

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**DAVID SCOTT CLARK,
Grievant,**

v.

Docket No. 2016-1442-DOR

**INSURANCE COMMISSION and
DIVISION OF PERSONNEL,
Respondents.**

DECISION

David Scott Clark, Grievant, filed this grievance against his employer the Office of the Insurance Commissioner ("OIC"), Respondent, on or about March 17, 2016, protesting the classification of his position. The grievance statement provides:

Following a desk audit by the Division of Personnel, my position was reclassified from an Employment Programs Manager 1, pay grade 18, to a Supervisor 3, pay grade 13. My subsequent request for reconsideration was denied. I believe the reallocation of my position is a misclassification, and alternate equivalent positions that more accurately reflect my job duties were not considered.

The relief sought reads:

I request that my position be reclassified as a Workers' Compensation District Claims Manager, which more accurately reflects my job duties and the level of the employees I supervise. In the alternative, I request that my original job classification of Employment Programs Manager 1 be reinstated.

Pursuant to a March 25, 2016 order, the level one grievance evaluator denied the grievance and waived it to level two indicating he did not have the authority to grant the relief requested. By Order of Joinder entered on April 8, 2016, this Grievance Board ordered the West Virginia Division of Personnel ("DOP") be joined as an indispensable party. Grievant appealed to level two on March 30, 2016, and a mediation session was

held on June 13, 2016. Grievant appealed to level three on June 28, 2016. A level three hearing was held before the undersigned Administrative Law Judge on October 24, 2016, at the Grievance Board's Charleston office. Grievant appeared *pro se*.¹ Respondent OIC was represented by Mary Downey, Esquire, and Respondent DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General.

Parties were provided an opportunity to submitted written Proposed Findings of Fact and Conclusions of Law. This matter became mature for decision on November 23, 2016, the assigned date for the submission of the parties' proposal documents.²

Synopsis

Grievant, an employee of the Workers' Compensation Office of Judges within the Insurance Commission contends the reallocation of his position is in error. Grievant is in opposition to the classification of his position from an Employment Program Manager 1, pay grade 18 to a Supervisor 3, pay grade 13. Grievant contends he is being misclassified and suggests that the classification of Workers' Compensation District Claims Manager more accurately reflects his job duties. The Division of Personnel is the entity of WV State government charged with making classification determinations. Upon reviewing the documents related to Grievant's position, and performing an on-site audit, the Division of Personnel determined that Grievant's position best fit into the classification

¹ "*Pro se*" is translated from Latin as "for oneself" and in this context means one who represents oneself in a hearing without a lawyer or other representative. *Black's Law Dictionary*, 8th Edition, 2004 Thompson/West, page 1258

² Grievant's motion to hold this grievance in abeyance awaiting further review by DOP is denied.

of Supervisor 3. Grievant did not prove that Respondent DOP's classification decision was clearly wrong. This grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant, David Scott Clark, has been employed by the Workers' Compensation Office of Judges continuously since April 16, 1997. For historical purposes, Grievant was hired as an Office Assistant 2 on April 16, 1997, was promoted to Office Assistant 3 on July 16, 1998, Employment Programs Claims Deputy on April 16, 1999, Hearings Examiner on September 1, 2000, District Claims Manager on April 1, 2002, and finally to Employment Programs Manager 1 on April 16, 2005.

2. Currently, Grievant occupies a position in the Office of Judges ("OOJ") within the OIC that was formerly classified as an Employment Programs Manager 1 ("EPM 1"). DOP Ex 1

3. As a result of the review of a Position Description Form ("PDF") for another position in the OOJ, the DOP determined that an audit of three positions in that office, including the position occupied by Grievant, was necessary. The decision to conduct the audits was made after DOP looked at the history of the position and compared old and new organizational charts. This review revealed extreme differences and realignment of duties for a number of positions in the OOJ. The realignment of duties appeared to be as a result of organizational restructuring by the OOJ that occurred without consultation with, or notification to, the DOP. As such, a job audit of the position Grievant occupies

was conducted on November 23, 2015. After the audit, DOP determined the position Grievant occupies should be downwardly reallocated to the classification of Supervisor 3.

