THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

CHRISTOPHER DAVID YOUNG,
Grievant,

v.

Docket No. 2024-0431-DHHR

DEPARTMENT OF HEALTH HUMAN RESOURCES/
BUREAU FOR PUBLIC HEALTH and DIVISION OF PERSONNEL,
Respondent.

DECISION

Grievant, Christopher David Young, is employed by Respondent, Department of Health and Human Resources[1] ("DHHR") through the Bureau for Public Health ("BPH"), as a Health and Human Resources Specialist Senior. On November 22, 2023, Grievant filed this grievance directly to level three, asserting, essentially, that he agreed to a temporary upgrade in his position and salary following the retirement of his supervisor, but the Division of Personnel ("DOP") denied the temporary upgrade. Nonetheless, Grievant continued to perform the duties of the retired supervisor without compensation. For relief, Grievant seeks "[c]ompensation for the amount of work, undue stress, and humiliation that has been asked of me to manage."

The grievance was transferred to level one by Transfer Order entered November 30, 2023. However, because the grievance involves matters of classification and compensation, the level one Grievance Evaluator waived the matter to level two on

[1] As of January 1, 2024, the agency formerly known as the Department of Health and Human Resources is now three separate agencies: the Department of Health Facilities, the Department of Health, and the Department of Human Services. For purposes of this grievance, the Department of Health and Human Resources shall mean the Department of Health.

December 18, 2023, per Rule 4.3.3 of the Rules of Practice and Procedure of the West Virginia Public Employees Grievance Board. By order entered January 31, 2024, DOP was joined as an indispensable party. The matter was mediated by Administrative Law Judge Wesley H. White, following which an Order of Unsuccessful Mediation was entered on July 18, 2024.

A Level Three hearing was held on January 28, 2025, before the undersigned Administrative Law Judge at the Grievance Board's Charleston, West Virginia, office. Grievant appeared in person and was self-represented. Respondent DHHR appeared by Kelley Epling, Human Resources Director for BPH, and was represented by counsel, James W. Wegman, Assistant Attorney General. Respondent DOP appeared by Elisabeth Arthur, Assistant Director of Staffing and Recruitment, and was represented by counsel, Katherine A. Campbell, Assistant Attorney General. This matter became mature for decision on February 26, 2025, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.[2]

Synopsis

Grievant is employed as a Health and Human Resources Specialist Senior by Respondent Department of Health and Human Resources through the Bureau of Public Health. Grievant filed this grievance asserting that he was denied compensation for work he performed pursuant to a temporary upgrade agreement. At the level three hearing, Grievant failed to prove that Respondent DOP acted arbitrarily or capriciously in rejecting

[2] Grievant's Proposed Findings of Fact and Conclusions of Law were appended with two documents of support which were not introduced at the level three hearing and, so, are not part of the record before the Grievance Board. Accordingly, they were not considered in this decision. *See* W. VA. CODE § 29A-5-2(b).

the proposed temporary upgrade agreement. However, he did prove that he worked outside of his classification for 32 days, which is two more days than DOP Policy allows. Accordingly, the grievance is DENIED IN PART and GRANTED IN PART, and Respondent DHHR is ordered to pay Grievant back wages for two days.

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 DHHR as a Health and Human Resources Specialist Senior for the BPH, at an hourly rate of $21.0312.

2. By letter dated September 13, 2023, Grievant was notified that he had "been selected to temporarily serve in the capacity of Health and Human Resources Program Manager 1, pay grade 18, as well as [his] current title of Health and Human Resources Specialist Senior, pay grade 15 . . . effective October 16, 2023." The letter proposed a 21% salary increase, or $25.4477 per hour. The temporary assignment was not to exceed six months.

3. The temporary assignment was prompted by the retirement of Jeffrey Necuzzi, who was a Health and Human Resources Program Manager 1-VFC Coordinator in Grievant's unit.

4. Grievant accepted the temporary assignment by signing the letter on September 13, 2023.

5. DOP Policy Number DOP-P13 ("Policy P13") defines a "temporary upgrade . . . as a [DOP] 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."

6. Per Policy P13, the temporary 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 or Personnel." As a corollary, then, a person may be worked outside of his or classification for up to 30 days.

7. Importantly, Policy P13 stipulates that "[a] classified employee proposed for a temporary upgrade shall . . . meet the minimum requirements of training and experience for the position to which they will be temporarily upgraded."

8. The Health and Human Resources Program Manager 1 requires these minimum qualifications and experience:

a. Master's degree *or* one year of full-time or equivalent part-time paid experience as described below to substitute for the Master's degree.

b. Three years of full-time or equivalent part-time paid professional experience in the area of assignment, one year of which must have been in a program administration capacity *or* post-graduate training in the area of assignment may substitute through an established formula for the non-supervisory experience.

9. "Professional experience" is "work which requires the application of theories, principles, and methods typically acquired through completion of a Bachelor's degree or higher or comparable experience [and] requires the consistent exercise of

discretion and judgment in the research, analysis, interpretation, and application of acquired theories, principles, and methods to work product."

10. Grievant does not hold a Master's degree; therefore, he would need to have four years of full-time or equivalent part-time paid "professional experience" in the area of assignment, one year of which must have been program administration.

11. DHHR submitted the proposed temporary upgrade for Grievant to DOP on November 13, 2023. It was reviewed by DOP on November 15, 2023.

12. By e-mail dated November 16, 2023, DOP reached out to DHHR to inquire what experience Grievant had to substitute as qualifying experience toward the minimum qualifications. That same day, DHHR responded that it considered all of the employment listed on Grievant's application, including his three years in his current unit at BPH (the Office of Epidemiology and Prevention Services), his time as a paralegal in the Office of Administrative Hearings, his experience as an insurance agent, and his experience as a server/trainer at a restaurant.

13. Again, that same day, DOP informed DHHR that it would be rejecting the proposed temporary upgrade "as the applicant does not meet the minimum qualifications for the position." Specifically, DOP only accepted Grievant's three years and one month as a Health and Human Resources Specialist Senior as "qualifying experience." Grievant's experience as a paralegal and as a trainer/server did not qualify as "professional experience." His time as an insurance agent was "professional," but it was not related to the area of employment. That left Grievant eleven months short of substituting experience for the Master's degree.

14. DOP's rejection of the temporary upgrade was not communicated to Grievant prior to him filing his grievance.

15. In the meantime, Mr. Necuzzi was brought back as a temporary employee on or about November 17, 2023. DHHR acknowledges that Grievant worked in the capacity of Program Manager 1 in the interim, for a total of 32 days.

16. Grievant disputes DHHR's assertion that Mr. Necuzzi fulfilled the duties of Program Manager 1 upon his temporary return but, rather, was a contracted specialist. Grievant was instructed to continue to "help" with the duties of Program Manager 1 after Mr. Necuzzi's return.

17. An applicant who met the minimum qualifications for the position was hired, effective February 26, 2024.

18. Grievant was asked to help train the new Program Manager 1 in her duties.

19. Grievant was never compensated under the terms of the September 13, 2023, letter. By his calculations, Grievant worked in the capacity of Program Manager 1 for 760 working hours for a total of $3,356.54.

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.*

The matter before the Grievance Board today is, at its base, an example of poor communication that resulted in an unfortunate misunderstanding and unmet expectations. Reducing it to its simplest terms, DHHR offered Grievant, and Grievant accepted, a temporary classification and salary upgrade for which he was neither qualified nor eligible. Two months after the offer was accepted and one month after Grievant assumed the duties of the temporary upgrade, DHHR submitted the upgrade for review and approval by DOP. DOP rejected the upgrade and timely informed DHHR of the rejection as well as the specific reasons for it. DHHR, however, did not communicate DOP's decision to Grievant, and Grievant continued to work under the assumption that he would be compensated at the agreed upon higher rate of pay. It was not until a permanent hire was made and this grievance was filed that Grievant learned that he would not be compensated for the extra duties he performed.

