

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHARI MICHELE PARSONS,
Grievant,

v.

Docket No. 2016-1125-DOT

DIVISION OF HIGHWAYS and
DIVISION OF PERSONNEL,
Respondents.

DECISION

Shari Michele Parsons, Grievant, filed this grievance against her employer the West Virginia Division of Highways (“DOH”), Respondent, protesting her classification. The original grievance was filed on January 15, 2016, and the grievance statement provides:

I am working out of classification. My current classification reads under the Nature of Work “This class is also used as the beginning of entry level of the professional personnel class series.” I have 24 years of State service with the last 5 as my current classification. I’ve been given more duties and would learn more but not without compensation.

The Relief Sought reads: “I want to be reallocated from my current position as a Personnel Specialist, Associate to the next step in the series which is a Personnel Specialist.”

Pursuant to a January 21, 2016 Order, the level one grievance evaluator waived the grievance to level two indicating she did not have the authority to grant the relief requested. The West Virginia Division of Personnel (hereinafter “DOP”), was joined to this grievance matter as an indispensable party by *Order of Joinder* entered on February 3, 2016. A level two mediation session was held on March 2, 2016. Grievant appealed to level three on March 12, 2016. A level three hearing was held before the undersigned

Administrative Law Judge on July 19, 2016, at the Grievance Board's Charleston office. Grievant appeared *pro se*. Respondent DOH appeared by Kathleen Dempsey, Human Resources Director, and was represented by legal counsel Jesseca Church, Esquire. Respondent DOP appeared by Wendy Elswick, Assistant Director, Classification and Compensation Section, and was represented by legal counsel, Karen O'Sullivan Thornton, Assistant Attorney General. The parties were provided the opportunity to submitted Proposed Findings of Fact and Conclusions of Law. This matter became mature for decision on August 18, 2016, the assigned date for the submission of the parties' proposed findings of fact and conclusions of law documents.

Synopsis

Grievant, an employee of the Division of Highways, seeks to have her position reallocated from the classification of Personnel Specialist Associate at pay grade 10 to the classification of Personnel Specialist, pay grade 12. 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 of Personnel Specialist Associate. Grievant did not prove that Respondent DOP's classification decision was clearly wrong. Grievant did not prove that her position should be reallocated to the classification of Personnel Specialist. 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 occupies a position at the DOH that is classified as a Personnel Specialist, Associate, pay grade 10. Grievant seeks to have the position she occupies reallocated to the classification of Personnel Specialist, pay grade 12.

2. The DOP is the entity in State government charged by law with classifying positions in the Classified Service. On a regular basis, year in and year out, DOP reviews PDFs for positions statewide to determine their appropriate classification. See W. VA. CODE § 29-6-1 *et seq.*

3. A Position Description Form (“PDF”) was completed by Grievant on October 15, 2015, and received by the DOP on November 10, 2015.¹ DOP conducted a Position Review Determination. This includes reviewing the duties and responsibilities of Grievant’s position. After a review, DOP determined the position should remain classified as a Personnel Specialist, Associate. See DOP Exhibits 1 and 3.

4. A request for reconsideration was submitted to DOP by Aaron Gillispie, District One Manager, DOH on December 21, 2015. This request did not follow the proper internal processes and procedures for requests within DOH. As such, DOP contacted Kathleen Dempsey, Human Resources (“HR”) Director for DOH, to confirm the request. Ms. Dempsey responded indicating DOP could process the request, but also added that she believed the position was properly allocated as a Personnel Specialist,

¹ The PDF is the document the DOP must utilize when classifying positions. It is the basic source of official information about a position containing official duties, responsibilities, supervisory relationships and other pertinent information relevant to a position. See W. Va. Code R. §143-1-3.70 and §143-1-4.5 *et seq.*

Associate.

5. Ms. Dempsey's office has oversight, accountability and discretion with regard to Human Resource functions of the DOH. All the HR work of the District staff is funneled through the DOH central HR office for final review and approval. See DOP Exhibits 4 and 5, and Testimony Wendy Elswick and Kathleen Dempsey.

