

**WEST VIRGINIA  
PUBLIC EMPLOYEES GRIEVANCE BOARD**

**AMBER N. MOORE,**

**Grievant,**

**v.**

**DOCKET NO. 2017-2453-DHHR**

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES/BUREAU FOR CHILDREN AND  
FAMILIES and DIVISION OF PERSONNEL,**

**Respondents.**

**DECISION**

Amber N. Moore (“Grievant”) filed this grievance on June 21, 2017, against her employer, the Department of Health and Human Resources (“Respondent DHHR” or “DHHR”), stating her complaint as follows:

I was hired as an Adult Protective Service Worker Trainee on May 14, 2016, following approximately 1 year and 5 months as a Social Worker II. I had been under the impression that I would receive a raise for this transition from trainee to a worker, and I did not receive this on my paycheck. The job description as trainee states one year of training.

Grievant attached the job announcement for Adult Protective Service Worker Trainee positions to her grievance. As relief, Grievant is seeking back pay covering the period from when she successfully completed her year of employment as a Trainee to the date her new salary became effective.

The parties jointly agreed to waive this matter to Level Two, and such waiver was approved by the Grievance Evaluator at Level One, Christina M. Bailey, on July 14, 2017. Pursuant to Rule 6.13 of the Grievance Board’s Rules of Practice and Procedure, the West Virginia Division of Personnel (“Respondent DOP” or “DOP”) was joined as an

essential party to this grievance on July 25, 2017. Thereafter, a Level Two mediation was conducted on August 18, 2017. The grievance was not resolved through mediation and Grievant appealed to Level Three on August 30, 2017. A Level Three hearing set for February 5, 2018, was continued due to inclement weather. Subsequently, a rescheduled Level Three hearing was held before the undersigned Administrative Law Judge on July 23, 2018, at the Raleigh County Commission on Aging in Beckley, West Virginia. Grievant appeared *pro se*. Respondent DHHR was represented by Assistant Attorney General Katherine A. Campbell. Respondent DOP was represented by Assistant Attorney General Karen O'Sullivan Thornton. All parties waived filing proposed Findings of Fact and Conclusions of Law so that this matter became mature for decision on July 23, 2018, at the conclusion of the Level Three hearing.

### **Synopsis**

Grievant is currently employed by Respondent as an Adult Protective Service Worker. After Grievant completed a one-year training period as an Adult Protective Service Worker Trainee on May 15, 2017, DHHR did not begin paying her at the higher pay rate of an Adult Protective Service Worker until June 24, 2017. DHHR acted in accordance with a policy memorandum from the Division of Personnel, issued in 2015, which allows up to ninety (90) days to accomplish such transactions. Grievant failed to demonstrate that this delay in processing the necessary reallocation documentation to effectuate her pay increase violated any law, rule, regulation or policy applicable to her employment situation. Accordingly, this grievance will be denied.

The undersigned Administrative Law Judge makes the following Findings of Fact based upon the record developed at the Level Three hearing:

### **Findings of Fact**

1. Grievant is currently employed by the Department of Health and Human Resources (“Respondent DHHR” or “DHHR”) in its Bureau for Children and Families as an Adult Protective Service Worker (“APSW”) covering Nicholas and Webster counties.

2. Grievant was previously employed by DHHR as a Social Service Worker II.

3. On May 13, 2016, Grievant became an Adult Protective Service Worker Trainee (“APSW Trainee”). See R-DOP Ex 2.

4. The APSW Trainee classification specification states: “Under close supervision, performs in a training capacity for approximately one year, learning the techniques of social casework in the area of Adult Protective Services.” R-DOP Ex 3.

5. Ordinarily, the minimum training period for an APSW Trainee to become an APSW is one year. See R-DOP Ex 4.

6. Grievant successfully completed her one-year training period on May 15, 2017.

7. Grievant did not begin receiving pay as an APSW until June 24, 2017. See R-DOP Exs 6 & 7.

8. As a result of this lag between the date Grievant completed the training period required to become an APSW, and the date she began receiving the higher pay of an APSW, as opposed to the pay of an APSW Trainee, Grievant lost \$344.93.

9. Patty Martin is employed by Respondent DHHR as a Community Service Manager for Nicholas and Webster counties.

10. Ms. Martin supervises Susan Hypes, who is over Adult Protective Services. Ms. Hypes is Grievant’s immediate supervisor.

11. Grievant completed a position description form required for reallocation of her position to an APSW on May 15, 2017. See R-DOP Ex 5.

12. On May 15, 2017, the required position description was approved by Ms. Hypes and forwarded to DHHR's regional office in Beckley, West Virginia, for review at the regional level. See R-DOP Ex 5.

13. The position description form was then forwarded to the human resources office within DHHR Headquarters for approval by the person having signature authority over hiring and promotion decisions, before being submitted to the Division of Personnel.

14. The new position description for Grievant as an APSW was approved by Lynn Huddleston in DHHR Human Resources on May 17, 2017. See R-DOP Ex 5.

