

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**EDNA SAPP,
Grievant,**

v.

Docket No. 2024-0012-DHS

**WEST VIRGINIA DEPARTMENT OF
HOMELAND SECURITY/PRUNTYTOWN
CORRECTIONAL CENTER AND JAIL,
and DIVISION OF PERSONNEL,
Respondents.**

DECISION

Grievant, Edna Sapp, filed this action on July 25, 2023, claiming that she was qualified for a position for which she had been given a tentative offer of employment. Grievant seeks as relief to “have all documents reviewed and my case heard.” On August 20, 2023, a level one waiver was entered since the relief sought could not be granted at that level. A level two mediation was conducted on October 30, 2023. A level three evidentiary hearing was held on May 21, 2024, before the undersigned by Zoom conferencing from the Grievance Board’s Westover office. Grievant appeared *pro se*. Respondent Department of Homeland Security appeared by Pruntytown Chief of Operations George Trent and was represented by Jonathan M. Calhoun, Assistant Attorney General. West Virginia Division of Personnel appeared by Elisabeth Arthur, Assistant Director of Staffing and Recruitment, and by Katherine A. Campbell, Assistant Attorney General. This case became mature for consideration upon receipt of the last of the parties’ Findings of Fact and Conclusions of Law on or about June 18, 2024.

Synopsis

Grievant is employed by Pruntytown and holds the position of Corrections Counselor I. Grievant is challenging the determination of the West Virginia Division of

Personnel that she does not possess the minimum qualifications for the position of Corrections Case Manager. The Division of Personnel determined that Grievant did not have a four-year degree in corrections programming and that the educational program hours that she had earned were not applicable to the position in question. Grievant failed to prove by a preponderance of the evidence that the Respondents acted in any manner that was arbitrary and capricious by not awarding her the position of Corrections Case Manager, as the record demonstrated that she did not possess the necessary qualifications for the position.

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

Findings of Fact

1. Grievant currently holds the position of Correctional Counselor I at Pruntytown Correctional Center which she has held for four years.
2. On or about April 28, 2023, Grievant applied for the position of Correctional Case Manager at Pruntytown Correctional Center via an internal application.
3. Elisabeth Arthur, Assistant Director of Staffing and Recruitment, explained that when an agency makes a selection and a tentative offer of employment to the applicant, the applicant's packet comes to Personnel Transaction Review for review. If there are any issues noted with the applicant's packet, then Personnel Transaction Review would reach out to the hiring agency.
4. The Division of Personnel does not speak to any applicants directly concerning their application. The Division of Personnel has no role when the agency reviews applications, conducts interviews of applicants, and makes a selection and tentative offer of employment.

5. Once the Personnel Transaction Review department reviewed Grievant's application it was determined that Grievant was not qualified for the position of Correctional Case Manager.

6. Pursuant to the Training required for the position, a bachelor's degree is required with a major in specific degrees. Even though Grievant had many hours of college credit, none of those college credits were given any credit towards the training required because they were not in the appropriate field.

7. Grievant's experience as a Correctional Counselor I was substituted on a year for year basis pursuant to the class specification. Grievant had two years and ten months that could be counted towards her training requirement leaving her with one year and two months short of fulfilling this requirement.

8. Pursuant to the Experience required, Grievant needed two years of full-time experience in a variety of different positions within corrections. Grievant was unable to use her experience as a Correctional Counselor I because it had been used to substitute for the training requirement.

9. Grievant was given credit for experience when she worked a twelve-hour security post when she was an Office Assistant 2 per week. This credit gave Grievant eleven months experience leaving one year and one month short of fulfilling the experience requirement.

10. In total, Grievant is two years and three months short of qualifying for the position of Correctional Case Manager. However, this review was completed on June 29, 2023, and Grievant has continued to earn experience as a Correctional Counselor I to substitute for lacking two years and three months.

11. George Trent, Chief of Operations for Region I in Corrections, indicated that he agreed with the Division of Personnel's decision finding that Grievant failed to meet the minimum qualifications of the position.

12. Grievant believes that she performs the duties of Correctional Case Manager now and just because an individual has a degree does not mean that individual knows what they are doing in the position. Grievant is understandably frustrated with the process.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

The Division of Personnel provided evidence that Grievant was not qualified for the position of Correctional Case Manager. The Division of Personnel decision must be analyzed according to the arbitrary and capricious standard or that the decision was

clearly wrong. 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, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). “Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996);” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Burgess v. Div. of Highways*, Docket No. 2019-0576-DOT (Nov. 22, 2019).

The “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001). In addition, the Grievance Board has previously ruled that an employer may refuse to allow an employee to return to work at less than full duty. *Griffon v. Div. of Motor Vehicles*, Docket No. 2008-1271-DOT (Aug. 17, 2009).

In the instant case, the record established that Grievant did not possess a bachelor’s degree in any of the specified fields of study for the Training component nor did Grievant refute that fact. As noted above, substitution was used, and the Division of

Personnel determined that Grievant had two years and ten months of experience leaving her short by one year and two months.

Turning to the Experience component, Grievant was unable to utilize the experience that she had already used to substitute for the Training component. The Division of Personnel was able to use Grievant's experience working a security post when she was an Office Assistant II which qualified her for eleven months of experience, but still leaving her short one year and one month.

The record is basically undisputed that Grievant is two years and three months short of qualifying for this position as of June 29, 2023. Grievant disputed none of the Division of Personnel's determinations either through documents or by testimony. Grievant is frustrated with the minimum qualifications required for the position, specifically the bachelor's degree in a specified field. This is understandable given that the Department of Homeland Security made her a tentative offer of promotion, but then was told by the Division of Personnel she did not qualify. In any event, Grievant failed to meet her burden by a preponderance of the evidence that the Division of Personnel's determination that she did not meet the minimum qualifications was arbitrary and capricious, or the Division of Personnel's interpretation of the minimum qualifications was clearly erroneous.

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. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. 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, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996);" *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Burgess v. Div. of Highways*, Docket No. 2019-0576-DOT (Nov. 22, 2019).

3. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision

is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001). In addition, the Grievance Board has previously ruled that an employer may refuse to allow an employee to return to work at less than full duty. *Griffon v. Div. of Motor Vehicles*, Docket No. 2008-1271-DOT (Aug. 17, 2009).

4. Grievant did not prove by a preponderance of the evidence that the Division of Personnel's determination that she did not meet the minimum qualifications was arbitrary and capricious, or that the Division of Personnel's interpretation of the minimum qualifications was clearly wrong.

Accordingly, this 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).

Date: August 6, 2024

Ronald L. Reece
Administrative Law Judge