6. By letter dated January 11, 2016, DOP Director Sara P. Walker responded to the request for reconsideration affirming the decision to classify the position as a Personnel Specialist, Associate. DOP Exhibit 6.

7. On March 7, 2016, DOP conducted a job audit of the position Grievant occupies. The job audit entails DOP staff going to the employee's work location and sitting down with the employee to discuss the details of the job duties and responsibilities of the position. After meeting with the employee DOP may also meet with the employee's supervisor to discuss the position. Subsequent to the desk audit, Director Walker again affirmed the original classification determination of Personnel Specialist, Associate. DOP Exhibit 7 and Testimony Elswick.

8. The classification specifications for the Personnel Specialist, Associate and Personnel Specialist read in pertinent part as follows:

PERSONNEL SPECIALIST, ASSOCIATE

Nature of Work

Under moderate supervision, performs professional personnel work in any one or more of the designated areas in the Division of Personnel. Analyzes information in order to determine appropriate procedures to use in the processing of a variety of personnel transactions. This class is also used as the beginning or entry level of the professional personnel class series. Performs related work as required.

Distinguishing Characteristics

Work at this level is characterized by limited scope and moderate complexity and may include the application of established standards, guidelines, rules and regulations, with little latitude to vary methods and procedures.

Examples of Work

Evaluates job applicants' education and work experience in relation to established standards for admission to examinations and/or to compute applicants' scores on unassembled examinations.

Reviews proposed personnel actions for conformity to budget amounts, personnel policies and merit system rules and regulations; assures timely processing of personnel transactions.

Drafts revisions of personnel policy and procedures manuals and employee handbook.

May testify in grievance hearings.

Conducts limited special projects in a variety of personnel areas requiring the collection of technical or confidential information and the writing of comprehensive reports.

Composes correspondence, job announcements, informational pamphlets, forms and work reports.

Manages specialized recruitment efforts for hard-to-fill positions; develops resources for identifying qualified applicants; serves as a source of referral of job applicants to the user agencies.

Investigates employee complaints or grievances; records facts and impressions of events; makes recommendations to employee and management on resolution of grievances.

Develops basic training courses and course evaluation techniques for staff and user agencies' employees; instructs groups of employees in a variety of subjects and procedures.

Uses any of a number of accepted job analysis methods to compile specific information on the duties, responsibilities and requirements of jobs in state government.

Identifies job class categories and writes class specifications, including classification and/or selection standards, based on job analysis results.

Makes recommendations on the allocation of positions to classes and may recommend basic staffing patterns.

Collects and computes wage and fringe benefit data and assists in developing salary schedules and compensation plans.

Develops and validates a variety of types of employment examinations based on job analysis information and in accordance with legal and professional standards.

Via telephone, correspondence or personal contact informs applicants of job requirements, opportunities and benefits; explains rules, regulations,

and procedures; answers questions; advises applicants' of appropriate course(s) of action.

Participates in formal and informal training to develop the knowledge and abilities required for the class, and for career growth and opportunity.

PERSONNEL SPECIALIST

Nature of Work

Under general supervision, performs professional personnel work in any one or more of the designated areas in the Division of Personnel. Work requires the use of specific acquired knowledge and analytical techniques in a variety of job assignments. Performs related work as required.

Distinguishing Characteristics

The work is characterized by its complexity with broad discretion and strict accountability for results. Full responsibility is delegated for planning, organizing, and completing assignments within established procedural framework and time constraints.

Examples of Work

Uses any of a number of accepted job analysis methods to compile specific information on the duties, responsibilities and requirements of jobs in state government.

Identifies job class categories and writes class specifications, including classification and/or selection standards.

Makes recommendations on the allocation of positions to classes and may recommend basic staffing patterns.

Collects and computes wage and fringe benefit data and assists in developing salary schedules and compensation plans.

Develops and validates employment examinations based on job analysis information and in accordance with legal and professional standards.

Informs employees and/or job applicants, via telephone, correspondence, or personal contact, information concerning requirements, benefits, career opportunities, rules and regulations; advises appropriate course(s) of action or refers questions to appropriate area.

