

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SHERIDAN JAYE ADKINS,
Grievant,**

v.

Docket No. 2019-0500-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.**

DECISION

Grievant, Sheridan Jaye Adkins, is employed by Respondent, Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital. On October 17, 2018, Grievant filed this grievance against Respondent stating, "I was placed into the Secretary 2 position expecting a temporary upgrade in pay because that is what I was told. I was informed, after being placed and performing the job of the Secretary 2 position, that I was denied the temporary upgrade due to not being qualified for the Secretary 2 position." For relief, Grievant seeks "the increase in pay that I would have received in the temporary upgrade for performing the Secretary 2 job for 3 weeks and 1 day."

Following the November 1, 2018 level one conference, a level one decision was rendered on November 28, 2019, denying the grievance. Grievant appealed to level two on December 6, 2018. Following mediation, Grievant appealed to level three of the grievance process on May 23, 2019. A level three hearing was held on August 22, 2019, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared *pro se*¹. Respondent appeared by Tamara Kuhn and was

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

represented by counsel, James "Jake" Wegman, Assistant Attorney General. This matter became mature for decision on September 23, 2019, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent at Mildred Mitchell-Bateman Hospital as a Health Service Worker. Respondent asked Grievant to assume the duties of a critical vacant Secretary 2 position and informed Grievant she would receive a temporary upgrade for the same. Grievant performed the duties for less than thirty days when the Division of Personnel determined she was not eligible for a temporary upgrade. Grievant failed to prove she was entitled to a temporary upgrade when she did not meet the minimum qualifications of the position and did not perform the duties for at least thirty days. Accordingly, the grievance is denied.

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

Findings of Fact

1. Grievant is employed by Respondent at Mildred Mitchell-Bateman Hospital as a Health Service Worker.
2. Beginning in early September 2018, Mildred Mitchell-Bateman Hospital CEO Craig Richards began requesting that Grievant accept a temporary assignment as a Secretary 2 due to the departure of the previous Secretary 2 during a critical time for the hospital.

3. Grievant was hesitant to accept the temporary assignment but felt she was not allowed to refuse so reluctantly agreed to the assignment with the assurance of CEO Richards that she would receive additional pay.

4. Grievant completed an application for temporary upgrade on September 18, 2018.

5. On the same date, Grievant received a letter from CEO Richards informing her of her temporary upgrade and increase in salary. Grievant signed her acknowledgement of receipt of the letter on September 19, 2018.

6. Grievant began performing Secretary 2 duties on September 24, 2018.

7. On an unspecified date, the Division of Personnel denied the temporary upgrade after determining that Grievant did not meet the minimum qualifications for Secretary 2 and Grievant was informed of the same on October 12, 2018.

8. By letter dated October 16, 2018, Grievant notified Respondent that she had ceased performing her temporary duties on October 15, 2018, after being informed that she was not eligible for a temporary upgrade.

9. The minimum qualifications for Secretary 2 require graduation from high school or the equivalent and the following experience:

Five years of full-time or equivalent part-time paid experience performing clerical duties at the Office Assistant 3 level, encompassing a wide range of office practices, which must have included typing, screening and routing telephone calls and correspondence, and composing routine correspondence.

Substitution: College hours or related business school or vocational training may be substituted through an established formula for up to two years of the required experience.

10. Grievant was not minimally qualified for the Secretary 2 position as she did not have the required experience.

11. Grievant performed Secretary 2 duties for less than thirty days.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant asserts she did the work so must be paid for the work. Grievant asserts that the “agreement” she signed with CEO Richards did not state she would be required to possess the qualifications for the position. Grievant asserts she would not have performed the duties had she known about the requirements for the temporary upgrade. Grievant does not assert that she actually met the minimum qualifications for Secretary 2. Respondent acknowledges that Grievant “admirably” performed the Secretary 2 duties during a critical time but that she was simply not eligible for a temporary upgrade under the Division of Personnel’s administrative rule because she did not meet the minimum qualifications of the position or perform the duties for at least thirty days.

Temporary upgrades are governed by the Division of Personnel’s administrative rule which states in relevant part as follows:

With the approval of the Director, an appointing authority may temporarily upgrade the classification of an employee

temporarily performing the duties of a position in a higher compensation range due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation.

4.8.a. A temporary classification upgrade, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than thirty (30) days and no more than six (6) months.

. . .

4.8.d. Employees in the classified service approved for temporary upgrade to a classified position shall have attained permanent status and meet the minimum requirements for the position to which they will be temporarily upgraded.

W. VA. CODE ST. R. § 143-1-4.8.

While it is unfortunate that Respondent was mistaken in its belief that Grievant would be eligible for the temporary upgrade, it is clear that a temporary upgrade may be made only with the approval of the Director of the Division of Personnel. The “agreement” to which Grievant refers is not an agreement but simply a letter she signed to acknowledge her receipt of the same. While the letter should have made clear that the upgrade was subject to the approval of the Division of Personnel, that omission does not create an entitlement to the upgrade. CEO Richards does not have the authority to grant an employee a temporary upgrade absent the approval of the Director of the Division of Personnel.

The Division of Personnel rules require that an employee meet the minimum qualification of the classification for which the upgrade is sought and that the duties be performed for at least thirty days. Grievant does not dispute that she lacks the minimum qualification of the Secretary 2 position or that she performed the duties of the position

for less than thirty days. Grievant was clearly ineligible for the temporary upgrade under the rule.

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 her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. Temporary upgrades are governed by the Division of Personnel’s administrative rule which states in relevant part as follows:

With the approval of the Director, an appointing authority may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher compensation range due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation.

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4.8.d. Employees in the classified service approved for temporary upgrade to a classified position shall have attained permanent status and meet the minimum requirements for the position to which they will be temporarily upgraded.

W. VA. CODE ST. R. § 143-1-4.8.

3. Grievant failed to prove she was entitled to a temporary upgrade when she did not meet the minimum qualifications of the position and did not perform the duties for at least thirty days.

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 (2018).

DATE: October 30, 2019

Billie Thacker Catlett
Chief Administrative Law Judge