15. Wendy Campbell is employed by the West Virginia Division of Personnel as the Assistant Director of the Classification and Compensation Section.

16. Grievant's position description form to reallocate her position to an APSW was received by the Division of Personnel on May 18, 2017.

17. On May 22, 2017, the Classification and Compensation staff approved reallocating Grievant's position as an APSW.

18. Once the reallocation to APSW has been approved by the Division of Personnel, the established personnel management process requires the employing agency, in this case, DHHR, to enter certain transactions into the computerized human resources and payroll system operated by state government, which is referred to as "OASIS."

19. There are separate computer transactions to reallocate Grievant's position to the proper classification and to update her payroll status consistent with the new

classification. Each of these transactions must have approval from the Division of Personnel, DHHR, the OASIS processing unit and the State Budget Office. In addition, the two transactions must reflect the same effective date, or the system will reject the transactions. See R-DOP Exs 6 & 7.

20. The effective date of a pay increase must coincide with the beginning of an employee's pay period. In order to assure successful processing of Grievant's reallocation, DHHR chose June 24, 2017, the beginning of a pay period, as the effective date for Grievant's reallocation to APSW.

21. The Administrative Rule of the West Virginia Division of Personnel defines "reallocation" as a "[r]eassignment by the Director of a position from one class to a different class on the basis of a significant change in the kind and/or level of duties and responsibilities assigned to the position or to address a misalignment of title and duties." 143 C.S.R. 1 § 3.72 (2016). See R-DOP Ex 1.

22. On December 10, 2015, Sara P. Walker, Director of Personnel, issued a memorandum which established the following policy regarding reallocation of positions: Retroactive wages will not be authorized for reallocations if a classification determination is communicated to the appointing authority by the DOP Classification and Compensation Section within sixty (60) calendar days of receipt of the signed position description form (PDF) and the agency processes the corresponding personnel transaction within the following thirty (30) days. Retroactive wages may only be authorized for the period of time the process was delayed beyond this ninety (90) calendar day period.

R-DHHR Ex 1.

## Discussion

Because 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 Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008); *Burkhart v. Ins. Comm'n*, Docket No. 2010-1303-DOR (Dec. 7, 2011); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). “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), *aff'd*, Cir. Ct. of Pleasants County, No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, Grievant has not met her burden. *Id.*

Grievant was selected to fill an Adult Protective Service Worker Trainee position. Grievant understood that once she successfully completed a one-year training period, she would become an Adult Protective Service Worker, which would place her in a higher pay grade. Grievant contends that she should have received this higher rate of pay from May 15, 2017, when she successfully completed her one-year training period, because she was then performing all of the duties of an Adult Protective Service Worker. However, this payroll change did not become effective until June 24, 2017, because DHHR needed to process this change as a reallocation of Grievant's position through the classification staff in DOP, and the state's automated payroll system which is referred to by the acronym “OASIS.”

Unfortunately, Grievant has not demonstrated how the lag between the date she completed her training period and the date she began receiving pay as a full performance

Adult Protective Service Worker violated any law, rule, policy or regulation applicable to her employment situation. See *Collins v. Dep't of Health & Human Res.*, Docket No. 2015-0563-CONS (Dec. 29, 2015). On the other hand, Respondents DOP and DHHR demonstrated that a certain gap between completing the requirements for reallocation to a higher paying position and the commencement of compensation at the higher rate through the payroll system is essentially inevitable. This is due to documentation that must be generated by the employing agency, DOP, and various gatekeeping authorities to be entered into the automated payroll system, in order to verify that an employee is fully qualified to receive a higher rate of pay. Because of this circumstance, DOP has issued a written policy which specifically prohibits paying retroactive wages (back pay) unless the particular reallocation action is delayed more than ninety (90) calendar days. See R-DHHR Ex 1.

In this particular situation, DHHR began the reallocation process for Grievant simultaneously with the date she completed the minimum one-year training period in a satisfactory manner. There has been no showing that an inappropriate delay took place at any point in the course of effecting Grievant's reallocation, and the entire process was completed in less than sixty (60) days. In these circumstances, Grievant has not shown that the delay was unreasonable or otherwise improper. See *Kirk v. Dep't of Health & Human Res.*, Docket No. 2016-1512-DHHR (Dec. 16, 2016).

The following Conclusions of Law support the Decision reached.

### **Conclusions of Law**

1. Because this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence.

Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008); *Burkhart v. Ins. Comm'n*, Docket No. 2010-1303-DOR (Dec. 7, 2011); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). “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), *aff'd*, Cir. Ct. of Pleasants County, No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, Grievant has not met her burden. *Id.*

2. Grievant failed to establish that the lag between the date she successfully completed her training period and the date she began receiving pay as a full performance Adult Protective Service Worker violated any law, rule, policy or regulation applicable to her employment situation. See *Collins v. Dep't of Health & Human Res.*, Docket No. 2015-0563-CONS (Dec. 29, 2015).

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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and



properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

**DATE: August 3, 2018**

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**LEWIS G. BREWER**  
**Administrative Law Judge**