Evaluates job applicants' education and work experience in relation to established standards for admission to examinations and/or to compute applicants' scores on unassembled examinations.

Composes correspondence, job announcements, informational pamphlets, forms and work reports.

Conducts specialized recruitment efforts for hard-to-fill positions; develops resources for identifying qualified applicants; serves as a source of referral of job applicants to the user agencies.

Visits state offices in a designated region to review personnel procedures,

conduct training, investigate complaints and advise managers and supervisors on personnel procedures.

Investigates employee complaints or grievances; records facts and impressions of events; makes recommendations to employee and management on resolution of grievances.

Develops basic training courses and course evaluation techniques for staff and user agencies' employees; instructs groups of employees in a variety of subjects and procedures.

Reviews proposed personnel actions for conformity to budget amounts, personnel policies and merit system rules and regulations; assures timely processing of personnel transactions.

Drafts revisions of personnel policy and procedures manuals and employee handbook.

May represent the Division in grievance hearings, or other governmental/public events.

Researches and writes informative articles on topics of interest for statewide publications.

Reviews and edits policy statements for conformance to established guidelines, regulations, laws.

Conducts limited special projects in a variety of personnel areas requiring the collection of technical or confidential information and the writing of comprehensive reports.

May assign and review the work of others.

DOP Exhibits 8 and 9.

9. Grievant testified at the level three hearing. Grievant was asked to testify in regard to how the duties of the position she occupies have changed. She was asked to list significant duties of the position. She identified the new duties related to preparing job postings, tracking applications for summer student employees and monitoring leave of absences as the duties she was performing that she believed were at a higher level than the current classification of the position. Grievant L-3 Testimony.

10. Grievant is of the opinion that she is performing duties outside of the classification of the position she occupies. She bases this belief on job duties and responsibilities she believes other positions classified as Personnel Specialists are

performing, but admits that the duties might be the duties of a position classified as a Personnel Specialist, Associate.

11. Grievant has been placed in a temporary upgrade as a Personnel Specialist during the absence of her supervisor who is in a position classified as an Administrative Services Manager. The higher level duties she is performing while in the temporary upgrade cannot be considered when making a classification determination about the position she normally occupies. See Testimony Grievant and Assistant Director Elswick.

12. Wendy Elswick, Assistant Director, Classification and Compensation Section, DOP, testified extensively at the level three hearing. The Classification and Compensation section is responsible for, among other things, ensuring that classified positions in State government are classified appropriately.

13. The Position Description Form ("PDF") is identified in the DOP Administrative Rule 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 in the DOP daily. When reviewing a PDF to determine whether a reallocation is appropriate, DOP is looking 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.

14. As part of the PDF review process, DOP looked at the history of the position, including the job posting that was used to hire Grievant into the position she now occupies.

15. Assistant Director Elswick was of the opinion and testified that the duties

Grievant performs, and the duties she described in her testimony, fall squarely within the duties listed on the posting that were expected to be performed by the position. The job posting reads as follows:

An employee in this classification will perform professional personnel work within the district personnel section. This employee will analyze information for processing a variety of personnel procedures, will act as the benefits coordinator, training coordinator, uniform coordinator, advise employee and supervisors of rules, regulations, policies and procedures, participate in the interview process, may evaluate job applications, review personnel and payroll transactions and compose correspondence. This position will also be responsible for special projects within the district. Will fill in for the Administrative Secretary in her absence and assist the District Manager and Administrative Services Manager. Will perform related duties as required.

Ms. Elswick noted that job postings are not intended to be as detailed as the PDF or the classification specifications and yet, every job duty that the Grievant identified during the hearing could be found on the original job posting. See Elswick L-3 Testimony and DOP Exhibit 2.

16. A primary difference between the Personnel Specialist, Associate and Personnel Specialist classification is generally the level of supervision required. See DOP Exhibits 8 and 9.

17. The duties described by Grievant as new duties added to her position since the last review were standard and routine duties that did not comprise the predominant duties of her position and were all duties reasonably anticipated to be performed by the position when the job was originally posted. See Elswick L-3 testimony.

