

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SHALA NICHOLE STARCHER,
Grievant,**

v.

Docket No. 2023-0721-DHHR

**DEPARMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL, and
DIVISION OF PERSONNEL,
Respondents.**

DECISION

Grievant, Shala Nichole Starcher, filed this action on or about March 23, 2023, against her employer, William R. Sharpe, Jr. Hospital. Grievant alleges that “Respondent is deliberately working grievant outside of job class.” For relief “Grievant requests DOP complete independent onsite job audit. Grievant requests reallocation to appropriate pay grade with full backpay and statutory interest, with all applicable compensation due, to be made whole in every way.”

On March 28, 2023, Respondent waived the grievance from level one to level two. The Division of Personnel was joined as an indispensable party by order dated March 31, 2023. A level two mediation was conducted on June 2, 2023. Grievant appealed to level three on June 15, 2023. On July 28, 2025, a level three evidentiary was conducted by Zoom conferencing before the undersigned. Grievant appeared in person and by her representative, Sandra L. Jeffries. The Department of Health and Human Services appeared by Steven R. Compton, Deputy Attorney General and Ginny Fitzwater, Human Resources Director Department of Health Facilities. The Division of Personnel appeared by Joanne M. Vella, Assistant Attorney General and Wendy Mays, Assistant Director of Classification and Compensation. This matter became mature for consideration upon

receipt of the parties' Proposed Findings of Fact and Conclusions of Law on September 19, 2025.

Synopsis

Grievant is currently employed in a position classified as a Procurement Specialist within the Office of Shared Administration's classification and compensation plan. Previously, the position was reallocated from an Office Assistant II to a Procurement Associate within the Division of Personnel's classification and compensation plan, after the Division of Personnel reviewed a Position Description Form for the position and made a classification determination that necessitated a reallocation. The Division of Personnel policy, approved by the West Virginia State Personnel Board, sets out the payment of back wages in reallocation such as in the instant case. Grievant seeks back wages for a period of three-hundred ninety days. The Division of Personnel determined that Grievant is only legally entitled to back wages for a total of forty-three days. The record of this case established by a preponderance that Grievant is entitled to back wages due to the unreasonable delay in the reallocation process at the agency level. This grievance is granted, in part, and denied, in part.

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

Findings of Fact

1. Grievant is employed in a position classified as a Procurement Specialist under the Office of Shared Administration's classification and compensation plan. Previously, under the Division of Personnel's classification and compensation plan, Grievant's position was reallocated from an Office Assistant II to Procurement Associate

on April 28, 2023. Grievant was first employed at the William R. Sharpe, Jr. Hospital as an Office Assistant II on or about August 1, 2019.

2. On March 1, 2022, Cecil Pritt, Human Resources Director at Sharpe Hospital submitted a discretionary pay increase for an internal equity increase for Grievant. Thereafter, on March 16, 2022, Kim Flesher, Human Resources Specialist at Sharpe Hospital, submitted a Position Description Form for Grievant. Ginny Fitzwater, Human Resources Director Department of Health Facilities, advised Mr. Pritt to attempt to obtain an internal equity increase for Grievant first, followed by a reallocation review. Ms. Fitzwater opined that an internal equity review and a Position Description Form (PDF) could not be submitted simultaneously because if Grievant's title changed she would no longer be eligible for an internal equity increase.

3. Notwithstanding, Grievant's PDF was sent to the Office of Human Resource Management for review on March 17, 2022. This review questioned Grievant's listed qualifications by communicating on March 21, 2022, to Ms. Fitzwater. In response, Grievant indicated to Mr. Pritt that she would like to proceed with the discretionary increase first.

4. The review of the internal equity increase occurred over the next several months. On November 19, 2022, Grievant received the discretionary increase for the pay equity. In December of 2022, two additional PDFs were submitted for Grievant. Ms. Fitzwater reviewed these forms and sought clarification to ensure that Grievant's duties were accurately reflected to help in the reallocation review.

5. The Division of Personnel determined that Office Assistant II was the correct classification for Grievant's position by letter dated March 21, 2023. On March 23, 2023, Ms. Starcher filed the instant grievance.

6. The Division of Personnel requested an audit of the position on April 5, 2023. The Division of Personnel amended its previous decision and determined in April of 2023, that Procurement Associate was the correct classification for Grievant's position by letter to the Office of Human Resources Management, Department of Health and Human Resources dated April 28, 2023. Respondents' Exhibit No. 5. Grievant received the reallocation from her employer on June 3, 2023.

