

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

BRIAN MATTHEW CASSIS,
Grievant,

v.

Docket No. 2013-0020-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES
AND DIVISION OF PERSONNEL,**
Respondents.

DECISION

Grievant, Brian Matthew Cassis, is employed by Respondent, Department of Health and Human Resources ("DHHR"). On July 10, 2012, Grievant filed this grievance relating to the Division of Personnel's review of the position Grievant holds with Respondent DHHR. Grievant's request of relief states in full:

I am requesting that the Division of Personnel review and consider the duties assigned to my position via the [prior] job posting dated March 27, 2009 and compare those duties and responsibilities against those for which are now currently assigned to me and listed on my current position description form dated November 21, 2011. I am requesting that the Division of Personnel review the definition of "Reallocation" within Section 3 of the Administrative Rule and provide reasoning as to their determination that there is not a substantial change in the "kind" and/or "level" of duties and responsibilities assigned to my position now as compared with the [prior] job posting dated March 27, 2009.¹

¹ Although Grievant's request for relief did not actually include a request for reallocation, Respondents and the undersigned believed that to be included in the request for relief during a portion of the level three hearing based on the wording of the grievance as a whole. Lengthy discussion was had during the hearing as to the actual relief sought and how the remainder of the hearing should proceed. Considering the liberal interpretation of grievance statements and relief requested required to avoid "procedural quagmire" and the necessity for a final determination of the reallocation issue, it was decided that the grievance would proceed on DOP's denial of the request for reallocation and the Grievance Board's review of that determination.

The level one grievance evaluator provided Notice of Level 1 Waiver on July 11, 2012, and the grievance was waived to level two. Grievant perfected the appeal to level three of the grievance process on January 22, 2013. A level three hearing was held on June 19, 2013, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared *pro se*. Respondent DHHR was represented by counsel, Michael E. Bevers, Assistant Attorney General. Respondent Division of Personnel ("DOP") was represented by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on July 31, 2013, the deadline for submission of Proposed Findings of Fact and Conclusions of Law, having received submissions from both Respondent DHHR and Respondent DOP, but not Grievant.

Synopsis

Grievant is employed by DHHR as an Administrative Services Manager 3 as the Director of an administrative support office of nine employees. Grievant grieved the DOP's determination that the position should remain classified as an Administrative Services Manager 3, and not as an Administrative Services Manager 4. DOP's interpretation of the critical distinction between the two class specifications is not clearly wrong as it is supported by substantial evidence. While some of Grievant's duties may fit specific statements within the sought class specification, the class specifications must be read as a whole, and Grievant's duties do not fit that class specification as a whole. Grievant failed to prove by a preponderance of the evidence that the sought classification is the best fit for the position he occupies. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant is employed by Respondent DHHR as the Director of the Office of Internal Control/Policy Development ("OICPD"), which is classified as an Administrative Services Manager ("ASM") 3. Grievant is one of five Office Directors who report to DHHR Chief Financial Officer Tara L. Buckner. The OICPD operates at the departmental, not divisional, level in that it serves in a support role to the DHHR as a whole.

2. On October 28, 2011, CFO Buckner posted additional duties in the OICPD, and Grievant was subsequently awarded the additional duties.

3. After the addition of the new duties, the OICPD was comprised of three organizational units: Division of Compliance and Monitoring, Division of Cost Allocation, and Single Audit and External Audit Coordination. Single Audit and External Audit Coordination is staffed only on an *ad hoc* basis. Grievant directly supervises an ASM 2 and a Financial Reporting Specialist 3 in the two divisions. Staffing of those divisions is comprised of Accountant/Auditors of varying levels, an ASM 2, and an Accounting Technician 4. Overall, the OICPD has nine positions.

4. After Grievant assumed the new duties, he and CFO Buckner completed a Position Description Form ("PDF") and submitted it to Respondent DOP for review of Grievant's position. Grievant describes his duties performed as follows:

Serve as the Director of the Office of Internal Control and Policy Development (OICPD) within the West Virginia

Department of Health and Human Resources (DHHR). Plan and manage the operations of the OICPD through professional, technical and clerical employees staffed within the Office's Division of Compliance and Monitoring; the Division of Cost Allocation; and a third "division" with ad-hoc staffing that coordinates the Single Audit/Closing Book process within the DHHR and oversees other external audits conducted by Federal and State regulatory entities. The OICPD is an office under DHHR Administration/Finance that reports to the DHHR Chief Financial Officer and provides Department-wide administrative and financial support function based on compliance with and interpretations of various Federal, State and professional rules, regulations and standards. In addition to the managerial and supervisory duties required of the position, serve as a direct resource for and work closely with all bureaus, offices and related programs under DHHR in order to address a myriad of issues regarding financial oversight, regulatory compliance and related controls. There is also frequent communication and interaction with other State agencies (e.g. Department of Administration, Financial Accounting Reporting Section; the State Treasurer's Office, the State Auditor's Office, the Legislative Auditor's Office) and Federal officials (e.g. U.S. Department of Health and Human Services, U.S. Department of Agriculture).

