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STEVE McCOY

v.

DOCKET NO. 89-DOH-88

W.VA. DEPARTMENT OF HIGHWAYS

DECISION

The grievant, Steve McCoy, is employed by the West Virginia Department of Highways (Department) as a Mechanic I. Mr. McCoy filed a level one grievance on December 12, 1988 in which he alleged that he was better qualified than the successful applicant for a position of Craftworker II. The grievance was denied at levels one through three and a level four appeal was filed on March 7, 1989. After numerous continuances a level four hearing was conducted on July 11 with proposed findings of fact and conclusions of law submitted by August 11, 1989.

The grievant was first employed by the Department in November 1987 and has been classified as a Mechanic I continuously from that time. In October 1988 the grievant applied for a posted position of Craftworker II, said position to be utilized in the area of highway maintenance.

The grievant was interviewed; however, the position was subsequently awarded to Roger Sharp.

The grievant asserts that he was better qualified than the successful applicant for the position and requests promotion to Craftsworker II with backpay and benefits effective December 5, 1988. In support of his allegation the grievant states his qualification to be eleven and one-half years of experience as a Mechanic, during which time approximately fifty percent of his duties were within the areas of highway maintenance, building trades, building maintenance and metal work, and the completion of seven training sessions or certification classes related to mechanics, welding and electronics.

The Department argues that the posting clearly specified that the position was in the area of highway maintenance and that the grievant's past training and experience, as stated on the application, were almost exclusively in the area of auto mechanics while the successful applicant possessed skills more closely related to those required by the position.

The grievant testified at level two regarding his experience in the areas of painting, plumbing, electrical work, air conditioning, heating and other repair and maintenance work. He acknowledges that this experience was not listed on the job application which almost exclusively listed experience earned as mechanic. He explained that because he had been hired as a mechanic for his prior

positions that is what he listed on the application. (T p.7). At the level four hearing the grievant testified that the interviewer, Stanley McNeill, had not inquired about his maintenance skills or experience and that he did not volunteer the information because he had talked with Mr. McNeill several times and assumed that he knew the grievant could perform the duties of the position.¹ The grievant stated that he was also misled by his co-workers that the senior applicant would automatically receive the position; therefore, he did not carefully complete the application.

Documentation made a part of the record include the job posting of Craftworker II described as "[p]erforms trades craft work in highway maintenance. Performs related duties as required...". The job description for Craftworker II states the nature of the work to be "[u]nder general supervision, an employee in this class performs journey level trades crafts work in one or more of the following areas: automotive repair, building trades, building maintenances, equipment repair, highway maintenance or metal works. The work may involve exposure to hazardous work conditions." Examples of work performed within the six craft areas are

¹The grievant implies that the interview was somehow flawed because Mr. McNeill did not inquire about any additional skills or abilities and attempted to dissuade the grievant from pursuing the position. This line of argument was not advanced and will receive no further consideration herein as it would have no effect on the outcome of this decision.

included as part of the job description along with required knowledge, skills and abilities.² Minimum training requirements include no formal education; however, two years full-time or equivalent part-time experience in the assigned craft area is required. Special requirements such as a motor vehicle operator's license or certification which may be necessary for the assigned craft were also included in the job description.³

A review of the grievant's application reveals that he has training in electronics, welding and machinery repair and maintenance. His work experience was listed as follows:

- 1) Employer Marlinton Motor Sales 1982-87
Position Mechanic/Service Manager
- 2) Employer L & R Excavating 1981-82
Position Heavy Equipment Mechanic
- 3) Employer Pocahontas Construction Co. 1980-81
Position Equipment Mechanic
- 4) Employer Daniels Construction Co. 1977-80
Position Oiler/Oiler Foreman/Heavy
Equipment Mechanic

²The job description for Craftworker II is necessarily broad as it must encompass six diverse areas of responsibilities; however, the job postings state the specific area in which the vacancy exists. While the position in question was for highway maintenance the same job posting included another position of Craftworker II for the equipment shop (cleans, sands, tapes, repairs dents and replaces rusted parts of vehicle bodies in preparation for painting).

³The grievant asserts that the position of Craftworker II consists primarily of unskilled tasks. While it is clear that the employees perform a variety of related duties the posting establishes a primary area of work to be performed and the job description requires a minimum period of experience within that area.

- 5) Employer Pocahontas Construction Co. 1976-77
Position Mechanic
- 6) Employer Denmar State Hospital 1975 (Summer)
Position Handyman

Mr. Sharp's application indicated no additional training beyond a high school diploma and the following work experience:

- 1) Employer Hanover Shoe Co. 1974-78
Position Heel compressor operator
- 2) Employer Daniels Construction Co. 1978-80
Position Welder and loader operator
- 3) Employer Mountaineer Construction Co. 1981
Position Maintenance
- 4) Employer Daniels Construction Co. 1982-84
Position Carpenter/Welder
- 5) Employer W.Va. Department of Highways 1985-86
Position Operator II
- 6) Employer Daniels Construction Co. 1986
Position Carpenter/Welder
- 7) Employer Bannett Builder 1986-87
Position Carpenter/Painter
- 8) Employer Hanover Shoe Co. 1987-88
Position Heel burnisher

Of the six positions listed by the grievant, five involved working as a mechanic while the position at Denmar State Hospital involved operating farm machinery. All of the additional training listed by the grievant is mechanical in nature. Of the eight positions held by the successful applicant, six of the positions were in the area of construction and maintenance. Because this was the only information available to Mr. McNeill regarding the grievant's training and experience prior to making his personnel recommendation, it cannot be determined that the decision to hire Mr. Sharp was clearly wrong. It is unfortunate that the grievant

did not include the additional experience on the job application or during the interview, that he was misled by his co-workers into believing that the most senior applicant would receive the position and that he incorrectly assumed Mr. McNeill was aware of his skills and abilities. However, the scope of the grievance must be limited to whether a correct decision was made based upon the information provided. It is not the purpose of the grievance procedure to allow an unsuccessful applicant the opportunity to reopen consideration for the position by submitting additional information.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant has been employed by the Department of Highways since 1987 and is classified as a Mechanic.

2. In October 1988 the grievant applied for a position as Craftworker II in the area of highway maintenance. The grievant asserts that he is more qualified than the successful applicant, Roger Sharp.

3. The grievant's application for the position of Craftworker II reveals that he has completed training in electronics, welding and mechanical equipment repair and maintenance. His work experience is entirely mechanical in nature with the exception of farm work completed one summer.

4. The successful applicant lists no additional training beyond high school but has earned approximately nine years of experience in construction and maintenance, including a prior assignment with the Department of Highways.

5. The grievant failed to include any training or experience relevant to the position assignment in highway maintenance on the job application. He did not provide this vital information during the interview based upon his assumption that the interviewer was aware of his abilities and his reliance on co-workers' assertions that the most senior applicant would receive the position.

Conclusions of Law

1. It is incumbent upon the grievant to prove the allegations of the complaint by a preponderance of the evidence. Payne v. W.Va. Department of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. The grievant has failed to prove a violation of Department of Highways or Civil Service System regulations in filling the position of Craftsworker II.

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Pocahontas 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.

DATED

November 30, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER