WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

GASTON CAPERTON
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MARVIN M. MANN

v. Docket No. VR-88-066

WEST VIRGINIA DIVISION

OF VOCATIONAL REHABILITATION

DECISION

Marvin M. Mann, Classified as a Disability Examiner II in the Charleston office of the Disability Determination Section ("DDS") of Respondent West Virginia Division of Vocational Rehabilitation, on October 3, 1988, filed this grievance, alleging that he was improperly denied a merit raise. The grievance was denied at Levels I, II,[1] and III. Anppeal to Level IV was filed on December 8, 1988, and a hearing was held January 23, 1989. At the hearing the

[1] At Level II the evaluator ruled that, after discussion of the case, Grievant indicated that he was satisfied. However, a few days thereafter Grievant retracted that conclusion and appealed.

parties waived submission of findings of fact and conclusions of law.

DDS processes claims for disability benefits under the Federal Social Security Program. From January 1987 through June 1987 Grievant had been classified as a Disability Examiner I and was making the initial determinations of disability. However, pursuant to a grievance proceeding, the West Virginia Civil Service System determined that Grievant was doing the work of a Disability Examiner II and required his reclassification thereto. Furthermore, in the summer of 1987 Civil Service determined that Disability Examiners II should be examining cases wherein the applicants asked for reconsideration of an initial denial. Accordingly, Grievant was transferred at the beginning of July, 1987, from making initial determinations to making reconsideration, or "recon," determinations.

On September 18, 1988, merit raises were awarded, based on the recent performance of the employees. The production of the employees from July 1, 1987, to June 30, 1988 was compared. Grievant contends that his production of recon cases from his first day of reassignment was unfairly compared with the production of the other recon examiners, who already had a caseload, and he was not given the opportunity to catch up in production since he was not given enough cases.

Respondent denies that Grievant was significantly disadvantaged and argues that its method of awarding merit

raises was not arbitrary or capricious, but was based on a proper method. It further argues that, even if Grievant's production had been much higher, he nevertheless would not have been entitled to a merit raise.

Grievant stated that he was given 80[2] new recon cases in July 1988 and, unlike other unspecified individuals, was not provided any cases that had been worked on.[3] Further, he testified that the number of cases assigned was determined by how many cases the evaluator disposed of and therefore he could not catch up in production.[4]

Grievant's supervisor Victor Clark conceded in his testimony that he did not know of any other time that an examiner was transferred to the recon division without picking up another's caseload but also indicated that such

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[2] At one point Grievant complained that the 80 cases was too high a number of cases to start off with. That comment does not reconcile with his overall argument that he was not provided enough cases.

[3] The document Grievant provided, Gr. Ex. 1, which he submitted to show the number of cases pending, received, and disposed of by each recon examiner on a monthly basis, shows 80 cases pending and 86 cases received by Grievant in July, 1988. It is not clear therefrom whether the 80 pending cases were included in the 86 received.

[4] Grievant stated that he was finally able to increase his caseload in the latter part of 1988 "because I sent out more than I had. I worked extremely hard to get out more cases. I had to get out more cases than were given me so that they could give me more in return." It is not understood how an examiner could work on more cases than given. Further, if there was an opportunity to work on more cases than provided, the record fails to establish why Grievant could not examine additional cases earlier than he did.

transfers had previously occurred when an examiner left the recon division, whereas in this instance a new position was created for Grievant to fulfill the requirements of Civil Service. Respondent's evidence furthermore established that it was allowed to give merit raises to 52% of its employees overall and 58% of the employees in the Charleston office. It was decided that the fairest dispersion of raises would be to group individuals with like classifications division by division and provide 52% or 58% of each group of employees the merit raises, based on performance. Accordingly, it was determined that, of the 7 recon examiners, 4 would receive merit raises. Further, four criteria were applied for rating the performance of the recon examiners, production, accuracy, mean processing time, and service rating. The employees were ranked 1 through 7 in each category and their rankings then totalled. The rankings of those who received the raises totalled 8, 10, 12 and 13. Grievant, with a total of 18, was fifth.[5]

Grievant's only argument is that the production criterion was unfair; he makes no argument against the other three categories for ranking the recon examiners.[6] The

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[5] The record is clear that production was weighted no more heavily than the other three criteria. A contention of Grievant that approximately 80% of the determination of who would receive merit raises was based on production is accordingly contradicted by the record.