CFO Buckner describes the primary role of the position:

Serve at the "corporate" level, overseeing, coordinating and directing the following processes for the Department: Single Audit, Closing Book, external audits conducted by Federal and State regulatory entities, cost allocation and compliance and monitoring of subrecipient grants. These processes all involve compliance with and interpretations of various Federal, State and professional rules, regulations and standards and are essential to the ability to draw down and safeguard millions of dollars, and for the prevention of disallowances. The position is responsible for direct staff, and the work units that fall under its purview serve as departmental experts that advise staff throughout the department.

She further states that the following duties were added to the position: "All duties associated with directing the DHHR Division of Compliance and Monitoring were added

to this office and associated position, to include the supervision and management of additional staff members and the monitoring of approximately 950 grant awards per fiscal year.”

5. After review of the PDF, the DOP determined that the position Grievant occupies was properly classified as an ASM 3, stating that the new duties assigned to the position were still consistent with the ASM 3 classification. The January 31, 2012 letter memorializing the decision states that the ASM 3 classification duties are described as “manages a statewide administrative support function of the department having responsibility to manage a department-wide support function involving an established professional field (i.e., accounting).”

6. Respondent DHHR requested reconsideration of the DOP’s classification determination by a ten-page memorandum dated February 22, 2012, alleging that the DOP had not reviewed the totality of the position, that there had been a substantial change in both the kind and level of duties, and arguing that the position should be classified as an ASM 4.

7. DOP Director Sara P. Walker, denied Respondent DHHR’s request for reconsideration by letter dated June 5, 2012. Director Walker states that she considered both the PDF and the memorandum from CFO Buckner in making her decision. She states, “The additional responsibility of the Division of Compliance and Monitoring still works with the fiscal requirement of Mr. Cassis’ duties.”

8. The ASM 3 classification reads in pertinent part:

Nature of Work: Under administrative direction, manages an organizational section providing administrative and support services in a division. The operations, policy, work processes, and regulatory requirements of the section are complex, varied, dynamic, and requiring substantial depth of analysis and

interpretation of theory, principles, practices, and regulations of a professional or administrative field. Involves the supervision of professional, technical and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Performs related work as required.

Distinguishing Characteristics: The Administrative Services Manager 3 is distinguished from the Administrative Services Manager 2 by responsibility to manage a statewide administrative support function of the department. Positions having responsibility to manage a department-wide support function involving an established professional field (i.e., accounting) including the supervision of a significantly large staff of professional, technical, and clerical employees may also be allocated to this class.

Examples of Work

Plans, develops and executes through professional, technical, and clerical staff, a statewide administrative support program or a primary department-wide program of considerable complexity.

Directs the daily operations of the staff and may direct regional or other field staff. Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.

Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.

Evaluates the operations and procedures of the unit for efficiency and effectiveness.

Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.

Determines need for training and staff development and provides training or searches out training opportunities.

Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.

Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.

Interprets statutes, regulations and policies to staff, other managers, and the public.

Represents the division or department in grievance hearings and serves as a witness in same.

Prepares reports reflecting the operational status of the unit and or agency programs.

May participate in local conferences and meetings.

Knowledge, Skills and Abilities

Knowledge of the organization and programs of the agency or department.

Knowledge of the principles and techniques of management, including organization, planning, staffing, training, budgeting, and reporting.
Knowledge of state government organization, programs and functions.
Knowledge of state legislative processes.
Knowledge of federal, state, and local government relationships as they relate to the program, mission and operations of the unit and/or department.
Ability to plan, direct, and coordinate the program and administrative activities of the unit.
Ability to supervise others.
Ability to evaluate operational situations, analyze data and facts in preparation for administrative and policy decisions.
Ability to establish and maintain effective working relationships with other government officials, employees, and the public.
Ability to present ideas effectively, both orally and in writing.

