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JAMES C. YOUNG

v.

Docket No. 89-ES-291

W.Va. DEPARTMENT OF EMPLOYMENT SECURITY

D E C I S I O N

This grievance involves the question of whether the person promoted by the West Virginia Department of Employment Security (DES) to fill an Employment Security Chief (ES Chief) vacancy had the necessary minimum qualifications for the position. Grievant was prompted to file this grievance because he was aware the successful applicant had been advised by DES just a few months earlier that he lacked sufficient administrative experience to be qualified for this type position.¹ DES has contended throughout that the successful applicant did have the necessary two years of

¹ The grievance was filed at level I on May 15, 1989, and level I and II responses were received on May 17 and May 31, respectively. A level III hearing was conducted on June 14, and a decision adverse to the grievant was made and concurred in by the Commissioner of DES on June 16. Grievant appealed to level IV on June 27, and after one continuance a hearing was held on August 7, 1989.

experience in a responsible administrative position required for the position and was qualified to be appointed.

The facts surrounding this employment dispute are not complicated and can be summarized in general terms. Mr. Richard Westfall was promoted from a pool of applicants to fill an ES Chief vacancy within DES in May 1989. On his civil service application dated in February 1989, he indicated that he had two years of supervisory experience directing the work of one individual. The DES personnel officials who reviewed his application were not certain whether he possessed the required two years of administrative experience to be eligible for the appointment, and therefore requested the Civil Service Commission to review the application. DES was advised that he did have the required administrative experience and was eligible to be considered.

Mr. Westfall had previously applied for a ES Chief vacancy in November 1988. Grievant was aware that this application had been rejected on the basis that he lacked the required two years of administrative experience. Mr. Westfall checked a box indicating he had no supervisory experience on this application. DES rejected this initial application in December 1988 without seeking an opinion from Civil Service.

The key testimony in this grievance came from Mr. Frank Chambers, Chief of Test Administration for the Civil Service

System, who found that Mr. Westfall was qualified for the ES Chief position based upon the information contained in his second application. His responsibility was to review the minimum training and experience requirements for the job class listed on the application and determine whether the applicant was qualified for the position. On direct examination the grievant explained to Mr. Chambers that some question had arisen about the definition of administrative experience and asked him if he could define that term. Mr. Chambers testified that a former assistant director of personnel had formulated a definition of administrative experience that is utilized to determine whether an individual has the requisite qualifications to fill a position in the classified service.²

² The memorandum dated April 6, 1981 is directed to a former director of personnel and defines administrative experience as follows:

work which includes responsibility for, or assisting in, setting goals and objectives (sic) of an established organizational unit and the coordination of resources to meet those objectives, for developing plans and executing policies, for directing the work of others in the performance of the prescribed mission and for interpreting the policies of the unit to workers and others.

The memorandum also defines the terms executive, professional and supervisory and states:

The following list identifies the notable classification activities:

The following tentative definitions were com-
(Footnote Continued)

Mr. Chambers then reviewed Mr. Westfall's initial application, which as noted earlier indicated he had no supervisory experience, and testified that his experience as a Counseling and Training Supervisor, which involved coordinating activities in various employment service divisions in the State, setting local office policy and making recommendations to management concerning procedures, would satisfy the two-year administrative experience requirement. He further stated that supervisory responsibility is not a necessary component of administrative experience.

Mr. Westfall testified that he decided not to challenge the rejection of his first application because he was aware that a second ES Chief position would be vacant in the near future, and he could file a second more complete application for that position. He had been previously advised by Civil Service personnel to include all prior work experience in as great a detail as possible on any future application. Accordingly, when he completed the form for the more recent ES Chief vacancy he included the fact that he had been

(Footnote Continued)

piled. They represent our continuing effort to establish clear interpretations of often used terms. I would like to you to review them and make any comments you deem appropriate. I want the terms to be useful to the Classification Division and the agencies when specifications are being developed, and to the Test Administration Division when specifications are being interpreted.

supervising one employee for the past two years. Finally, Mr. Westfall testified at some length concerning the responsibilities and duties of a Counseling and Testing Supervisor, the position he held for eight years prior to his promotion to the ES Chief position.

DES introduced the testimony of R. Allen Wright, the Assistant Director for Program Services, who previously held essentially the same position currently held by Mr. Westfall. He corroborated Mr. Westfall's testimony that he supervised one employee for approximately a two-year period.

At the conclusion of the hearing, grievant acknowledged that it did not appear that DES had acted improperly in filling the vacancy.³ He also expressed satisfaction that the question of Mr. Westfall's qualification had finally been resolved, but lamented the fact that Civil Service had not provided this information earlier in the grievance procedure. It appears that this probably could have been resolved within the agency at level III, if this information from Civil Service had been obtained at that time.

After a complete and thorough review of the testimonial and documentary evidence introduced in this grievance proceeding, the undersigned is of the opinion that the

³ In light of his statements at the hearing, grievant was advised that he could withdraw the grievance if he made such a request in writing within seven days from and after the date of the hearing. No request to withdraw the grievance was made.

grievant has not proven by preponderance of the evidence that the successful applicant was not qualified for the position. The evidence, in fact, is just to the contrary, as grievant himself recognized at the hearing. However, the grievant did have reason to question whether the successful applicant met the minimum qualifications for the position, and as a result of his efforts both DES and he have a better understanding of the terminology used by Civil Service to define various types of employment experience.

In addition to the preceding discussion, the following finding of fact and conclusions of law are appropriate:

Finding of Fact

1. The successful applicant for the ES Chief vacancy met the two-year administrative experience requirement for the position.

Conclusions of Law


1. It is incumbent upon a grievant to prove all the allegations constituting a grievance by a preponderance of the evidence. E.g., Payne v. W.Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. Grievant failed to show by a preponderance of the evidence that the appointment of the successful applicant to

the ES Chief vacancy was in violation of any Civil Service regulation or was otherwise improper.

The grievance is, therefore, **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 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.



C. RONALD WRIGHT
ADMINISTRATOR/HEARING EXAMINER

Dated: September 5, 1989