



**Members**  
James Paul Geary  
Chairman  
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David L. White

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

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**SANDRA CART**

v.

**Docket No. 89-VA-619**

**WEST VIRGINIA  
DEPARTMENT OF VETERANS AFFAIRS**

**D E C I S I O N**

Grievant Sandra Cart filed a grievance on August 17, 1989, alleging that she is entitled to backpay for working out of classification from February 1985 through August 1988.<sup>1</sup> The Levels I and II evaluators found they had no authority over the matter. The Level III evaluator denied the grievance on the basis that it was not timely filed. Grievant appealed to Level IV. Thereafter Respondent moved for dismissal of the grievance on the grounds that it was not timely<sup>2</sup> and a hearing on the timeliness issue was held

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<sup>1</sup>The grievance actually alleged that she was misclassified "to July 1988." However, at hearing it was clarified that she was actually contending that she was misclassified past the end of July, through August.

<sup>2</sup>Respondent alternatively argued that, because "portions of the grievance involved allegations that pre-existed the jurisdiction of this Board for the handling of grievances for state employees" for which, allegedly,  
(Footnote Continued)

November 14, 1989.<sup>3</sup> The parties waived submission of proposed findings of fact and conclusions of law.

Grievant states that on October 4, 1988, the West Virginia Division of Personnel issued a decision that she should be reclassified from Clerk I to Typist I and that, while she had requested backpay for the same time period at issue here, February 1985 through August 1988, no provision for backpay was made. She contested that determination by filing a grievance shortly thereafter, wherein she alleged that during those years she was doing the work of a Clerk III. The decision Cart v. West Virginia Dept. of Veterans Affairs, Docket Nos. VA-88-070/071, 89-VA-180 (Aug. 3, 1989), rejected that claim. In that case no alternative argument that Grievant was doing the work of a Typist I was made.<sup>4</sup> Grievant states that she did not think she could claim backpay for working as a Typist I until she found out that her claim that she was doing the work of a Clerk III

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(Footnote Continued)

relief could not be granted, this Grievance Board had no jurisdiction. At hearing it was ruled that, since the alleged misclassification continued after July 1, 1988, and this Grievance Board has jurisdiction over grievances arising on or after that date, the matter could not be dismissed on that basis.

<sup>3</sup>The parties were advised that, should the grievance be found timely, the case would be remanded for consideration of the merits.

<sup>4</sup>In Cart Grievant's representative did pose the argument that Grievant was doing the work of a Clerk II, if not a Clerk III, in clear recognition that such an alternative argument was appropriate.

was rejected in Cart. When asked at hearing whether she had been so advised, she admitted that no one had so counselled her.

In addition to the findings of fact contained in the above discussion, the following conclusions of law are appropriate:

Conclusions of Law

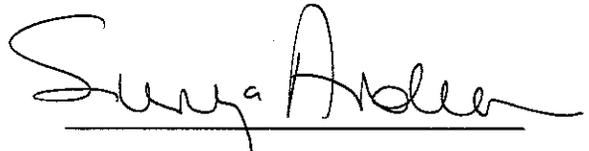
1. Grievant was not precluded from making an alternative argument in her grievance, filed October 31, 1988, in which she alleged that from February 1985 through August 1988 she was doing the work of a Clerk III while classified as a Clerk I, that she was doing the work of a Typist I during that time, and was entitled to backpay therefor.

2. Because Grievant was not so precluded and furthermore did not file her grievance within the ninety days after the issuance date, March 28, 1989, of AFSCME v. CSC, 380 S.E.2d 43 (W.Va. 1989), during which claims alleging misclassifications before July 1, 1988, could be filed, the grievance was not timely.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days

of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

A handwritten signature in cursive script, reading "Sunya Anderson", written over a horizontal line.

SUNYA ANDERSON  
HEARING EXAMINER

Dated: November 29, 1989