9. The ASM 4 classification reads in pertinent part:

Nature of Work: Under administrative direction, performs administrative work at the advanced level, managing an organizational section providing administrative and support services in a department where operations, policy, work processes, and regulatory requirements of the section are complex, varied, dynamic. Work requires substantial depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Duties involve the supervision of managerial, professional, technical and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Positions at this level report to the division head and have primary responsibility for the administrative support functions for a large state division. Performs related work as required.

Distinguishing Characteristics: The Administrative Services Manager 4 is distinguished from the Administrative Services Manager 3 by responsibility to manage a statewide administrative function of the largest state divisions. Positions in this class have responsibility for managing multiple units of a diverse administrative support function (i.e., accounting, purchasing, printing, etc.) in the largest state divisions and where significant federal relationships are involved in the fiscal and administrative function. Typically, positions in this class manage the section through subordinate Administrative Services Managers.

Examples of Work

Plans, develops and executes through managerial, professional, technical, and clerical staff, a statewide administrative support program of considerable complexity.

Directs the daily operations of the staff and may direct regional or other field staff.
Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.
Renders decisions in unusual or priority situations; consults with superiors and other state managers in reviewing same.
Evaluates the operations and procedures of the unit for efficiency and effectiveness.
Recommends the selection and assignment of staff to superiors; conducts interviews and background evaluations for prospective employees.
Determines need for training and staff development and provides training or searches out training opportunities.
Develops the section and division program and administrative budget.
Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.
Directs the compilation of a variety of data related to the operation of the unit and/or the agency.
Interacts effectively with national and state officials on the granting and use of federal funds for program and administrative needs.
Interprets statutes, regulations and policies to staff, other managers, and the public.
Prepares reports reflecting the operational status of the unit and or division programs.
Participates in national, state and local conferences and meetings.

Knowledge, Skills and Abilities

Knowledge of the organization and programs of the division or department.
Knowledge of the principles and techniques of management, including organization, planning, staffing, training, budgeting, and reporting.
Knowledge of state government organization, programs and functions.
Knowledge of federal and state legislative processes.
Knowledge of federal, state, and local government relationships as they relate to the program, mission and operations of the unit and/or department.
Ability to plan, direct, and coordinate the program and administrative activities of the unit or section.
Ability to supervise others.
Ability to evaluate operational situations, analyze data and facts in preparation for administrative and policy decisions.
Ability to establish and maintain effective working relationships with other government officials, employees, and the public.
Ability to present ideas effectively, both orally and in writing.

10. Following the determination that the position he occupies would not be reallocated despite the additional duties assigned, Grievant received a ten percent pay increase under the Pay Plan Implementation Policy.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. Of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one in which his position is currently classified. See *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

Respondent DOP has wide discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001). The role of the Grievance Board is to review the information provided and assess whether the actions

taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

Grievant alleges Respondent DOP failed to consider all the duties of his position and failed to review the ASM 4 classification in considering the proper classification of his position. Grievant alleges the duties of his position have changed in both level and kind, and those duties more closely match those of the ASM 4 classification specifications. Respondent DHHR supports Grievant in this instance and would support reallocation of the position to ASM 4. Respondent DOP asserts it did consider all the duties of the position, did review those duties against all the specifications in the class series, including the ASM 4, and the position Grievant occupies is properly classified as an ASM 3.

"Reallocation" is defined as "[r]eassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." W.VA. CODE ST. R. § 143-1-3.75. An increase in the type of duties contemplated in the current class specification does not require reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further. "[t]he fact that all of the actual

tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.” W. VA. CODE ST. R. § 143-1-4.4(d). DOP class specifications are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the “Nature of Work” section of a classification specification is its most critical section. *See generally, Dollison v. W. Va. Dep’t of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989). “[S]imply because one is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [one] misclassified *per se*.” *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996).

Both Respondent DHHR, in its memorandum requesting reconsideration, and Grievant, in his grievance form, exhibits, and testimony, compared his position to the ASM 3 and ASM 4 classification specifications line by line. Within “Nature of Work” Grievant points out that an ASM 3 manages an organizational section in a “division”, whereas an ASM 4 manages an organizational section in a “department”. An ASM 4 manages managerial employees, and an ASM 3 does not. Finally, an ASM 4 reports to the division head and has “primary responsibility for the administrative support functions for a large state division.” Grievant is the director of an “office,” which is comprised of “divisions.” He supervises two managerial employees. He reports to the CFO of a

“department.” However, Grievant’s entire office includes only nine employees and he has responsibility for only one part of the administrative support functions of the DHHR.