DOP Ex 1

4. A request for reconsideration of the classification determination was submitted to DOP by both Grievant and Rebecca Roush, OOJ's Chief Administrative Law Judge, on January 7, 2016, and January 11, 2016, respectively. G Exs 5 and 6

5. By letter dated March 2, 2016, former DOP Director Sara P. Walker responded to the request for reconsideration of the audit determination, affirming the DOP's decision to classify the position as a Supervisor 3. DOP Ex 2

6. A PDF was completed by Grievant on July 1, 2016, and was received by DOP on July 5, 2016. After a review of the PDF, DOP again determined the position Grievant occupies should be classified as a Supervisor 3. DOP Exs 6-8

7. The Workers' Compensation titles within the State Classification Plan have been eliminated from use by action of the State Personnel Board. One of the two classifications Grievant seeks to have his position placed in, the Workers' Compensation District Claims Manager, was abolished in 2009.³ It was reopened in 2010 by Director Walker for the sole use by the OIC Claims Services Division for four (now only three) positions that are responsible for administering the Workers' Compensation Old Claims Fund. As such, this classification is not available to be used for the position Grievant occupies. DOP Ex 16

³ Grievant seeks to either have the position he occupies placed in the Workers' Compensation District Claims Manager classification or to have the position returned to its former allocation as an Employment Programs Manager 1.

8. The classification specifications⁴ for the EPM 1 and Supervisor 3 read in pertinent part as follows:

EMPLOYMENT PROGRAMS MANAGER 1

Nature of Work

Under limited supervision, performs administrative and professional work at the full-performance level as the manager of a program unit or an organizational unit of equivalent size and complexity in the Bureau of Employment Programs. Responsible for developing and implementing methods related to program specialty area. Has limited authority to act independently. Provides important advice, information or data to higher management for program decisions; requires ability to persuade superior on actions related to the program area. Performs related work as required.

Distinguishing Characteristics

Positions in this class have responsibility for a primary unit in the Workers' Compensation Division or a secondary program section in the Division of Employment Service. Typically, the operation, policy, work processes, and regulatory requirements of the unit are predictable and stable. The positions normally supervise technical and clerical positions.

Examples of Work

Supervises the planning, organizing, implementation and evaluation of all work in the area of assignment.

Directs the development and implementation of policies and procedures in the area of assignment.

Supervises the monitoring of division activities to determine compliance with state and federal regulations, policies and work standards.

Assists in the preparation and execution of program budgets.

Assists the Section Director with problem resolution through technical expertise, program and organization knowledge and management experience.

Interacts effectively with state and federal officials on the interpretation and application of state and federal regulations and policies.

Coordinates the work of the section with other units, internal and external.

Supervises the preparation of regular and special reports on the status of agency programs.

Recommends personnel budget, purchasing and organization activities as

⁴ W. Va. Code R. § 143-1-3.19 defines "Class Specification" as "[t]he official description of a class of positions for the purpose of describing the nature of work, providing examples of work performed, and identifying the knowledge, skills, and abilities, required while stating the generally accepted minimum qualifications required for employment."

necessary.

SUPERVISOR 3

Nature of Work

Under general supervision, performs advanced level supervisory work overseeing the activities of high-level technical or administrative staff. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by supervisors through results produced and through meetings to evaluate output. Provides information on the units' accomplishments for the agency's annual report. Represents the agency before committees and the general public. Performs related work as required.

Distinguishing Characteristics

The Supervisor 3 is distinguished from the Supervisor 2 by the nature of the work supervised, the degree of external contacts, the number of units supervised and by the level of collateral work assigned to the position. The work supervised is typically of a technical or administrative nature as opposed to clerical. Contacts are often with other public officials at the state and federal level. Supervises two or more related units. The level of related work assigned is often administrative and technical in nature.

