONOS to evaluate completeness and overtime conflicts,
- Merging KRONOS weekly reports into the payroll by-weekly report,
- Distributing payroll reports to agency managers and supervisors according to strict deadlines.
- Auditing leave entries for accuracy and maintain appropriate documentation for leave used by employees.<sup>9</sup>

13. Grievant Artis spends an additional 10 % of his time performing the following activities relate to employee benefits and retirement:

- Communicating with employees via email correspondence regarding, acceptance letters, reallocation letters, promotion/lateral/demotion letters, employee transfer letters, breaking service letters, benefit letters, donated leave requests, open enrollment and buy backs.

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<sup>7</sup> The percentage of time allocations which appear in these findings represent the sworn testimony of Grievant Artis and differ significantly from the percentages listed in the PDF he submitted to DOP. Respondents did not object to these corrections.

<sup>8</sup> Respondent DOP Exhibit 2, PDF of Grievant Artis (as corrected by his testimony).

<sup>9</sup> *Id.*

- Contacting outside agencies to obtain employment information pertaining to employees with previous State government tenure to update progression dates and create OASIS documents to make corrections within the system.
- Assisting supervisors and managers with certain areas of the process of hiring new employees, promoting/demoting and lateral changes of current employees and separating and dismissing employees.<sup>10</sup>

14. Grievant Artis spends 5% of his time in cross training learning the payroll duties of Grievant Trail.<sup>11</sup>

15. Grievant Artis spends an additional 5% of his time “maintaining accurate employment information regarding breaks in service, training, proper position placement, as well as paycheck withholdings.”<sup>12</sup>

16. There are five more duties listed in Grievant Artis’ PDF to which he attributes 1% of his time for each duty. These duties do not represent predominant duties of Grievants Artis’ position.<sup>13</sup>

17. In 2018, the West Virginia Division of Personnel (“DOP”), in consultation with affected agencies, created a proposal for a new human resources class series to be utilized for human resources positions in agencies outside of DOP. This new class series proposal was approved by the West Virginia State Personnel Board (“SPB”) on May 17, 2018. The resulting position classification and specifications became effective August 4, 2018. The new class series was made up of the following classifications:

- Human Resources Assistant      paygrade 8.
- Human Resources Associate      paygrade 10.
- Human Resources Generalist 1      paygrade 12.
- Human Resources Generalist 2      paygrade 14.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

18. After the creation of the class series and the action of the SPB, agencies with any positions having HR functions were required to submit PDFs for those positions to DOP so the positions could be reviewed and properly allocated by DOP to classifications within the new class series.

19. The person who occupied Grievant Trail's present position at that time was Lisa Vaughan. Ms. Vaughn completed and signed a PDF listing the position's duties and responsibilities on July 3, 2018. The form was reviewed and signed by Ms. Vaughn's supervisor and the appointing authority on July 6, 2018, after which it was submitted to DOP for a classification determination.<sup>14</sup>

20. DOP issued a classification determination on August 16, 2018, concluding that the best fit for the position was the HR Associate classification. This determination was communicated to Rehab by letter dated August 20, 2018. (Respondent DOP Exhibit 5). There was no objection or appeal of the classification determination.<sup>15</sup>

21. Grievant Artis was already occupying his present position when the PDFs were requested by DOP. Grievant Artis completed and signed a PDF listing the position's duties and responsibilities on July 3, 2018. The form was reviewed and signed by Grievant Artis' supervisor and the appointing authority on July 6, 2018, after which it was submitted to DOP for a classification determination.

22. DOP issued a classification determination on August 16, 2018, concluding that the best fit for that position was the HR Associate classification. This determination

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<sup>14</sup> Respondent DOP Exhibit 5.

<sup>15</sup> *Id.*



was communicated to Rehab by letter dated August 20, 2018. (Respondent DOP Exhibit 9). There was no objection or appeal of the classification determination.<sup>16</sup>

23. Grievants Trail and Artis completed and signed PDFs, dated June 6, 2021, in an effort to have their positions reallocated to the HR Generalist classification. The PDFs were signed by their supervisors and submitted to DOP for a classification determination.

24. By letter dated July 15, 2021, Respondent Rehab was notified that the DOP had determined that the best fit for the position occupied by Grievant Trail was still the HR Associate classification.<sup>17</sup> The DOP notified Respondent Rehab that the position held by Grievant Artis was also determined to fit in the HR Associate classification by letter dated July 26, 2021.<sup>18</sup> In both letters, DOP noted that there had been no significant changes in the predominate duties since the positions were last allocated in 2018. Both Grievants appealed the classification determinations to the DOP.