18. Classification determinations are not made based upon the volume of work that a position may be assigned or upon work that occurs occasionally and intermittently;

rather, DOP focuses on the predominant duties, those duties performed the majority of the time, when classifying a position.

19. The predominant duty of a Personnel Specialist position must involve complex work, with broad discretion and general supervision. This is unlike the position Grievant occupies. An example was noted from Grievant's testimony of her drafting documents that are then reviewed and signed by the District manager who is then held responsible for the document. This level of work does not rise to the level of the Personnel Specialist classification. See Elswick L-3 testimony.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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 she occupies should be reallocated to the Personnel Specialist classification. Respondent DOP contends that Grievant's job duties and responsibilities do not warrant such a reallocation. The DOH agrees with the classification determination made by the DOP. It is noted, not overlooked, that Grievant has been placed in a temporary upgrade as a Personnel Specialist during the absence of her supervisor who is in a position classified as an Administrative Services Manager. The higher level duties she is performing while in the temporary upgrade cannot be considered when making a classification determination about the position she normally occupies.

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).

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).

Classification determinations are not made based upon comparison of the duties of a grievant to those of other employees in the classification sought, as those to whom the grievant compares himself may themselves be misclassified, or they have additional duties and responsibilities which grievant has no knowledge of. Further,

“[t]he remedy, in a situation involving a grievant's claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. *Akers v. W. Va. Dep't of Tax and Revenue*, 194 W. Va. 456, 460 S.E.2d (1995).’ *Myers v. Dep't of Health and Human Resources*, Docket No. 00-HHR-392D (2001).”

Stihler v. Div. of Natural Res., Docket No. 07-DNR-360D (Feb. 6, 2009), citing *Kunzler v. Dep't of Health and Human Resources*, Docket No. 97-HHR-287 (Jan. 8, 1998); *Smith v. Dep't of Health and Human Resources*, Docket No. 94-HHR-1077 (Nov. 9, 1998). The key is to compare the grievant's duties and responsibilities to the classification at issue, utilizing the clearly wrong standard. *Stihler, supra.*; See also, W. Va. Code R. §143-1-4.4.

Grievant was asked to testify in regards to how the duties of the position she occupies have significantly changed. She listed several duties she claimed to be new to the position. She identified the new duties related to preparing job postings, tracking applications for summer student employees and monitoring leave of absences as the

duties she was performing that she believed were at a higher level than the current classification of the position. Grievant said her “main” duties now are tracking leaves of absence, serving as benefit and uniform coordinator and answering HR questions for District employees. Grievant identified answering the regular and routine personnel questions that come to her office daily from the Office Assistants and other District employees. See Grievant L-3 Testimony.

Grievant described a typical day at work. While somewhat different than her description of a typical workday, Grievant indicated that the PDF was also a fair and accurate description of her job duties and responsibilities. See Testimony Grievant and DOP Exhibit 1. When asked about the new job duty of “instructing” Office Assistants, and serving as the privacy coordinator, Grievant’s ability to clarify the specific amount of time she spent on these task was less than persuasive. Grievant did not list tracking summer workers on her PDF and did not mention this duty when describing her typical day, but identified it as a new duty during her testimony and was permitted to testify in regard to what this job duty entailed and the amount of time spent on this function. Grievant stated this duty only occurs once a year for about a two-week period of time when she must track student summer applications in a tracking system and on a spreadsheet.

Grievant’s argument that her position should be classified as a Personnel Specialist seemed to rely on the assertion that she was performing some of the same duties as other individuals who work for the DOH who are in positions classified as Personnel Specialists. This is not persuasive. The DOP classifies positions based upon predominant duties. The predominate duties of the position in question are class

controlling. *Broaddus v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 608 and 609 (Aug. 31, 1990). While an employee can be performing some duties at a higher level and/or lower level or both, the classification is based on the predominant duties of the position.

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). In this instance Grievant has failed to demonstrate such change outside of her temporary upgrade duties.