Examples of Work

Performs work in an administrative capacity compiling management reports, representing the agency before committees and the public and attending meetings with limited authority to commit the agency to a cause of action.

Interprets and applies departmental policies and regulations for employees and others in state government; may interpret policies for the general public. Advises subordinates of changes in policy and procedure.

Plans, assigns, and coordinates the work of subordinates.

Assists subordinates in the overall operation of programs and projects.

Trains new employees and implements policies, procedures, and regulations of the department.

Reviews and monitors the programs and projects of subordinates; assists in compiling federally and state-mandated reports.

Designs and carries out management studies for agency management; composes correspondence for agency administrators' signatures; advises superiors on matters relating projects and programs to the agency or department.

Answers questions and solves problems for and with subordinates; revises work procedures to align with changes in State or Federal laws or programs. Prepares and maintains records and reports for superiors to document

activities, evaluates the performance of the unit, documents expenditures and projects trends in the program; uses facts and figures to set management goals for improved performance.

Completes employees' performance evaluations, approves annual and sick leave, and recommends hiring, disciplinary actions, and other personnel actions.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

DOP Exs 11 and 12 and G Exs 7 and 9

9. Grievant described his typical work day. He has a seven-hour work day that begins at 9:00 a.m., though the majority of his employees start work at 8:00 a.m.

His time is spent performing the following duties and responsibilities:

- (1) Checking emails that come mostly from OOJ staff, including his employees. The emails typically involve questions about claims and processes. This represents approximately two (2) hours of a typical work day.
- (2) Reviewing the computer system to see the work that is coming into his staff. This represents approximately thirty (30) minutes, though he continues this task off and on throughout the day.
- (3) Answering questions in person from employees. These are the same type of questions he receives in email form. Questions will be in regard to which judge to assign a hearing, scheduling issues, and claims protest related to procedural issues. This represents approximately two (2) hours of a typical work day.
- (4) Discussions with upper management in OOJ about personnel issues with his staff, though not every day, and about scheduling of judges for hearings, though this does not occur every day either. Grievant claims this comprises one (1) hour of every work day.
- (5) Answering questions from non-employees and upper management. This represents one (1) hour of a typical work day.
- (6) Reviewing the work of his staff. This represents an average of forty-five (45) minutes of a typical work day.
- (7) Assigning work to staff. This represents fifteen (15) minutes of a typical work day.
- (8) Making phone calls. These are the same type of calls that his staff make

to schedule hearings and check on documents for claims. This represents fifteen (15) minutes of a typical work day.

- (9) Training staff about processes and computer system functions. This represents fifteen (15) minutes of a typical work day, although Grievant admitted this was only done maybe one (1) time per month.
- (10) Reviewing and approving leave requests for his staff. Grievant did not assign an amount of time to this task during his testimony.

10. When asked the predominant duty of his position, Grievant indicated that answering the technical questions related to procedural and processing issues with claims and claims documents, and scheduling hearings were his main duties. The majority of the questions he receives come from his staff who are responsible for scheduling the hearings and handling the documents that are assigned to claims' files in the OOJ computer system that the claims deputies and hearings officers use for each individual claim.

11. Grievant acknowledged that there have been significant changes to the job duties and responsibilities of the position he occupies since its last review.

12. Grievant indicated that the original PDF submitted for his position was a fair and accurate description of his job duties and responsibilities at the time he completed and signed it on July 1, 2016.

13. An addendum to his PDF, signed on July 8, 2016, was submitted to DOP on July 18, 2016. Contrary to the original PDF, the addendum indicated that Grievant was responsible for assigning work to others. The addendum was submitted after DOP questioned Grievant's supervisory responsibilities based on the original PDF that

indicated he did not assign work to other employees. Assigning work is a key component of supervisory responsibility. DOP Exs 6 and 7

14. When asked how he assigned work, the Grievant responded that the OOJ computer system has a method of assigning work in that it shows what work needs to be done. There are working queues in the system and he can determine priorities and email staff to request that they handle matters, e.g., hearings that need to be scheduled, or phone calls that need to be made about hearings or documents that have been submitted.