West Virginia Code § 29-6-5(b) directs DOP to establish and apply a system of classification and compensation for all positions in the classified service, such as Grievant's position. To that end, the State Personnel Board is authorized to promulgate rules to govern that classification and compensation system. W. VA. CODE § 29-6-10 (1999). State agencies which utilize the classification and pay plan structure established by DOP adhere to the applicable classification and pay grade for each of their employees. The rules promulgated by the State Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. *Harvey-Gallup v. Dep't of Health and Human Res.*, Docket No. 04-HHR-149(J) (Feb. 21, 2008); *Moore v. W. Va. Dep't of Health & Human Res./Div. of Personnel*, Docket No. 94-HHR-126 (Aug. 26, 1994); *see also* Syl. Pt. 4, *Callaghan v.*

W. Va. Civil Serv. Comm'n, 273 S.E.2d 72 (W. Va. 1980). That is, while the State Personnel Board and DOP are given wide discretion in performing their duties, they cannot act in an arbitrary and capricious manner.

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).

"'[T]he "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. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal*

refused, W. Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003); *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).

The pertinent DOP policy in this case is Policy P13, which defines a "temporary upgrade . . . as a [DOP] 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." The policy makes clear that "[a] classified employee proposed for a temporary upgrade shall . . . meet the minimum requirements of training and experience for the position to which they will be temporarily upgraded." And therein lies the rub: Grievant did not meet the minimum requirements of training and experience for the position of Program Manager 1 because he did not hold a Master's degree and did not have enough paid professional experience related to the position to substitute experience for a degree. Accordingly, DOP rejected DHHR's request that Grievant be granted a temporary classification upgrade to Program Manager 1.

To be clear, Grievant does not really protest DOP's decision. Even if he did, it cannot be said that DOP's decision was arbitrary and capricious or clearly wrong. The qualifications for the job are what they are, and Grievant did not meet them at the time the temporary upgrade was proposed.[3] Per its own policy, DOP had no choice but to

[3] DOP pointed out that in the intervening period of time between the November 2023 request and the level three hearing, Grievant has acquired enough relevant experience to substitute experience for a Master's degree should he wish to apply for a Program Manager 1 position in the future.

deny the request, and Grievant seems to understand that. Grievant's frustration comes in that he was never informed that the temporary upgrade had been rejected and, so, he continued on in his daily tasks, believing that he would be compensated according to the terms of the September 2023 agreement with DHHR.

Grievant's frustration is both reasonable and understandable. DHHR does not deny that it failed to pass along the word to Grievant that he had not been approved for the temporary upgrade. Rather, it argues that DOP should have informed Grievant. DOP is firm that it was DHHR's responsibility to inform its employee of the conundrum. Instead of doing that, DHHR simply brought back Mr. Necuzzi to fill the position of Program Manager until a permanent hire could be made. Again, though, DHHR failed to adequately communicate the plan to Grievant, and Grievant came to believe that Mr. Necuzzi was not acting as a Program Manager but as a contracted specialist. Grievant, in the meantime, was instructed to continue to "help" Mr. Necuzzi (in Grievant's words) until the position was filled on a permanent basis in February 2024.

The question is, what does "help" mean? Essentially, Grievant's argument is akin to misclassification and reallocation. In that case, Grievant's burden is to show that it is more likely than not that he was performing the duties and responsibilities of Program Manager 1 from October 16, 2023 (when Mr. Necuzzi returned), until February 26, 2024 (when the permanent hire became effective). When a grievant alleges he has been misclassified, 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. *See Walker v. Pub. Serv. Comm'n and Div. of Personnel*, Docket No. 2017-2006-DEP (Jan. 4, 2019); *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038

(Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001). "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further,

> [t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

W. VA. CODE ST. R. § 143-1-4.4(d).

Division of Personnel 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), *aff'd*, Kan. Co. Cir Ct. Docket No. 89-AA-220 (Jan. 10, 1991). "The predominant duties of the position in question are class-controlling." *Carroll v. Dep't of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004) (citing *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 608, 609 (Aug. 31, 1990); *Lemley v. Dep't of Health & Human Res.*, Docket No. 04-HHR-159 (Aug. 27, 2004)). "Simply because one is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [one] misclassified *per se*." *Wilkins v. Dep't of Envtl. Prot. and Div. of Personnel*, Docket No. 2011-1333-DEP (Aug. 2, 2013).

