

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**KRISTOPHER RAY WILCOXEN,
Grievant,**

v.

Docket No. 2017-2062-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR BEHAVIORAL HEALTH AND HEALTH FACILITIES
AND DIVISION OF PERSONNEL,
Respondents.**

DECISION

Grievant, Kristopher Ray Wilcoxen, is employed by Respondent, Department of Health and Human Resources within the Bureau for Behavioral Health and Health Facilities ("BBHMF"). On April 12, 2017, Grievant filed this grievance against Respondent stating:

Department of Personnel job reclassification determination due to job audit performed February 3, 2017 in which my classification was changed from Facility Surveyor I (9796) to Building and Grounds Manager (9729). I do not manage or have authorization over any facility as it relates to the day to day maintenance. I am only involved in the maintenance of a facility if it involves compliance.

For relief, Grievant seeks "[r]eclassification of my job, back to its original classification of Facility Surveyor I (9796)."

By Notice of Level 1 Waiver dated May 4, 2017, the level one grievance evaluator waived the grievance to level two of the grievance process. By order entered May 9, 2017, the Division of Personnel ("DOP") was joined as a party. Following unsuccessful mediation, Grievant appealed to level three of the grievance process on September 15, 2017. A level three hearing was held on February 12, 2018, before the undersigned at

the Grievance Board's Charleston, West Virginia office. Grievant appeared *pro se*¹. Respondent BBHMF was represented by counsel, Brandolyn N. Felton-Ernest, Assistant Attorney General. Respondent DOP was represented by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on March 19, 2018, upon final receipt of Respondent DOP's written Proposed Findings of Fact and Conclusions of Law and Respondent BBHMF's *Department's Closing Argument*. Grievant did not submit written Proposed Findings of Fact and Conclusions of Law or any other written argument.

Synopsis

At the time this grievance was filed, Grievant was employed by Respondent as a Health Facilities Surveyor 1. Grievant protests the Division of Personnel's decision to reallocate the position he occupies to Building and Grounds Manager and asserts the position should remain classified as Health Facilities Surveyor 1. Grievant failed to prove the Division of Personnel's decision to reallocate the position he occupies was arbitrary and capricious or that the classification he seeks is the best fit for the position. 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. At the time this grievance was filed, Grievant was employed as a Health Facilities Surveyor 1 by Respondent BBHMF.

¹ For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

2. In reviewing another position within the BBHFF, Respondent DOP determined the Health Facilities Surveyor 1 position Grievant occupied would also need to be reviewed.

3. A Position Description Form ("PDF") was submitted to Respondent DOP on December 22, 2016. The PDF listed the following as "Important and Essential Duties:"

Duty	Important and Essential Duties	Approx. % Of Time
1	I develop structural/maintenance standards for BHFF facilities in accordance with federal, state and local laws, rules and regulations. I conduct proactive inspections of BHFF facilities to monitor compliance with established standards and determine preventive maintenance, renovations, repairs and/or upgrades, including but not limited to structures, security systems, HVAC systems, elevators, parking lots and sidewalks. I collaborate with BHFF Deputy Commissioner for Operations and facilities' CEO's to establish long-term plans and budget for future maintenance, renovations, repairs and/or upgrades necessary to maintain compliance and safety. I monitor the work of maintenance staff at each facility to ensure completion of preventive maintenance according to plans and makes improvement recommendations for facilities' CEO's to prevent regulatory infractions and mitigate costs. I provide management with detailed written reports of inspection findings and recommendations.	35%
2	In ensure that BHFF facilities achieve compliance with various regulatory agencies, such as the WV Board of Risk and Insurance Management (BRIM), the State Fire Marshal, the Office of Health Facility Licensure and Certification (OHFLAC) and the Joint Commission. Regulatory agencies inspect each facility on a monthly, quarterly, annual or as needed basis. Following each inspection, the regulatory agencies report any compliance violations. I am responsible for reviewing these reports, collaborating with the BHFF Deputy Commissioner for Operations and facilities' CEOs to recommend necessary corrective action plans and ensuring timely completion of corrective action plans at each facility. I coordinate and work as the liaison with DHHR's Chief Operation's Officer for the BHFF's capital project and maintenance projects undertaken by the COO's Construction and Project Management section. I am responsible in applying to maintenance standards and practices set forth by the Office of the COO for all DHHR facilities.	25%