15. Patricia Fink, Insurance Program Manager for the OOJ and supervisor to Grievant, testified at the level three hearing. She provided background in regard to the restructuring of the OOJ that began in 2009 as a result of privatization of workers' compensation by the legislature that resulted in the removal of duties and responsibilities from the position Grievant occupies. See L-3 Testimony Patricia Fink.

16. Patricia Fink, Insurance Program Manager provided little specific information with regard to the current job duties and responsibilities of the position Grievant occupies.

17. Wendy Campbell, Assistant Director, Classification and Compensation Section for DOP testified at the level three hearing. The Classification and Compensation section is statutorily responsible for, among other things, ensuring that all classified positions in state government are classified and paid appropriately. See L-3 Testimony Campbell.

18. The PDF is identified in the DOP Administrative Rule, W. Va. Code R. § 143-1-4.5, as the official document detailing the duties and responsibilities of a position

and it is used by DOP to properly allocate positions within the classified service. PDFs are received by DOP on a daily basis and Campbell reviews every PDF. She has reviewed thousands of PDFs during her tenure with DOP. Campbell explained that when reviewing a PDF to determine whether a reallocation is appropriate, the DOP looks for a substantial change in the predominant duties of the position. The PDF is compared to the classification specifications to come up with the “best fit” for the position.

19. Prior to the level three hearing, DOP believed the position Grievant occupies should be classified as a Supervisor 3 and not an EPM 1. Campbell explained this was so because of the significant change in duties, i.e., the diminished complexity and nature of work of the position. The position no longer fell within the EPM 1 classification due to the change to the unit and loss of size and complexity of the program and work performed as compared to when the position had responsibility for the claims deputies and hearing examiners and itself conducted hearings.

20. A comparison between the 2016 PDF and the last review of the position, a PDF from 2009, as well as what was discovered during the job audit, reveals a significant change in the duties and responsibilities of the position Grievant occupies. In 2009, the position was responsible for supervision of a district claims manager, 13 claims deputies and four hearing examiners all of who were responsible for presiding over hearings. The position itself, also presided over hearings. After a restructuring of the OOJ and realignment of duties, the position in 2016 is responsible for supervising positions currently classified primarily as paralegals who are not involved in making decisions and do not conduct hearings. Two staff solely handle scheduling for hearings. One staff

person solely handles documents for hearings. The remaining ten staff solely handle documents for anything other than hearings. Additionally, the position itself no longer presides over hearings. Campbell described these changes to the position as “huge,” “drastic,” and “significant” throughout her testimony. See DOP Ex 6-7, 9 and L-3 Testimony of Grievant and Campbell.

21. Based on the PDF and the job audit, DOP identified the position as performing advanced level supervisory work overseeing the activities of administrative staff which falls in line with the Supervisor 3 classification. However, after hearing Grievant’s testimony, Campbell now has reservations about DOP’s classification determination because of the job duties and responsibilities of the positions that fall under the position Grievant occupies as described by Grievant himself during the hearing. The positions appear to be clerical as opposed to administrative in nature which, if true, would change those classifications to a lower classification and in turn would require the position Grievant occupies to be further downwardly reallocated to the classification of Supervisor 1. A Supervisor 1 position is responsible for supervising clerical staff. DOP Exs 5-6, and G Exs 3-4

22. All agencies should know that the submission of a PDF is required pursuant to DOP Administrative Rule when there is a significant change in the duties and responsibilities of a position. W. Va. Code R. § 143-1-4.5.e. specifically states:

Position descriptions shall be kept current by the appointing authority for each position under his or her jurisdiction. When the appointing authority significantly alter the duties and responsibilities of a position, the appointing authority shall provide a revised position description to the Director certifying with signature its accuracy and completeness.