Under “Distinguishing Characteristics,” Grievant points out the ASM 4’s responsibility for the “largest state divisions,” federal relationships, and management of the section through other ASMs more closely match his current position. However, Respondent DOP asserts that the key distinguishing characteristic of the ASM 4 is responsibility for “managing multiple units of a diverse administrative support function (i.e., accounting, purchasing, printing, etc.) in the largest state divisions.” This was the determinative factor in Respondent DOP’s review. Barbara Jarrell, Assistant Director of the Classification and Compensation section of Respondent DOP, testified that the diversity referred to in the classification specification entails management over different disciplines. All of Grievant’s responsibility is focused on accounting/auditing, which is one discipline, as shown by the composition of his non-managerial staff, who are all varying levels of Accountant/Auditors and one Accounting Technician. Both Grievant and the DHHR attempted to portray the organizational units under the position as diverse, but they are not diverse within DOP’s interpretation, which requires different disciplines for diversity. The West Virginia Supreme Court of Appeals, in applying previous cases regarding rules of construction and interpretation of statutes by bodies charged by their administrations, found that DOP’s “interpretation and explanation of the classifications should [be] ‘given great weight unless clearly erroneous.’” *W. Va. Dep’t of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) (per curiam). The clearly wrong standard is a deferential standard that requires the administrative law judge to presume that DOP’s interpretation and explanation of the classifications is valid

as long as it is supported by substantial evidence or by a rational basis. Syl. pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001) (citing Syl. pt. 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996)). In this case, Ms. Jarrell's interpretation of the need for management of multiple disciplines to be classified as an ASM 4 is supported by the clear language of the classification specification.

It is understandable that Grievant believed DOP had not reviewed the position against the ASM 4 classification specification when considering some of the language used to describe organizational units in the two classification specifications. The organizational structure of the DHHR and the wording of the classification specifications simply do not mesh. Under the organization of the DHHR, Grievant manages multiple "divisions." Since the ASM 3 is described as supporting a "division" while the ASM 4 is described as supporting a "department," it does seem that the ASM 4 would be a better fit. However, if one focuses on the classification specification as a whole as is required, rather than the organizational terminology used, the intent of the DOP in the classification specification is clear. The ASM 4 is meant for positions managing a large, diverse in discipline, organizational unit. While DHHR is clearly a large and diverse department, Grievant only manages a small organizational unit supporting the department in only one discipline. While there are definitely some specific portions of the ASM 4 that do appear to more closely match Grievant's position, such as his supervision of managerial employees and involvement at the federal level, Grievant has not proven by a preponderance of the evidence that the ASM 4 is the better fit as a whole.

The relief Grievant specifically requested, for DOP to review the definition of “reallocation,” review all of his job duties, and to provide an explanation for their decision, has already been provided. Ms. Jarrell testified that she did review all Grievant’s duties under the definition of “reallocation” and provided her reasoning as explained above for why she made her classification determination.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep’t of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. Of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one in which his position is currently classified. See *Hayes v. W. Va. Dep’t of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep’t of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

3. The Division of Personnel has wide discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001). The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

4. "Reallocation" is defined as "[r]eassignment by the Director of Personnel of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." W.VA. CODE ST. R. § 143-1-3.75. An increase in the type of duties contemplated in the current class specification does not require reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further. "[t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a

position should be allocated to the class.” W. VA. CODE ST. R. § 143-1-4.4(d). DOP class specifications are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the “Nature of Work” section of a classification specification is its most critical section. See generally, *Dollison v. W. Va. Dep’t of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989). “[S]imply because one is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [one] misclassified *per se*.” *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996).

5. The West Virginia Supreme Court of Appeals, in applying previous cases regarding rules of construction and interpretation of statutes by bodies charged by their administrations, found that DOP’s “interpretation and explanation of the classifications should [be] ‘given great weight unless clearly erroneous.’” *W. Va. Dep’t of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) (per curiam). The clearly wrong standard is a deferential standard that requires the administrative law judge to presume that DOP’s interpretation and explanation of the classifications is valid as long as it is supported by substantial evidence or by a rational basis. Syl. pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001) (citing Syl. pt. 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996)).

6. DOP’s interpretation of the need for management of multiple disciplines to be classified as an ASM 4 is supported by the clear language of the classification specification and is not clearly wrong.

7. The position Grievant occupies does not manage multiple disciplines.
8. Grievant did not prove by a preponderance of the evidence that the ASM 4 classification is a better fit for the position he occupies than the ASM 3 classification.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. Va. Code § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2008).

DATE: December 31, 2013

Billie Thacker Catlett
Administrative Law Judge