25. When the DOP receives an appeal of a classification determination, the position undergoes another full review 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 the Assistant Director. The Assistant Director also reviews the appeal and all documentation before presenting her recommendation to the Director

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<sup>16</sup> Respondent DOP Exhibit 9.

<sup>17</sup> Respondent DOP Exhibit 6.

<sup>18</sup> Respondent DOP Exhibit 10.

of the DOP. The Director reviews the appeal and all the documentation relative to the position before making the final determination about the appropriate classification.

26. A letter containing the DOP response to the appeal regarding Grievant Trails position was sent to Respondent Rehab on September 8, 2021. DOP Director Webb noted that Grievant's request had been reconsidered as well as additional information provide by Acting Director, Pisnu Bua-lam. The review affirmed the original classification determination of HR Associate. The letter specifically noted:

The additional information provided does not cause the classification of the position to change because the duties that are completed with time constraints, and go through various approvals before being finalized. The duties of this position do not meet the classification of Human Resources Generalist 1 because the duties are not complex in nature, and strict accountability for results is not met due to not having final authority. The work goes to the Department level and/or other agencies for approval.<sup>19</sup>

27. A letter containing the DOP response to the appeal regarding Grievant Artis position was sent to Respondent Rehab on September 8, 2021. DOP Commissioner Webb noted that Grievant's request had been reconsidered as well as additional information provide by Acting Director, Pisnu Bua-lam. The review affirmed the original classification determination of HR Associate. The letter specifically noted:

The additional information provided in the appeal states that new duties have been added to the position. These duties include; performing position maintenance for the entire agency by creating documents to alter existing positions, assist supervisors and managers with the process of hiring new employees, promoting/demoting, and lateral changes of current employees, KRONOS liaison for agency, and create new positions to expand workforce . . .

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<sup>19</sup> Respondent DOP exhibit 7.

The additional information provided does not cause the classification of the position to change because the work is reviewed and approved by other levels, including other agencies and the Department level approver. The duties of this position do not meet the classification of Human Resources Generalist 1.<sup>20</sup>

28. As with Grievant Trail's position, Grievant Artis' position was determined to not meet the "strict accountability for results" requirement of the HR Generalist 1 classification because Grievant Artis' decisions were reviewed and ultimately approved by others before becoming final.

29. A job audit was requested for the position of Grievant Artis. 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, or may be a virtual audit requiring the employee to have access to a computer and the appropriate software

30. A virtual job audit was conducted for Grievant Artis' position by DOP personnel on February 2, 2022.<sup>21</sup> By letter dated May 11, 2022, DOP determined that the

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<sup>20</sup> Respondent DOP Exhibit 11.

<sup>21</sup> As a result of the COVID 19 Pandemic, the DOP began conducting job audits through video platforms to avoid person to person contact. The auditor can still communicate with the employee and supervisors as well as view documents and procedures. DOP determined that the virtual audits were effective and had the additional benefit of allowing the audits to be scheduled and conducted more expeditiously, cutting down the wait time for agencies and employees for the ultimate determinations. While Grievant Artis was suspicious of the efficacy of the virtual audit, there was no evidence to indicate that it was more or less effective than an on-site audit.

audit confirmed the prior classification determination of HR Associate. Specifically, the letter noted:

Our review found the duties and responsibilities for the position are predominately professional human resource work in one or more areas characterized by limited authority . . .

A significant characteristic of the [HR Generalist 1 classification] is that it is “characterized by its complexity, broad discretion, and strict accountability for results . . .

Our review did not find that this position has broad discretion as described by the Human Resources Generalist 1 level, as the position is located in a Division within a Department and the work of this position goes through various approvals before being finalized.<sup>22</sup>

31. Grievants’ positions are characterized by the performance of significant and important duties related to processing the payroll, tracking leave, administering benefits as well as reporting information to their supervisors, and advising their supervisors regarding HR matters such as hiring, transferring, and terminating employees in the Department. These duties are performed through established procedures in compliance with specific rules and regulations. Grievants have little or no discretion in altering the way their duties are performed. Neither Grievant has final authority regarding documents they create or processes they perform. Their work is reviewed and approved by one or more supervisors before it becomes final.

