

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**TIMOTHY ICKES,  
Grievant,**

**v.**

**Docket No. 2024-0560-DHF**

**DEPARTMENT OF HEALTH FACILITIES/  
MILDRED MITCHELL-BATEMAN HOSPITAL,  
Respondent.**

**DECISION**

Grievant, Timothy Ickes, is employed by Respondent, Department of Health Facilities (“DHF”) at Mildred Mitchell-Bateman Hospital (“Bateman”). On February 16, 2024, Grievant filed this grievance against Respondent stating, “Change of pay grade from Physical Therapist 1 to Physical Therapist II (supervision) of Physical Therapy Aide. Position of Physical Therapy Aide be formed and Leila Gore to be placed into per WV Code 30-20-1.” At level three of the grievance process, Grievant amended his claim to request the following relief: “Move to level 2 physical therapist status.”

On April 24, 2024, the chief administrator’s designee waived the grievance to level two. Following unsuccessful mediation, Grievant appealed to level three of the grievance process on August 8, 2024. A level three hearing was held on February 21, 2025, and October 30, 2025, before the undersigned at the Grievance Board’s Charleston, West Virginia office.<sup>1</sup> Grievant appeared self-represented. Respondent appeared by Ginny Fitzwater, Human Resources Director, and was represented by counsel, James “Jake” Wegman, Assistant Attorney General. This matter became mature for decision on

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<sup>1</sup> The day in resolution was due to multiple requests for continuance and a period of abeyance.

December 2, 2025, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

### **Synopsis**

Grievant is employed by Respondent as a Physical Therapist at Mildred Mitchell-Bateman Hospital. Grievant is currently classified under the Office of Shared Administration's classification system but challenges his prior classification under the Division of Personnel's classification system. Grievant failed to prove that the position he occupied was improperly classified. 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:

### **Findings of Fact**

1. Grievant is employed by Respondent as a Physical Therapist ("PT") at Bateman.
2. Bateman is a state-owned acute psychiatric hospital operated by DHF and treats patients suffering from mental illness.
3. In 2023, House Bill 2006 split the former Department of Health and Human Resources into three Departments: Department of Health Facilities, Department of Human Services, and DHF.
4. At the same time, the Bureau for Social Services within the Department of Human Services was removed from the oversight of the Division of Personnel ("DOP") and the Bureau was ordered to implement a "merit based system policy" for the Bureau.
5. Employees of the DHF hired after January 1, 2024, were also removed from the DOP's merit system.

6. The Office of Shared Administration (“OSA”) provides services to all three departments and was tasked to implement the new merit-based system policy.

7. Employees of the three departments that were still included under the DOP’s merit system were given the option to “opt in” to the OSA’s new merit system.

8. Grievant opted into the OSA merit system by acknowledgment form dated February 13, 2024, three days before he filed the instant grievance. R. Ex. 1.

9. Grievant never requested a review of the position he previously occupied in the DOP’s classification system to determine the proper classification prior to opting into the OSA’s system.

10. Of relevance to the disputed issues of the grievance, the PT 1 classification specification is as follows:

Under general supervision, performs professional, full-performance level work providing physical therapy services to patients in a state facility...Conducts or delegates physical therapy exercises or treatments to be performed...Trains staff...in proper treatment of patients...Plans, supervises an participates in the total program of physical therapy activities; arranges schedules of client, subordinates, and others...Administers individual client assessment tests; evaluates client needs; develops physical therapy treatment plans and conducts and/or directs the implementation of treatment for individual patients.

G. Ex. 7.

11. The PT 2 classification is distinguished from the PT 1 classification as follows: “[u]nder limited supervision, performs professional work planning, organizing, supervising, and assigning work of other physical therapists, instructs and reviews the work of assistants and prepares reports on the progress of clients.” G. Ex. 8.

12. A Health Service Worker (“HSW”) was assigned to assist Grievant but Grievant was not her supervisor nor did he supervise any other employees.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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.*

As Grievant claims he is improperly classified, he must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one in which his position is currently classified. *Miller v. Workforce West Virginia and Div. of Pers.*, Docket No. 2008-0235-DOC (Dec. 23, 2008), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 09-AA-15 (May 17, 2010). See *Dep’t of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oiler v. Dep’t of Health & Human Res.*, Docket No. 00-HHR-361 (Apr. 5, 2001).