Moreover, under Policy P13, an employee can be asked to perform tasks outside of his or her classification for up to 30 days. DHHR acknowledged that Grievant worked outside of his classification for 32 days.[4] Otherwise, the evidence developed at the hearing did not touch on Grievant's daily duties and responsibilities as a Specialist Senior as compared to those of a Program Manager 1, nor did it touch on what duties Grievant performed daily in the relevant window of time. The evidence was more a "he said/she said," with Grievant conclusively asserting that he, not Mr. Necuzzi, was functioning as Program Manager while Respondent's representative, Ms. Epling, asserted Mr. Necuzzi was Program Manager. Though, generally, such situations would call for a credibility analysis, there is no point in undertaking that task in this case. Suffice it to say that both Grievant and Ms. Epling are equally credible. The discrepancies in their positions, again, come down to a lack of clear communication between Grievant and DHHR; and, so, both parties are equally assured in their positions. In the end, the scale did not move in favor of one side or the other, and Grievant did not meet his burden of proving that he performed the duties of Program Manager 1 for 760 hours, as he alleged.

Nonetheless, DHHR acknowledged that Grievant worked outside of his classification for 32 days, which is two days more than DOP policy allows. Where employees of an agency are classified in one position but are tasked with performing the functions of a position to which they are not classified, such employees are entitled to the difference in compensation between the two classifications. *See* Syl. Pt. 2, *Am. Fed'n of State v. Civil Serv. Comm'n*, 174 W. Va. 221, 324 S.E.2d 363 (1984). In this case, the

[4] DOP put the figure at 31 days but acknowledged that DHHR had calculated it at 32 days.

difference between Grievant's compensation as a Specialist Senior and that of a Program Manager 1 is $4.4165 per hour. Grievant worked in the capacity of Program Manager 1 for 16 hours more than rule, law, or policy allows. Therefore, in order to be made whole, Grievant is entitled to $70.664.

Grievant has failed to prove by a preponderance of the evidence that Respondent DOP acted arbitrarily or capriciously in rejecting his temporary classification upgrade. He has, however, proved that he was worked outside of his classification for two days more than allowed by DOP policy. Accordingly, the grievance is denied in part and granted in part. 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 his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018).

2. "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.*

3. The State Personnel Board is authorized to promulgate rules to govern that classification and compensation system. W. VA. CODE § 29-6-10.

4. The rules promulgated by the State Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. *Harvey-Gallup v. Dep't of Health and Human*

Res., Docket No. 04-HHR-149(J) (Feb. 21, 2008); *Moore v. W. Va. Dep't of Health & Human Res./Div. of Personnel*, Docket No. 94-HHR-126 (Aug. 26, 1994); *see also* Syl. Pt. 4, *Callaghan v. W. Va. Civil Serv. Comm'n*, 273 S.E.2d 72 (W. Va. 1980).

5. 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)).

6. "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).

7. "'[T]he "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. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*).

8. "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Blake v.*

Kanawha County Bd. of Educ., Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W. Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003); *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).

9. Grievant failed to prove by a preponderance of the evidence that DOP acted arbitrarily and capriciously or was clearly wrong in rejecting his temporary classification upgrade to Program Manager 1 because he did not meet the minimum qualifications for the position.

10. When a grievant alleges he has been misclassified, 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. *See Walker v. Pub. Serv. Comm'n and Div. of Personnel*, Docket No. 2017-2006-DEP (Jan. 4, 2019); *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

11. "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further,

> [t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

W. VA. CODE ST. R. § 143-1-4.4(d).

12. "Simply because one is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [one] misclassified *per se*." *Wilkins v. Dep't of Envtl. Prot. and Div. of Personnel*, Docket No. 2011-1333-DEP (Aug. 2, 2013).

13. Where employees of an agency are classified in one position but are tasked with performing the functions of a position to which they are not classified, such employees are entitled to the difference in compensation between the two classifications. *See* Syl. Pt. 2, *Am. Fed'n of State v. Civil Serv. Comm'n*, 174 W. Va. 221, 324 S.E.2d 363 (1984).

14. Grievant proved by a preponderance of the evidence that he was worked outside of his classification for two days without compensation.

Accordingly, the grievance is **DENIED IN PART** and **GRANTED IN PART.**

Respondent DHHR is **ORDERED** to pay Grievant back wages for the two days (November 15, 2023, and November 16, 2023) he was worked outside of his classification.

Any party may appeal this decision to the Intermediate Court of Appeals in accordance with W. VA. CODE § 51-11-4(b)(4) 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: April 9, 2025

Lara K. Bissett
Administrative Law Judge