### **Discussion**

This grievance does not challenge a disciplinary action, so Grievants bear the burden of proof. Grievants’ allegations must be proven by a preponderance of the

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<sup>22</sup> Respondent DOP Exhibit 12.

evidence. See, W. VA. CODE R §156-1-3. *Burden of Proof*. "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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

Grievants challenge the classification determination made by DOP that their positions are properly allocated to the HR Associate classification. Grievants argue that the best fit for their positions is the HR Generalist 1 classification. They seek to have their positions reallocated to that classification. In order to prevail upon a claim of misclassification, Grievants must prove by a preponderance of the evidence that the predominate duties more closely match those of another cited class specification than the classification to which he is currently assigned. See generally *Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

WEST VIRGINIA CODE § 29-6-10 authorizes the W. Va. Division of Personnel (DOP) to establish and maintain a position classification plan for all positions in the classified and classified exempt service. State agencies that utilize such positions must adhere to the plan in making assignments to their employees. Additionally, the Division of Personnel is the entity of West Virginia State government primarily charged with making classification determinations. W. VA. CODE ST. R. § 143-1-6.4.a.1. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and *an agency's determination of matters within its expertise is entitled to substantial weight*. Syl. pt. 3, *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Princeton Community Hosp. v. State Health Planning*, 174

W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983). (Emphasis added)

Respondent DOP has reviewed Grievants' positions as described in the PDFs and other documents related to the positions including postings and prior history. The initial review went through three steps including the initial specialist, their supervisor, and the Assistant Director for Classification and Compensation. A second independent review was performed when Grievants and Rehab appealed the initial determination. A three-step examination of the positions occurred beginning with a different specialist. Additionally, Grievant Artis' position was reviewed a third time through the job audit procedure. Through the job audit, a detailed review of the duties and responsibilities assigned to a Grievant Artis' position was performed to include reviewing current and previous position description forms, organizational charts, reporting relationships and organizational setting. This was the third extensive review of the position. The auditor was not involved in the previous reviews and made an independent recommendation based upon the information collected in the audit. The job audit confirmed the determination that Grievant Artis' position was properly allocated to the HR Associate classification.

"Reallocation" is defined as reassignment 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 R. §143-1-3.72. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Stihler v. Div. of Natural Res.*, Docket No. 07-DNR-360D (Feb. 6, 2009) *citing*, *Keys v. Dep't of Environmental Protection*, Docket No. 06-DEP-307 (April 20, 2007);

*Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (March 26, 1997); *See Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

The testimony provided by both Grievants does not show that there has been a significant change in the predominant duties from the time the positions were originally allocated to the HR Associate classification and the reassessment which was concluded in July 2021. The original PDF submitted for the position now held by Grievant Trail included the following duties:

- Entering data and reports into OASIS regarding hiring, suspension, transfers, discretionary raises, and other changes in employment status which effect employee compensation, as well as entering resignations and retirements and calculating final payments including “no hardship” deductions, for retirees to ensure payment in a timely matter. (25%)
- Entering reports to update positions with title changes, funding changes, work locations changes, and pay class updates to assure conformity between specified modules in the OASIS system. (20%)
- Oversee KRONOS process by training and assisting Agency timekeepers. Calculate and enter annual leave payouts for retiring or resigning employees. And assist employees and supervisors with questions regarding payroll issues and policies. (25%)
- Process payroll for approximately 500 employees every six weeks: including balancing KRONOS totals to HMR pre-check totals, final payroll totals and making corrections where needed. (10%).<sup>23</sup>

While the percentage work time assigned to these tasks differs, the duties are virtually the same as those described by Grievant Trail in the PDF he prepared and submitted June 7, 2021.

The same is true for Grievant Artis who listed his predominate duties in 2018 as:

- Overseeing leave cases, including FMLA, Medical, personal, and Worker's Compensation, then prepare and send documentation to concerned parties within and outside the agency. (50%).
- Process all documents for PEIA, FBMC, 457 Retirement Plus and help employees by answering their question and to make change when necessary. Assure that all Federal and State guidelines are followed. Enter

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<sup>23</sup> Respondent DOP Exhibit 5.

changes into OASIS, PEIA and sending documentation to the various agencies. Balancing and paying PEIA premiums. (15%).

- Prepare and send retirement documentation to employees and answer questions or concerns. Process the documentation when returned and send completed documentation to appropriate agencies. Provide information from the COMPASS system on any pay periods the retirement Board does not have. (50%).<sup>24</sup>

Once again, while the percentage of work time assigned to these tasks differ, the duties are virtually the same as those described by Grievant Artis in the PDF he prepared and submitted June 1, 2021.<sup>25</sup>

The only real change in the duties for the two positions is that both Grievants noted that they are now engaged in cross training so HR employees can temporarily perform the duties of another worker in the case of a prolonged absence. Grievant Trail believes he spends 25% of his time in cross training and Grievant Artis believes he spends 5% of his time in cross-training.