3	I conduct product research required for BHHF facilities' corrective action plans and other renovation, repair and/or upgrade issues and work the regulatory agencies to determine if particular products are appropriate to resolve compliance issues. I collaborate with the BHHF Deputy Commissioner for Operations and facilities' CEO's and provide technical expertise to define project priorities, develop project management plans, determine cost effective solutions and write technical specifications for renovations, repairs and/or upgrades. I conduct pre-bid meetings with potential contractors, obtains bids for renovation and/or repair work and monitor work of contractors at BHHF facilities to ensure adherence to federal and state safety and environmental regulations. I make independent determinations of facilities' requests for non-essential renovation and/or repair work.	20%
4	I conduct proactive inspections of more than forty other BHHF properties operated by third parties. I make recommendations to the Deputy Commissioner for Operations regarding necessary or preventive maintenance, renovations, repairs and/or upgrades to properties. I work with third parties to develop short and long-term plans for necessary maintenance, renovations, repairs and/or upgrades and assists in developing budgets for completion. I work with city inspectors regarding code compliance of BHHF properties operated by third parties.	20%

4. The PDF describes the most complex duty as: "Determining correct specifications for repairs and renovations. Interpreting Code to ensure compliance for each facility." It states the position has no decisions over which it has total authority, only that it recommends "[p]lan of action regarding repairs, ensuring compliance" and "[p]rioritizing of projects (needs vs wants)." The PDF states the position has no supervisory duties.

5. The supervisor of the position described the primary function of the position to be: "Oversees the structural and maintenance of all 7 state hospitals owned and operated by BBHMF and BBHMF leased property. Ensures that the facility is structurally sound and the Preventaive Maintenance is conducted at each facility. Is a resource for the Maintenance/Facility Plant Director at each facility."

6. Although Grievant was required to complete the PDF personally, and by his signature certified that he did so, Grievant did not personally complete the PDF.

7. After reviewing the PDF and conducting an in-person job audit, Respondent DOP determined the position Grievant occupied should be reallocated to Building and Grounds Manager. Assistant Director Wendy A. Elswick informed Respondent BBHMF of the determination by memorandum dated February 13, 2017.

8. Respondent BBHMF, by its Commissioner, Victoria L. Jones, appealed the determination by letter dated February 24, 2017. In support of her appeal she asserted that Classification and Compensation staff had reviewed the position “a couple of years ago when it was vacant” and “again assigned the title of Health Facility Surveyor I.” Commissioner Jones further asserted that, although there was no change in paygrade, this determination was still a downgrade of the position because the only other positions classified as Building and Grounds Manager within her Bureau have responsibility for only one facility. Commissioner Jones was concerned that she would be unable to recruit applicants “with the requisite knowledge and skills to effectively provide the same level of administrative oversight and regulatory compliance assurance that is necessary to limit agency liability and monetary penalties given the minimum qualifications required for a Building and Grounds Manager.”

9. By letter dated April 3, 2017, Acting Director Joe F. Thomas denied Respondent BBHMF’s appeal. Acting Director Thomas explained why the position could not be classified as Health Facilities Surveyor 1 as follows:

[T]he position does not survey the care and delivery of patient services as required by the Health Facilities Surveyor 1 classification. Further, this position does not have the authority to develop and implement procedures to improve

client/patient services. As stated in the PDF, this position may only recommend and has no authority to implement any changes. Because the primary duties consist of ensuring compliance with various regulatory agencies, such as the WV Board of Risk and Insurance Management (BRIM) and the Office of Health Facility Licensure and Certification (OHFLAC), regarding the physical structure of the building and grounds for the facilities, and because the level of responsibility demonstrates no authority to effectuate recommended changes, this position does not meet the requirements of the Health Facilities Surveyor 1 classification.