7. Grievant opted into the Office of Shared Administration pay plan and was classified as a Procurement Specialist on March 9, 2024.

8. Grievant asserts she is entitled to three-hundred and ninety days back pay. Grievant argues that she should be paid from the time she was hired into the position of Office Assistant II and was allegedly being worked out of classification until the reallocation.

9. The Division of Personnel's Settlement Agreement/Back Wages Policy provides that back wages are only authorized for reallocation determinations when delays occur at any of the following phases: (1) the appointing authority must provide a completed PDF to the Division of Personnel for a classification determination within forty-five days of the date the supervisor signed the PDF; (2) the Division of Personnel must communicate a classification determination to the appointing authority within sixty days after receipt of the signed PDF; and (3) the appointing authority must process the

corresponding personnel transaction within thirty days of receipt of the classification determination from the Division of Personnel. Respondents' Exhibit No. 8 and No. 6.

10. The record reflects that the first two phases were completed within the proper time frames. The third phase was not completed within the proper time frames and resulted in the forty-three days of back wages for the period of April 21, 2023, to June 2, 2023.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *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).

At the time of the filing of this grievance the Division of Personnel was authorized by WEST VIRGINIA CODE § 29-6-10 to establish and maintain a position classification in the classified and classified exempt service. The Division of Personnel is charged with setting and interpreting the minimum qualifications for classified positions within the state classified system. *Prue v. Div. of Corrections and Div. of Personnel*, Docket No. 2017-1400-MAPS (Nov. 3, 2017).

Grievant asserts that she is entitled to back wages from the time she was hired into the position of Office Assistant II, while working out of classification, for a total of three hundred and ninety days. The Division of Personnel and William R. Sharpe, Jr. Hospital acknowledge that the hospital did not process the personnel transaction with thirty days of receipt of the classification determination from the Division of Personnel. This acknowledgement resulted in Grievant being entitled to forty-three days of back wages.

Pursuant to applicable policy, back wages will not be authorized for reallocation if a classification determination is communicated to the appointing authority by the Division of Personnel within sixty calendar days of receipt of the signed PDF and the agency processed the corresponding personnel transaction within the following thirty days. Back wages may only be authorized for the period of time the process was delayed beyond this ninety-calendar day period. *Cutright v. Dep't of Health & Human Res. and Div. of Personnel*, Docket No. 2017-2167-DHHR (March 9, 2019).

The record established that Grievant completed a PDF and submitted it to the Division of Personnel on March 15, 2023. The Division of Personnel reviewed the PDF and determined that Office Assistant II was the correct classification for Grievant's position by letter dated March 21, 2023. Thereafter, the Division of Personnel initiated an audit of the position. By letter dated April 28, 2023, the Division of Personnel amended its previous decision and determined that Procurement Associate was the correct classification for Grievant's position. On June 3, 2023, Grievant received the reallocation from the Division of Personnel. Based on the timeframes, the PDF was timely processed by Division of Personnel. For reasons not entirely evident from the record, but undisputed by the Respondents, the Department of Health and Human Resources fell short of

meeting the timeframe to effectuate the transaction. Grievant's frustration with the delay and concern with the circuitous route that her issue concerning classification took is understandable. Nevertheless, the record established that Grievant is entitled to forty-three days of back wages. Grievant failed to prove that she was entitled to back wages from the time she was hired.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

2. The Division of Personnel is charged with setting and interpreting the minimum qualifications for classified positions within the state classified system. *Prue v. Div. of Corrections and Div. of Personnel*, Docket No. 2017-1400-MAPS (Nov. 3, 2017).

3. Back wages may only be authorized for the period of time a reallocation process was delayed beyond the Division of Personnel's policy's ninety-calendar day period. *Cutright v. Dep't of Health & Human Res. and Div. of Personnel*, Docket No. 2017-2167-DHHR (March 9, 2019).

4. Grievant demonstrated by a preponderance of the evidence that the delay by the William R. Sharpe, Jr. Hospital in processing her reallocation was unreasonable and a violation of applicable policy.

5. Grievant has demonstrated by a preponderance of the evidence that she is entitled to an award of back wages for the forty-three-day delay in processing her reallocation.

This grievance is **GRANTED**, in part, and **DENIED**, in part. Respondent Department of Health and Human Resources is **ORDERED** to pay Grievant back wages for the unreasonable forty-three-day delay in processing her reallocation.

“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: November 3, 2025

Ronald L. Reece
Administrative Law Judge