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).

There was continuing confusion during the pendency of the grievance regarding Grievant's switch from the DOP merit system to the OSA merit system and the actual relief Grievant was seeking. In the end, Grievant acknowledged and accepted that he is under the OSA merit system and that he is currently properly classified as a PT under the OSA system. He seeks a determination that his classification was improper under the DOP's merit system and back pay for the same.

Grievant asserts that the position he occupied was required to be classified as a PT 2 because the "PT practice act" requires that physical therapy aides be "directly supervised" by a licensed physical therapist. Grievant appears to argue that the HSW that assisted him must be considered a "physical therapy aide" and, thus, the law requires Grievant to be her supervisor for purposes of DOP classification.

Simply put, Grievant misconstrues the PT 2 classification and the law relating to physical therapy practice. It is true that the statute governing physical therapists and the legislative rule of the Board of Physical Therapy require that physical therapy aides performing tasks related to physical therapy services be "directly supervised" by a physical therapist. W. VA. CODE § 30-20-3(12); W. VA. CODE ST. R. § 16-1-2.17. However, "direct supervision" is defined by the Code and the Rule as "the actual physical presence of the physical therapist in the immediate treatment area where the treatment is being rendered." W. VA. CODE § 30-20-3(5); W. VA. CODE ST. R. § 16-1-2.5. Thus, Grievant's assertion that the failure to classify him as a supervisor under the DOP classification somehow violates the law related to physical therapists is false. Nothing in the Code or

Rule requires Grievant to be classified under the DOP system as a supervisor; he must simply remain physically present with the aide during treatment.<sup>2</sup>

For purposes of classification under the DOP's merit system, the DOP's definitions control. A supervisor for purposes of DOP classification is defined in the Pay Plan Policy as follows:

Formally delegated responsibility for planning, assigning, reviewing and approving the work of two (2) or more full-time or part-time equivalent employees. The supervisor's overall role is to communicate organizational needs, oversee employees' performance, provide guidance, support, identify development needs, and manage the reciprocal relationship between staff and the organization so that each is successful.<sup>3</sup>

Grievant failed to prove that he supervised the HSW who assisted him and did not assert that he supervised other PTs because he was the only PT at Bateman. Therefore, Grievant clearly does not meet the DOP's definition of supervisor or the requirement of the classification that the PT 2 supervise other PTs.

Grievant failed to prove he was improperly classified under the DOP classification system. The most critical duty of a PT 2 is to supervise other PTs, which Grievant did not do. Grievant was properly classified as a PT 1. Nothing in the law governing physical therapy practice requires Grievant's position to be classified as a PT 2.

The following Conclusions of Law support the decision reached.

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<sup>2</sup> Grievant also failed to prove that the HSW would be considered a "physical therapy aide" under the statute or legislative rule.

<sup>3</sup> The undersigned takes judicial notice of the DOP's Pay Plan Policy as the DOP was not joined as a party due to the confusion regarding Grievant's move to the OSA's classification system.

## Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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. As Grievant claims he is improperly classified, he must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one in which his position is currently classified. *Miller v. Workforce West Virginia and Div. of Pers.*, Docket No. 2008-0235-DOC (Dec. 23, 2008), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 09-AA-15 (May 17, 2010). See *Dep’t of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oiler v. Dep’t of Health & Human Res.*, Docket No. 00-HHR-361 (Apr. 5, 2001).

3. 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).

4. Physical therapy aides performing tasks related to physical therapy services must be “directly supervised” by a physical therapist. W. VA. CODE § 30-20-3(12); W. VA. CODE ST. R. § 16-1-2.17.

5. "Direct supervision" is defined as “the actual physical presence of the physical therapist in the immediate treatment area where the treatment is being rendered.” W. VA. CODE § 30-20-3(5); W. VA. CODE ST. R. § 16-1-2.5.

6. Grievant failed to prove that the position he occupied was improperly classified.

Accordingly, the grievance is **DENIED**.

“The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

**DATE: January 22, 2026**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**