10. The classification for Health Facilities Surveyor 1 states in relevant part:

Nature of Work

Under general supervision, performs full-performance level professional work conducting complex regulatory compliance determinations during inspections of health care facilities including, but not limited to: hospitals, long term care facilities, home health agencies, hospices, residential board and care facilities, personal care homes, ambulatory surgery centers, end stage renal dialysis units, rural health clinics, screening mammography facilities and clinical laboratories. Functioning individually, or as part of a multi-disciplinary team, surveys facilities through observation of care and delivery of services, interviews and review of documentation such as policy and procedures, committee meeting minutes, facility operating records, personnel files, training records and patient/resident medical records. Work involves frequent overnight travel (up to 90%). There is considerable dependence on professional judgement in the performance of a survey. The purpose of a survey is to determine compliance of providers/suppliers and State and federal requirements for licensure and/or Medicare/Medicaid certification, and, on occasion, to provide technical assistance to facilities regarding compliance standards and development and implementation of procedures to improve client/patient services. Performs related work as required.

Distinguishing Characteristics

This is the entry level in the series. An employee in this classification would conduct surveys individually or as a member of a multi-disciplinary team. An incumbent would not be expected to act as a team leader or lead worker on a regular, recurring basis.

Examples of Work

- Conducts on-site survey of behavioral and medical health care facilities; discusses survey procedures and practices with administrators and department directors.
- Observes client/patient care, collects and records objective data, reviews medical and other records, interviews clients/patients in a group or individually, evaluates policy and treatment or therapeutic services to determine accuracy and adequacy of program/service delivery.
- Reviews facility operative and management records, committee meeting minutes and related records as well as resident personal funds accounts to determine compliance with regulatory requirements.
- Reviews organizational charts, personnel credentials and training records, and policies and procedures to determine appropriate staffing levels and qualifications of staff to perform services.
- Tours the facility to evaluate physical environment compliance of areas such as laboratory, patient treatment and living areas, kitchen and pharmacy.
- Evaluates social services, activities, recreation and resident rights issues to ensure provision of services and quality of life.
- Utilizes laptop computer system to compile, document and record data and to print preliminary findings.
- As part of a survey team, discusses areas of non-compliance with team members.

Minimum Qualifications

- Training: Graduation from an accredited four-year college or university with a major in nursing, social work, vocational rehabilitation, hospital or health care administration, nutrition, psychology, counseling, medical records management, clinical laboratory or related sciences, recreation, speech, physical or occupational therapies or other related health/social services/educational fields or safety, engineering or architectural design.
- Substitution: Experience as described below will substitute for the required training on a year-for-year basis.
- Experience: Three years of full-time or equivalent part-time paid professional experience in public health, social work, nursing, vocational rehabilitation, hospital administration or related health program, safety, engineering or architectural design, OR three years of fulltime or equivalent part-time paid experience as a building maintenance supervisor.
- Substitution: A Master's degree in one of the above subject areas may substitute for one year of the required experience.

11. The classification specification for Building and Grounds Manager states in relevant part:

Nature of Work

Under limited supervision, at the advanced level, performs managerial work analyzing agency building and ground requirements and recommending to management improvements, renovations and efficient space usage. Responsible for providing management with an effective overview of existing buildings and grounds conditions and recommendations to improve any deficiencies. The overall coordination and responsibility of repair and upkeep of division property is performed through effective management of contracted construction, maintenance and custodial services. Frequent travel is required. Performs related work as required.

Examples of Work

- Oversees and directs the operations of maintaining, repairing and renovating state property.
- Recommends alterations and renovations to existing structures.
- Evaluates and determines adequate operating space requirements for work units.
- Recommends, when necessary, the addition of work space as dictated by division needs and expansion.
- Ensures the division's conformance to state building codes and safety and fire regulations.
- Establishes maintenance and repair procedures to be used by all building maintenance personnel.
- Determines adequacy of and makes recommendations for additional structural lighting, heating and ventilating equipment.