As indicated *supra*, Grievant seeks a reallocation of the position she occupies. The DOP repeatedly determined that there had not been a significant change in the duties of the position and that the position should remain classified as a Personnel Specialist, Associate. Wendy Elswick, Assistant Director, Classification and Compensation Section, DOP, testified that the position Grievant occupies is appropriately classified as a Personnel Specialist, Associate. She explained this was so because of the level of supervision required, but also because of the limited scope of work and moderate complexity of the duties that were detailed on the PDF and in the testimony provided by the Grievant. When asked why the position did not rise to the level of the Personnel Specialist classification, Ms. Elswick explained that a Personnel Specialist operates under general supervision and has more complexity of work, broader discretion and full

responsibility for planning, organizing and completing assignments. Based upon testimony and evidence presented by Grievant, there was not the level of complexity and broad discretion expected to be performed by the Personnel Specialist classification.

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, *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *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). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his or her judgment for that of DOP. See generally, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276 (1982).

The PDF is identified in the DOP Administrative Rule 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. When reviewing the PDF to determine whether a reallocation is appropriate, DOP is looking 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. As part of the PDF review process, DOP looked at the history of the position, including the job posting that was used to hire Grievant into the position she now occupies. Assistant Director Elswick stated that the duties Grievant performs, and the duties she described in her testimony, fall

squarely within the duties listed on the posting that were expected to be performed by the position. Grievant was asked to provide detail about the new job duties she identified in her testimony and contained in her PDF. See Testimony Grievant and DOP Exhibit 1. Pursuant to the testimony and evidence provided, within the current State Classification Plan, the “best fit”, in terms of classification for the position Grievant occupies, is Personnel Specialist, Associate. 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*.

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 her 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 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. "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).

6. Classification determinations are not made based upon comparison of the duties of a grievant to those of other employees in the classification sought as those to whom the grievant compares himself may themselves be misclassified, or they have additional duties and responsibilities which grievant has no knowledge of. Further,

“‘[t]he remedy, in a situation involving a grievant’s claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. *Akers v. W. Va. Dep’t of Tax and Revenue*, 194 W. Va. 456, 460 S.E.2d (1995).’ *Myers v. Dep’t of Health and Human Resources*, Docket No. 00-HHR-392D (2010).”

Stihler v. Div. of Natural Res., Docket No. 07-DNR-360D (Feb. 6, 2009), *citing Kunzler v. Dep’t of Health and Human Resources*, Docket No. 97-HHR-287 (Jan. 8, 1998); *Smith v. Dep’t of Health and Human Resources*, Docket No. 94-HHR-1077 (Nov. 9, 1998). The key is to compare Grievant’s duties and responsibilities to the classification at issue, utilizing the clearly wrong standard. *Stihler, supra.*; *See also*, W. Va. Code R. §143-1-4.4.

7. 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).

8. The predominate duties of the position in question are class controlling. *Broadbuss v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 608, and 609 (Aug. 31, 1990). Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one quality or requirement does not exclude others.

W. Va. Code R. §134-1-4.04(a). Even though a job description does not include all the actual tasks performed by a grievant it does not make that job classification invalid. Id at §4.04(d). *Lee v. Dep't of Administration and Div. of Personnel*, Docket No. 02-ADMN-014 (May 30, 2002).

9. 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, *Broadbuss v. W. Va. Div. of Human Services*, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990); *Scott v. Dep't of Health & Human Res. & Div. of Personnel*, Docket No. 06-HHR-389 (Dec. 6, 2007).

10. 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).

11. 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).

12. 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.*

13. 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 *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993), 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). 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).

14. 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).

15. Grievant has not established by a preponderance of the evidence that her duties and responsibilities fall more closely within the Personnel Specialist classification

than the Personnel Specialist, Associate classification to which the position she occupies is currently assigned.

16. Based on the duties and responsibilities performed by the Grievant as detailed on the PDF, the State Compensation Plan classification specifications as reflected in the record, the findings of the job audit conducted by DOP and the testimony and evidence presented at the level three hearing, the “best fit” and most appropriate classification for the position Grievant occupies is Personnel Specialist, Associate.

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: October 7, 2016

Landon R. Brown
Administrative Law Judge