[6] Grievant argued that Respondent acted contrary to an (Footnote Continued)

record does not establish that, even if the method of distribution did disadvantage Grievant initially, he continued to be disadvantaged, for his supervisors opined that the system allowed him to catch up in a month or two. Further, while Grievant complained that the 894 cases he received were less than the 934 to 1089 cases received by the individuals who received merit raises, without more proof of how the cases were dispersed, this divergence in numbers does not, in and of itself, show unfair treatment of Grievant. Moreover, while Grievant argues that, if he is given cases, he disposes of them, the figures show he disposed of 737 out of the 894 he received. The difference between the number of cases received and the number of cases completed was less than 100 for all the individuals who received merit raises. Accordingly, the figures indicate that Grievant did not complete as many of the cases he received as he might have.

Nevertheless, the record may indicate that the distribution of cases was not uniform and may have been unfair, for Respondent's witnesses conceded that the number of cases an examiner disposed of did influence how many new ones he

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(Footnote Continued)
than their peers. However, Grievant did not support his contention with any evidence on any specific individual and, furthermore, the memo does not prohibit such an awarding of a merit raise.

would receive.[7] Further, while the figures do not otherwise show unfair distribution of cases, one figure is suspect. One of the recon evaluators who was given a merit raise was on maternity leave for approximately 6 weeks in August and September, 1987, with a resulting production of 38 and 0 for those months, respectively.[8] Nevertheless, she was given 175 cases in October. From these figures it can be inferred that she was provided the opportunity to catch up on production, which she did with a production ranking of third.

Even though this evidence indicates some opportunity provided that individual which may have been denied Grievant, it does not support a determination that Grievant was entitled to a merit raise. Even if that one individual would have been ranked behind him in production if she had not been provided extra cases, Grievant would nevertheless have only had a ranking of sixth in production, and that would have resulted in no change in his overall ranking at

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[7] The purpose of the method was to prevent backlogging of cases with an examiner who could not dispose of the cases he already had.

[8] Grievant also contended that the woman who went on maternity leave was provided help which he was not provided. However, he did not specify any help she was provided and the evidence does not otherwise support his contention. Furthermore, while he stated he requested help, he did not say what kind of help he requested, and he presented testimony that he did not ask for help from the clerical or secretarial staff; rather, he preferred to be self-sufficient.

fifth place. Accordingly, he would not have been entitled to one of the merit raises.

In addition to the foregoing narrative, the following Findings of Fact and Conclusions of Law are appropriate.

Findings of Fact

1. Grievant, a Disability Examiner II with Respondent, was transferred from initial determinations to reconsideration determinations on July 1, 1987.

2. Respondent was allowed to provide merit raises of 58% of its employees in the DDS division in Charleston.

3. Respondent considered the seven recon examiners for merit raises by ranking them in four categories, production, accuracy, mean processing time, and service rating, and gave the examiners with the top four rankings merit raises in September 1988. Grievant had the fifth ranking and was denied a merit raise.

4. Respondent considered the production of the recon examiners from July 1, 1987, to June 30, 1988, in ranking them.

5. Grievant was not significantly disadvantaged by being given 80 new reconsideration cases at the beginning of July 1987 nor did he prove he was denied the opportunity to

catch up. The mere figures on dispersal of the cases do not establish unfair treatment, especially since Grievant completed a lower percentage of the cases assigned than the individuals who were granted merit raises.

6. Even if one recon examiner who was absent on maternity leave during August and September 1987 was provided a greater opportunity to increase her production upon her return than Grievant was provided upon his reassignment to reconsideration cases and, without that opportunity would have had lower production than Grievant, Grievant would nevertheless not have been entitled to a merit raise because he would have been ranked fifth.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Payne v. West Virginia Department of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievant failed to establish that Respondent misapplied or contravened any legal requirement or was arbitrary or capricious in its awarding of merit raises, nor did he establish any discriminatory practice in the dispension of cases or the awarding of the merit raises. See W.Va. Code §§29-6A-2 (d) and (i).

The grievance is accordingly **DENIED.**

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days 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 your intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

SUNYA ANDERSON
HEARING EXAMINER

Dated: February 8, 1989