

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**BRITTANY LYNN PRAGER,  
Grievant,**

v.

**Docket No. 2022-0680-DHS**

**DEPARTMENT OF HOMELAND SECURITY/  
NORTHERN CORRECTIONAL FACILITY  
and DIVISION OF PERSONNEL,  
Respondents.**

**DECISION**

Grievant, Brittany Prager, an employee of the Department of Homeland Security, filed this action on or about March 16, 2022, claiming to be working out of classification as a Corrections Unit Manager at the Northern Regional Jail and Correctional Facility. The grievance was waived by the Department of Homeland Security at level one. The Division of Personnel was joined as a necessary party by order entered on May 6, 2022. A level two mediation was conducted on July 27, 2022. Grievant appealed to level three.

An evidentiary level three hearing was conducted before the undersigned on April 10, 2023, by Zoom originating from the Public Employees Grievance Board Westover office. Grievant appeared *pro se*. The Department of Homeland Security appeared by Superintendent Shawn Straughn and by Jodi Tyler, Assistant Attorney General. The Division of Personnel appeared by Wendy Mays, Assistant Director and by Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for consideration upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law on May 11, 2023.

## **Synopsis**

Grievant is employed by the Department of Homeland Security as a Corrections Case Manager. Following the resignation of a Unit Manager, who supervised Grievant, she was assigned certain clerical duties that had previously been performed by the Unit Manager. These duties were intended to be divided between the two Case Managers, although Grievant volunteered to take on the bulk of those duties, in addition to her normal workload. Grievant was never assigned as the acting Unit Manager during this time and other supervisory staff members absorbed the other duties of the Unit Manager until the vacancy was filled. Grievant failed to demonstrate that she is entitled to compensation for additional duties performed under the Division of Personnel's "Temporary Classification Upgrade Policy." This grievance is denied.

The following Findings of Fact are based on the record of this case.

### **Findings of Fact**

1. Grievant is employed by the Department of Homeland Security in a position classified as a Corrections Case Manager.
2. In December of 2021, the Unit Manager working in Grievant's assigned Unit resigned his position. This vacancy was filled by the agency on March 14, 2022.
3. In the absence of the Unit Manager, Grievant and the other Case Manager, Bob Morris, were directed to absorb a limited number of the Unit Manager's clerical duties, which included logging inmate grievances and completing monthly statistical reports.
4. The higher-level Unit Manager duties were not completed by Grievant and were shared among other facility employees.

5. As part of their ordinary job duties, Case Managers are required to fill in as acting Unit Manager when the Unit Manager is off work for leave or training

6. During the vacancy, Grievant was not assigned as acting Unit Manager or expected to perform all Unit Manager duties on a full-time basis.

7. Agencies are permitted to fill positions through a temporary upgrade in certain circumstances under the Division of Personnel's "Temporary Classification Upgrades Policy."

8. "Temporary upgrade' is defined as an approved pay differential for employees who, during a specified limited period of time, perform the duties and responsibilities on a full-time basis of a position in a higher compensation range due to a separation or an extended leave of absence, for a short-term project of less than twelve (12) months in duration, or in an emergency situation." Division of Personnel Exhibit 1.

9. "The assignment must be to a position in an acting capacity as a result of the separation or extended leave of absence of an employee who occupies/ied a position assigned to a higher classification, for a short-term project or less than twelve (12) months in duration, or for an emergency situation. If the employee is not assuming the full complement of duties and responsibilities of the higher classification, a Position Description Form (PDF) must be submitted to the DOP for a classification determination prior to the personnel transactions for the temporary upgrade being entered." Division of Personnel Exhibit 1.

10. "The assignment shall be for no less than 30 calendar days and no more than six (6) months, unless an extension is granted by the Director of Personnel." Division of Personnel Exhibit 1.

11. The Division of Personnel did not receive a temporary upgrade request, a PDF for classification review, or other request for a discretionary pay increase from the Department of Homeland Security.

12. The Division of Personnel opined that even if they had received a PDF for Grievant, her classification would not have changed since she was performing lower-level clerical duties of the Unit Manager position on a temporary basis. Classification is based upon permanently assigned predominant duties of the position. Grievant would not have been eligible for a temporary upgrade because she did not take on full responsibility as acting Unit Manager for the required time period under the policy.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See *W. Va. Code* § 29-6A-6. See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "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).

Grievant argues that she is entitled to additional compensation under the Division of Personnel's "Temporary Classification Upgrade Policy" for Unit Manager duties that she performed during the months of December 2021 through March 2022, during a

vacancy of the position. The record established that following the resignation of the former Unit Manager in December of 2021, Brandy Miller, the Associate Superintendent of Programs, directed the Grievant and Rob Morris to absorb the responsibility of completing inmate grievances and monthly unit reports. The higher-level Unit Manager duties were not completed by Grievant and were shared among other supervisory employees.

Grievant had little assistance from Mr. Morris in performing the additional Unit Manager duties assigned during the vacancy. To rectify the situation, Ms. Miller directed Mr. Morris to assist Grievant in processing inmate grievances and had conversations with Grievant on numerous occasions explaining to her that she was not expected to complete these tasks on her own. Ms. Miller indicated that on several occasions Grievant informed her that either she had the time to devote to the additional duties or she did not mind doing them. The record clarified that the inmate grievances only required one employee to complete and Grievant took it upon herself to complete the task.

Under the Division of Personnel's "Temporary Classification Upgrade Policy", agencies are permitted to fill positions through a temporary upgrade in certain circumstances. The temporary upgrade must last for at least thirty days but cannot exceed twelve months. In order to be eligible under the policy, an employee must be assigned to the position in an acting capacity and must perform all the duties and responsibilities of that position on a full-time basis, effectively leaving their old position temporarily. The policy is also clear that temporary upgrades should be the employing agency's last resort for addressing staffing needs.

Due to the Department of Homeland Security never assigning Grievant as the acting Unit Manager or directing her to perform the majority of the Unit Manager's higher-level duties, a temporary upgrade request or PDF was not submitted to the Division of Personnel for review or approval. In any event, the Division of Personnel opined that even if they had received a PDF for Grievant, her classification would not have changed since she was performing lower-level clerical duties of the Unit Manager position on a temporary basis. Classification is based upon permanently assigned predominant duties of the position. Grievant would not have been eligible for a temporary upgrade because she did not take on full responsibility as acting Unit Manager for the required time period under the policy.

It is obvious that the employing agency recognizes Grievant as an exceptional, hardworking employee, who goes above and beyond in the performance of her job duties, and that she did so in this situation. However, the record demonstrated that Grievant did not meet the requirements of the "Temporary Classification Upgrade Policy." In addition, Grievant did not prove by a preponderance of the evidence that the Department of Homeland Security violated any statute, regulation, or policy or that it abused its discretion in not requesting a temporary upgrade for Grievant.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See

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2. Grievant failed to establish by a preponderance of the evidence that she was eligible for a temporary upgrade.

3. Grievant failed to establish by a preponderance of the evidence that the Department of Homeland Security violated any statute, regulation or policy in not requesting a temporary upgrade for Grievant.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.<sup>1</sup> Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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

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<sup>1</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 W. VA. 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: June 16, 2023**

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**Ronald L. Reece**  
**Administrative Law Judge**