Minimum Qualifications

- Training: Graduation from a standard high school or equivalent.
- Substitution: Additional experience as described below may be substituted on a year-for-year basis for the required training.
- Experience: Eight (8) years of full-time or equivalent part-time paid experience in building maintenance, building construction, or in the installation and maintenance of building electrical or heating systems.

- Substitution: Successful completion of study from a regionally accredited college or university in building trades, or related business or vocational school training may be substituted for the general experience on a year for-year basis for up to two (2) years of the required experience.

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).

Grievant and Respondent BBHMF disagree with Respondent DOP's determination that the position should be classified as Building and Grounds Manager. Grievant and Respondent BBHMF assert the position should remain classified as a Health Facilities Surveyor 1. Grievant asserts Building and Grounds Manager is not the best fit as he has no management responsibilities and his job is to ensure compliance with regulations. Respondent BBHMF asserts that the Building and Grounds Manager classification "does not articulate the requisite knowledge and skills necessary to effectively provide the same level of administrative oversight and regulatory compliance necessary" for the position. Respondent DOP admits that neither classification is a perfect fit for the position. Respondent DOP maintains that, based on a very thorough review of this position, it is clear the Building and Grounds Manager classification is the best fit as the position has

nothing to do with direct patient care like the Health Facilities Surveyor 1 classification and all duties described fall squarely within the Building and Grounds Manager classification, although the position admittedly has no management authority or supervisory responsibility.

The Division of Personnel has 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 Pers.*, 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)).

When a grievant alleges he has been misclassified, he 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). In order to determine the best fit, the class specifications at issue must be analyzed. "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). Division of Personnel 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), *aff’d*, Kan. Co. Cir Ct. Docket No. 89-AA-220 (Jan. 10, 1991).

As a preliminary matter, it is clear that, although Grievant certified he completed the PDF personally, this is not the case. Grievant was very hesitant in his answers regarding completing the PDF and, although he said he “believed” he completed the PDF himself, he demonstrated no memory of the document. In addition, the PDF is an almost exact copy of the PDF Respondent BBHMF completed and submitted to the DOP in 2013.

BBHMF facilities are required to comply with various regulations from agencies such as the Board of Risk and Insurance Management, the State Fire Marshal, the Office of Health Facility Licensure and Certification, and the Joint Commission. These regulations encompass both standards relating to direct patient care and standards relating to the physical structure of the facilities, such as security systems, HVAC systems, and elevators. Grievant develops standards for the physical maintenance of the

facilities based on applicable law, rule, and regulation; inspects the facilities and makes recommendations for corrective action plans including preventative maintenance, renovations, repairs, and upgrades; reviews and makes recommendations regarding reports from regulatory bodies; and provides research and technical expertise for required physical projects. Grievant does not “manage” buildings or supervise employees.

Comparing the “Nature of Work” sections of both classification specifications shows that Grievant’s work most closely fits with the Building and Grounds Manager classification. A Building and Grounds Manager operates with limited supervision at an advanced level, which matches Grievant’s assertion that he performs work independently. In contrast, the Health Facilities Surveyor 1 classification is an entry level position that functions under general supervision. A Building and Grounds Manager is “[r]esponsible for providing management with an effective overview of existing buildings and grounds conditions and recommendations to improve any deficiencies” and “for analyzing agency building and ground requirements and recommending to management improvements, renovations. . . .” This is exactly what Grievant does in the position, with the specification that he views the conditions based on the requirements of law, rule, and regulation. In contrast, a Health Facilities Surveyor 1 “conduct[s] complex regulatory compliance determinations during inspections of health care facilities surveys facilities through observation of care and delivery of services, interviews and review of documentation such as policy and procedures, committee meeting minutes, facility operating records, personnel files, training records and patient/resident medical records” and “surveys facilities through observation of care and delivery of services, interviews and review of documentation such as policy and procedures, committee meeting minutes, facility

operating records, personnel files, training records and patient/resident medical records.” Grievant’s position has nothing to do with direct patient care and he clearly does not perform any of these tasks. The only part of this nature of work that appears to be related to the position’s duties is the involvement of regulatory compliance.