23. Pursuant to the application of the above cited rule, the OOJ should have submitted a PDF for the position Grievant occupies, as well as for all other positions impacted, when the office restructuring occurred.

24. The complexity and level of duties and responsibilities of the position have significantly changed as a result of the restructuring and reorganization within the OOJ, which resulted in the position Grievant occupies being downwardly reallocated to the classification of Supervisor 3.

25. Within the current State Classification Plan, based solely on the PDF and the job audit, the "best fit," in terms of classification for the position Grievant occupies, is Supervisor 3.

Once the job audits of the positions Grievant supervises are completed by the DOP and classification determination made thereon, based upon the testimony provided by Grievant at the hearing, it may be necessary to further downwardly reallocate the position Grievant occupies to the classification of Supervisor 1.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Grievant asserts the position he occupies should remain classified as an EPM 1 or be classified as a Workers’ Compensation District Claims Manager. Respondent DOP contends the job duties and responsibilities of the position Grievant occupies have been so drastically diminished in complexity that the position should, at a minimum, be downwardly reallocated to the classification of Supervisor 3.

In order for a reallocation to occur, there must have been a significant change in the job duties and responsibilities of the position grievant occupies. W. Va. Code R. §143-1-3.72, *Kuntz/Wilford v. Dep’t of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997). Additionally, in a classification grievance, the focus is upon the grievant’s duties for the relevant period, and whether they more closely match those of another cited classification specification than the classification to which he/she is currently assigned. *See generally, Hayes v. W. Va. Dep’t of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

DOP’s classification specifications generally contain five sections as follows: first is the “Nature of Work” section; second, “Distinguishing Characteristics”; third, the “Examples of Work” section; fourth, the “Knowledge, Skills and Abilities” section; and finally, the “Minimum Qualifications” section. These 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 Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his/her required duties. *Simmons v. W. Va. Dep't of Health and Human Resources*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broadbuss v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

A comparison between the 2016 PDF and a PDF from 2009, as well as information obtained during a job audit, revealed a significant change in the duties and responsibilities of the position Grievant occupies. In 2009, the position was responsible for supervision of a district claims manager, 13 claims deputies and four hearing examiners. The position, as well as those that fell under it in the reporting structure, all presided over hearings. After restructuring and realignment of duties, the position in 2016 is responsible for supervising positions currently classified primarily as paralegals who are not involved in making decisions and do not conduct hearings.

Though Grievant acknowledged there were significant changes to the job duties and responsibilities of the position he occupies, he still believed the position should

remain classified as an EPM 1 or be reallocated to a Workers' Compensation District Claims Manager. However, because of the significant change in the duties, DOP identified the position as performing advanced level supervisory work overseeing the activities of administrative staff which falls in line with the Supervisor 3 classification. As such, the position no longer fell within the EPM 1 classification. In addition, the position had moved out from under the Workers' Compensation Division and no longer fit within the EPM 1 classification that was specific to the Bureau for Employment Programs and Workers' Compensation.

Furthermore, within the State Classification Plan the specific Workers' Compensation titles, such as the Workers' Compensation District Claims Manager, were eliminated from use by action of the State Personnel Board in 2009. In 2010, then DOP Director Sara P. Walker, did open the Workers' Compensation District Claims Manager classification up again; however, only for the sole use of four positions in the OIC Claims Services Division that were responsible for administering the Workers' Compensation Old Claims Fund. As such, this classification is simply not available to be used for the position Grievant occupies.

DOP's interpretations of the classification specifications should be given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. pt. 3, *Blankenship, supra*; *Princeton Community Hosp. v. State Health Planning*, 174 W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983).