The DOP Administrative Rule requires that “[w]henver significant changes occur in the duties and responsibilities permanently assigned to a position, the Director shall reallocate the position to its proper class.” W. VA. CODE R. §143-1-4.7. The cross training listed is not a “permanently assigned” duty for the positions, and it is certainly not a significant change in predominate duties which would require reallocation. Grievant’s did not prove by a preponderance of the evidence that “significant changes occurred in the duties and responsibilities permanently assigned to [their] positions” which would require a reallocation.

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<sup>24</sup> Respondent Exhibit 9.

<sup>25</sup> Respondent Exhibit 2.



Finally, Grievants did not prove by a preponderance of the evidence that the HR Generalist 1 classification is the best fit for their positions. The classification specifications for the HR Associate position states the following in the Distinguishing Characteristics section.

Work at this level is characterized by limited authority and moderate complexity and includes the application of established standards, guidelines, rules and regulations, with little latitude to vary methods and procedures. Work is performed with greater independence than that of the Human Resources Assistant level.

Conversely, the classification specifications Distinguishing Characteristics section for the HR Generalist 1 position states:

The work is characterized by its complexity, broad discretion, and strict accountability for results. Full responsibility is delegated for planning, organizing, and completing assignments within established procedural framework and time constraints. These positions are distinguished from the Human Resources Associate level by the wider range of work assignments in the human resources area.

Grievants Trail and Artis perform important work in payroll and benefits which significantly affects all the employees in the Rehab agency. These duties are performed through established procedures in accordance with policies and rules established by Respondent and other government entities. It is noted in the PDFs supplied by Grievants that their duties must be performed within specific procedures and timelines. Consequently, Grievants have little or no discretion in altering the way their duties are performed. Additionally, neither Grievant has final authority regarding documents they create or processes they perform. Their work is reviewed and approved by one or more supervisors before it becomes final.

The classification specifications for the HR Generalist 1 classification specifically state that positions in this classification are characterized by complexity, broad discretion, and strict accountable for results. Grievants' positions do not have broad discretion in performance of their duties. All Grievants' reports and documentation is ultimately approved by a supervisor or manager. Thus, Grievants do not have strict accountability for the results. Accordingly, the HR Generalist 1 classification is not the best fit for the positions Grievants hold. Accordingly, the consolidated grievances are DENIED.

### **Conclusions of Law**

1. This grievance does not challenge a disciplinary action, so Grievants bear the burden of proof. Grievants' allegations must be proven by a preponderance of the evidence. See W. VA. CODE R §156-1-3. *Burden of Proof*. "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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

2. In order to prevail upon a claim of misclassification, a Grievants must prove by a preponderance of the evidence that their predominate duties more closely match those of another cited class specification than the classification to which he is currently assigned. See generally, *Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

3. WEST VIRGINIA CODE § 29-6-10 authorizes the W. Va. Division of Personnel (DOP) to establish and maintain a position classification plan for all positions in the

classified and classified exempt service. State agencies that utilize such positions, as a general rule, must adhere to the plan in making assignments to their employees.

4. The Division of Personnel is the entity of West Virginia State government primarily charged with making classification determinations. W. VA. CODE ST. R. § 143-1-6.4.a.1. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and *an agency's determination of matters within its expertise is entitled to substantial weight*. Syl. pt. 3, *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Princeton Community Hosp. v. State Health Planning*, 174 W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983). (Emphasis added)

5. "Reallocation" is defined as reassignment 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 R. §143-1-3.72. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Stihler v. Div. of Natural Res.*, Docket No. 07-DNR-360D (Feb. 6, 2009) *citing*, *Keys v. Dep't of Environmental Protection*, Docket No. 06-DEP-307 (April 20, 2007); *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (March 26, 1997); *See Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

6. The DOP Administrative Rule requires that "[w]henver significant changes occur in the duties and responsibilities permanently assigned to a position, the Director shall reallocate the position to its proper class." W. VA. CODE R. §143-1-4.7.

7. Grievants did not prove by a preponderance of the evidence that “significant changes occurred in the duties and responsibilities permanently assigned to [their] positions” which would require a reallocation.

8. Grievants did not prove by a preponderance of the evidence that the HR Generalist 1 classification is the best fit for their positions.

Accordingly, the consolidated grievances are DENIED.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>26</sup> 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 appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**DATE: OCTOBER 31, 2022**

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

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<sup>26</sup> 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.