Without question, Grievant interprets regulations and applies that interpretation to the physical compliance of the facilities with the regulations. However, there was little evidence presented of the complexity of the regulations at issue. Grievant provided limited testimony that compliance with regulations applicable to the position concern the cleanliness of the facility, lighting, climate, and electrical systems. Grievant testified that, if an inspection from the Bureau of Risk and Insurance Management required a sprinkler head be installed, Grievant would meet with the Fire Marshal. Based on the limited information presented in testimony and the PDF, it cannot be said that the regulations applicable to the position are complex. Further, the regulations clearly do not involve direct patient care and the type of thorough investigation through documents and interviews contemplated by the Health Facilities Surveyor 1 classification specification. Although nothing in the Building and Grounds Manager classification specification includes the specific interpretation of regulations, an example of work is that the position “[e]nsures the division's conformance to state building codes and safety and fire regulations.” This would necessarily involve the interpretation of those codes and regulations, which, based on the limited information in the record, appear similar to the types of regulations related to the position at issue. Neither classification specification encompasses the development of standards based on applicable law, rule and regulation. However, as stated above, “[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. . . .” W. VA. CODE ST. R. § 143-1-4.4(d).

Respondent BBHMF argues Respondent DOP’s determination is in error because Respondent BBHMF would not be able to recruit suitable candidates with adequate experience if the position is classified as a Building and Grounds Manager. As both classifications are within the same paygrade, it appears Respondent BBHMF refers to the different minimum qualifications required by the two positions. The Health Facilities Surveyor 1 classification specification requires “[g]raduation from an accredited four-year college or university and [t]hree years of full-time or equivalent part-time paid professional experience in public health, social work, nursing, vocational rehabilitation, hospital administration or related health program, safety, engineering or architectural design, OR three years of fulltime or equivalent part-time paid experience as a building maintenance supervisor.” The Building and Grounds Manager classification specification requires a high school diploma and “[e]ight (8) years of full-time or equivalent part-time paid experience in building maintenance, building construction, or in the installation and maintenance of building electrical or heating systems.” Respondent BBHMF’s argument must fail as there was simply no evidence presented why the eight years of experience required by the Building and Grounds Manager classification specification is not sufficient or why a bachelor’s degree would be required.

Respondent BBHMF further argues that the position Grievant occupies should not have been reallocated because another agency had been permitted to post a Health Facilities Surveyor 1 position for a statewide position like the position at issue. This

argument is without merit as classification determinations are not made based upon comparison to other employees, but upon which classification specification is the best fit for the employee's duties. *Harmon v. Dep't of Health and Human Res.*, Docket No. 99-HHR-432 (May 15, 2000); *Baldwin v. Dep't of Health and Human Res.*, Docket No. 99-HHR-142 (Oct. 28, 1999). The employee to which Grievant compares himself may be misclassified and the remedy in that case is not to similarly misclassify Grievant. *Kunzler v. Dep't of Health and Human Res.*, Docket No. 97-HHR-287 (Jan. 8, 1998).

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. The Division of Personnel has 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 Pers.*, 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).

3. 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. When a grievant alleges he has been misclassified, he 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).

5. “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).

6. “The 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).

7. Division of Personnel 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), *aff’d*, Kan. Co. Cir Ct. Docket No. 89-AA-220 (Jan. 10, 1991).

8. Classification determinations are not made based upon comparison to other employees, but upon which classification specification is the best fit for the employee’s duties. *Harmon v. Dep’t of Health and Human Res.*, Docket No. 99-HHR-432 (May 15, 2000); *Baldwin v. Dep’t of Health and Human Res.*, Docket No. 99-HHR-142 (Oct. 28, 1999). The compared employee may be misclassified and the remedy in that case is not to similarly misclassify a grievant. *Kunzler v. Dep’t of Health and Human Res.*, Docket No. 97-HHR-287 (Jan. 8, 1998).

9. Grievant failed to prove the Division of Personnel’s decision to reallocate the position he occupies was arbitrary and capricious or that the classification he seeks is the best fit for the position.

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: April 27, 2018

Billie Thacker Catlett
Chief Administrative Law Judge