After hearing Grievant's testimony, DOP now has reservations about the

classification determination. The positions for which Grievant has supervisory responsibility, appear to be clerical as opposed to administrative in nature which, if true, could change the classification of those positions to a lower classification and in turn would require the position Grievant occupies to be further downwardly reallocated to the classification of Supervisor 1.⁵ Regardless of the outcome yet to be determined, it is clear that the complexity and level of duties and responsibilities of the position were significantly changed as a result of the restructuring that occurred within the OOJ. This resulted in the position Grievant occupies being downwardly reallocated to the classification of Supervisor 3. Grievant has not demonstrated by a preponderance of the evidence that DOP's determination for his position was clearly wrong or arbitrary and capricious.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. The subject of this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008).

2. In order to prevail upon a claim of misclassification, a Grievant must prove by a preponderance of the evidence that his/her duties for the relevant period of time more closely match those of another cited classification specification than the

⁵ A Supervisor 1 position is responsible for supervising clerical staff.

classification to which he is currently assigned. See generally, *Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

3. Employees have a substantial obstacle to overcome when contesting their classification, as the grievance board's review is supposed to be limited to determining whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. The State Personnel Board and the Director of DOP have wide discretion in performing their duties although they cannot exercise their 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. C. Ct. Docket No. 99-AA-151 (Mar. 1, 2001).

5. An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996).

6. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. pt. 3, *Blankenship*, *supra*;

Princeton Community Hosp. v. State Health Planning, 174 W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983).

7. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001) (*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)); *Powell v. Paine*, 221 W. Va. 458, 655 S.E.2d 204 (2007).

8. The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of DOP. *Moore v. W. Va. Dep't of Health & Human Resources*, Docket No. 94-HHR-126 (Aug. 26, 1994); *Celestine v. State Police*, Docket No. 2009-0256-MAPS (May 4, 2009); *Logdson v. Div. of Highways*, Docket No. 2008-1159-DOT (Feb. 23, 2009). Rather, 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); *Logdson, supra*.

9. "Reallocation" is defined as a reassignment 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 R. §143-1-3.72. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Stihler v. Div. of Natural Res.*, Docket No. 07-DNR-360D (Feb. 6, 2009) *citing, Keys v. Dep't of Environmental Protection*, Docket No.

06-DEP-307 (April 20, 2007); *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (March 26, 1997); *See Siler v. Div of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

10. The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for their required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991); *Propst v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 93-HHR-351 (Dec. 3, 1993).

11. In ascertaining which classification constitutes the "best fit," DOP looks at the predominant duties of the position in question. These predominant duties are deemed to be "class-controlling." *Carroll v. Dep't of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004), citing, *Broaddus v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

12. Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1991`).

13. Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994).

14. In a classification grievance, the focus is upon whether the Grievant's duties for the relevant period of time more closely match those of another cited classification

specification than the classification to which he is currently assigned. *See generally, Hayes, supra.*

15. Personnel classification specifications generally contain five sections as follows: first is the “Nature of Work” section; second, “Distinguishing Characteristics”; third, the “Examples of Work” section; fourth, the “Knowledge, Skills and Abilities” section; and finally, the “Minimum Qualifications” section. These 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. *Atchison v. W. Va. Div. of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep’t of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

16. DOP’s interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See Blankenship, supra., citing Dillon, supra.; See also Rossana v. Dept. of Health and Human Resources and Div. of Personnel*, Docket No. 05-HHR-460(B) (May 14, 2010).

17. Grievant has not shown by a preponderance of the evidence that his duties and responsibilities fall more closely within the EPM 1 or Workers’ Compensation District Claims Manager classifications than the Supervisor 3 classification to which the DOP determined the position should be assigned.

18. Grievant did not demonstrate that the classification he identified was a better fit for his position's duties than the classification determination of the Division of Personnel.

19. Grievant was unable to prove by a preponderance of the evidence that DOP's classification for his position was clearly wrong or arbitrary and capricious.

Accordingly, this 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* 156 C.S.R. 1 § 6.20 (2008).

Date: December 13, 2016

Landon R. Brown
Administrative Law Judge