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**BERNARD MICHAEL DAUGHERTY**

**v.**

**Docket No. 89-DOH-84**

**W.Va. DEPARTMENT OF HIGHWAYS**

**DECISION**

Grievant Bernard Daugherty is employed in Pleasants County by respondent West Virginia Department of Highways as a Craftswoman I. On March 3, 1989, he filed a level four grievance because he had been denied a promotion to Maintenance Crew Leader. The grievance had been previously denied at level one, January 11; level two, January 20; and level three, February 14, 1989. A level four hearing was conducted April 11, 1989, and the parties declined to submit proposed findings of facts and conclusions of law.

The parties do not contest the facts in this case. On August 5, 1985, grievant signed and submitted a Civil Service Application For Examination (application) and was employed as a Craftworker I on a limited ninety-day status on August 19; this employment terminated November 19, 1985. Another temporary employment commenced December 21, 1985. On April 3, 1986, grievant filled out another application for a Highway Equipment Operator II position. On June 2, 1986, grievant was hired on an original appointment to a permanent position as a Highway Equipment Operator II. On September 14, 1987, grievant filed another application for Highway Equipment Supervisor II but apparently did not receive the position.

On December 29, 1987, grievant submitted yet another application for a position as Assistant County Supervisor. An employment check was made to verify whether he had supervisory experience in a construction-related employment as he had denoted on the application. According to the record, officials discovered he had falsified the application to enhance his work experience. Indeed, he had falsified the last three applications in a similar manner by stating he had supervisory experience. Grievant did not receive the Assistant County Supervisor position, but he was not disciplined for his actions.<sup>1</sup>

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<sup>1</sup>The application contains a warning against false swearing, to-wit: "AFFIRMATION: In signing this application you are certifying all statements are true and complete. BE SURE TO SIGN THIS APPLICATION. Civil Service reserves the right to verify information given in the application. Misrepresentation  
(Footnote Continued)

On February 22, 1988, grievant submitted a fifth application for a bid on a Maintenance Crew Leader position. The position did not require prior supervisory experience and grievant filled out the latter application in a manner consistent with the first application (August 5, 1985), i.e., that his construction work did not involve the supervision of other employees.

The county supervisor and assistant county supervisor, who were apparently made aware of the discrepancies in three of grievant's prior applications, nonetheless supported grievant's appointment as crew leader and employment papers for change of status were prepared. Carl Thompson, District Engineer, would not approve the new employment. Mr. Thompson's position was that he could not approve the employment of someone who had falsified applications because the position required the submission of daily paperwork logging and tallying the road workers' time, use of equipment and inventory.

Grievant admitted he had falsified three prior applications. Throughout the record he attempted to convey that he had learned a lesson and was remorseful about the falsified applications. He said that he had done so to meet minimum requirements for the various positions because he knew he could do the job, unlike so many of his peers, some of whom could not read or write. He said that he had two years of college and could make

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(Footnote Continued)

is grounds for disqualification and punishable by fine and/or imprisonment."

more money at other employments, but he liked his job and outdoor work. He also stated that he had been temporarily assigned as crew leader for at least six to eight weeks in the past and performed satisfactorily. He said that at the present time there was no foreman or crew leader and therefore it created a bad situation for his supervisors. He promised not to falsify documents again.

Mr. Thompson countered that he did intend to eventually fill the position, but in the meantime it could be filled temporarily on an as-needed basis in the same manner as grievant's prior temporary crew leader assignment.

Grievant argued that respondent should consider only the application before it for the job in question, not past applications. He averred that he can do a good job, has the support of his immediate superiors, who are well aware of the needs of the position, and gets along well with most of the men. He requests instatement to the position.

Evaluators at level three were supportive of Mr. Thompson's wishes to not award the position to grievant because there existed a lack of confidence in grievant's integrity "at this time." At hearing, respondent argued that management prerogative not to hire grievant is valid under the circumstances and should be affirmed.

Respondent's position in this matter is more compelling. Absent any authority upon which to support his contention that he should be hired as crew leader or a claim or showing that

respondent acted arbitrarily, grievant's request cannot be upheld.

In addition to the foregoing narration, the following findings of fact and conclusions of law are made.

#### FINDINGS OF FACT

1. Grievant admitted to falsifying three applications for posted positions and enhancing those documents to show that he had had supervisory experience when in fact he had not. He did not falsify his latest application for a position as crew leader for which he was minimally qualified.

2. Grievant was recommended for the crew leader position by his supervisors but the district engineer would not approve the employment because of his belief that a honest person with integrity and high standards should be employed for the position inasmuch as it required daily submission of accurate work reports.

3. Grievant's only authority on the grievance matter was his own personal conviction and assertion that respondent should not consider his past falsified applications and instead instate him to the position.

#### CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the

evidence. Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (March 29, 1989); Nefflin v. Dept. of Human Services, Docket No. DHS-88-068 (Feb. 28, 1989).

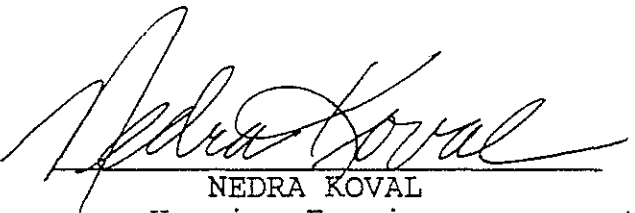
2. The grievant has failed to prove any violation of law, policy or statutory provision on respondent's part in this grievance matter.

3. Grievant has failed to claim or show arbitrariness on respondent's part or that he was entitled to reinstatement to the crew leader position as a matter of law.

Accordingly, this grievance is DENIED.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Pleasants 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: May 31, 1989

  
NEDRA KOVAL  
Hearing Examiner