

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**KATHY CYPHERS,
Grievant,**

v.

Docket No. 2018-1333-MrnED

**MARION COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Kathy Cyphers, is employed by Respondent, Marion County Board of Education, as a Secretary III. Grievant filed a Level One grievance form dated March 20, 2018. Grievant's Statement of Grievance asserts: "Accounts Payable Supervisor position was filled and approved by the Marion County Board of Education incorrectly per WV 18A-4-8b and per WV 18A-4-8e." As relief Grievant seeks: "Correctly fill the Accounts Payable Supervisor position per WV Code."

A Level One conference was held on May 11, 2018. A Level One decision was issued on September 7, 2018, denying the grievance. A Level Two mediation session was held on November 3, 2018. Grievant perfected her appeal to Level Three on November 14, 2018. A Level Three evidentiary hearing was conducted before the undersigned on March 11, 2019, at the Westover office of the Grievance Board. Grievant appeared in person and by her counsel, George B. Morrone, III, West Virginia School Service Personnel. Respondent appeared by its counsel, Richard S. Boothby, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on June 5, 2019.

Synopsis

Grievant is regularly employed by Respondent as a service personnel and she holds the classification title of Secretary III. Respondent posted a vacancy under the classification title of Accounts Payable Supervisor. Grievant was one of eleven total applicants, none of whom held the classification title of Accounts Payable Supervisor. Grievant contends that Respondent's failure to offer a competency test to determine the qualifications of the applicants prior to filling the position violated state code and policy. No local board of education has a legal duty to create a local competency test when the State Board of Education has failed to create such a test. Because both Grievant and Ms. Poling were deemed qualified for the position and neither of them held that classification title at the time of application for the position, Respondent was obligated to hire the applicant with the most overall county seniority.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievant is employed by Respondent and holds the classification title of Secretary III.
2. Grievant's secretary seniority date is March 12, 2014. This is also Grievant's overall county seniority date.
3. Lisa Poling also holds the classification title of Secretary III, and she holds more seniority than Grievant. Lisa Poling's secretary seniority date is December 25, 1987.

4. On February 15, 2018, Respondent posted the disputed Accounts Payable Supervisor position.

5. Grievant and Lisa Poling applied for the Accounts Payable Supervisor position.

6. The job posting, in pertinent part, read as follows:

A. Possesses High School Diploma or GED and have at least 12 hours of accounting from an accredited institute of higher education or at least eight years of experience performing progressively difficult accounting tasks.

B. Working knowledge of the West Virginia Department of Education's Office of School Finance regulations.

C. Working knowledge of the West Virginia Education Information System (WVEIS) Financial Management System for accounting.

D. Demonstrate proficiency in data processing including but not limited to: Microsoft Word Processing and Excel Spreadsheets.

E. Demonstrate analytical skills necessary to understand and perform monthly payment reconciliations.

F. Demonstrate ability to perform multiple office operations in a highly organized, accurate, systematic, productive and professional manner while meeting multiple deadlines.

G. Demonstrate ability and desire to work independently and complete assigned duties in a timely and accurate manner.

7. Grievant held all the qualifications for the posted position, including the 12 hours of accounting from an institution of higher education.

8. Ms. Poling has more than eight years of experience performing progressively difficult accounting tasks.

9. The "accounts payable supervisor" classification title is defined by WEST VIRGINIA CODE § 18A-4-8(i)(7) as follows:

“a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel.”

10. A total of eleven individuals applied for the vacancy of Accounts Payable Supervisor, none of which held that classification title.

11. Paulene Rakes was the Respondent's prior Accounts Payable Supervisor prior to her retirement. Ms. Rakes supervised Lisa Poling in the Accounts Payable Department for more than 15 years. Ms. Poling was working as a Secretary III in the Accounts Payable Department of Respondent's Finance office when she applied for the position.

12. The State Board of Education has never developed a competency test for the service personnel classification of Accounts Payable Supervisor.

13. Respondent did not make a competency test available to any of the applicants for the position of accounts payable supervisor.

14. At its meeting on March 19, 2018, Respondent hired Ms. Poling for the position effective March 21, 2018.

Discussion

As 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 W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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). "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).

Grievant argues that Respondent should have developed its own Accounts Payable Supervisor competency test, administered the test to the applicants, and then, based on the results of that test and other relevant hiring factors, awarded the position. While the undersigned agrees with counsel for Grievant that competency tests play a significant role in making employment decisions for service personnel, the record does not support a finding that such a competency test was available to Respondent. WEST VIRGINIA CODE § 18A-4-8e(a) provides that the "state board shall develop and make available competency tests for all of the classification titles defined in section eight [§ 18A-4-8] of this article and listed in section eight-a [§ 18A-4-8a] of this article for service personnel."

It appears that no county board of education has a legal duty to create a local competency test when the State Board of Education has failed to create such a test. The State Board of Education's Policy 4120 provides that "[p]rior to recommending a candidate to the Board, the Superintendent shall ascertain that the applicant for employment for a service personnel position is qualified in that s/he holds or has held a classification title in the required category of employment or has achieved a passing score

on the State Board of Education's competency test for the classification title of the vacancy."

The record also supports a finding that no competency test other than one authorized by the State Board of Education may be used by a board of education. In any event, Grievant does not contest that the qualifications for the Accounts Payable Supervisor are codified in WEST VIRGINIA CODE § 18A-4-8(i)(7). Both Grievant and Ms. Poling were qualified for the position under that statutory definition.

As previously mentioned, the State Board of Education is responsible for developing and making available competency tests for all of the classification titles defined in WEST VIRGINIA CODE § 18A-4-8. The State Board has never authorized a competency test for the classification of Accounts Payable Supervisor. As a matter of law, "[c]ounty boards of education may not use a competency test other than the test authorized by this section." W. VA. CODE § 18A-4-8e(e). Because both Grievant and Ms. Poling were deemed qualified for the position and neither of them held that classification title at the time of application for the position, Respondent was obligated to hire the applicant with the most overall county seniority. W. VA. CODE § 18A-4-8g. *See generally Miller v. Preston County Bd. of Educ.*, Docket No. 2011-0107-PreED (Aug. 9, 2011). Respondent followed this statutory requirement by hiring Ms. Poling since she has decades more overall seniority than Grievant.

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. Procedural Rules

of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2018); *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).

2. The State Board of Education is responsible for developing and making available competency tests for all of the classification titles defined in WEST VIRGINIA CODE § 18A-4-8.

3. As a matter of law, “[c]ounty boards of education may not use a competency test other than the test authorized by this section.” W. VA. CODE § 18A-4-8e(e).

4. “If a school service employee applies for a position outside of the classification category he or she currently holds, and if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purpose of bidding on the position.” W. Va. Code § 18A-4-8g(k). Ms. Poling’s overall seniority date is December 25, 1987. Grievant’s overall seniority date is March 12, 2014. Respondent hired the correct applicant for the position in question.

5. Grievant failed to prove that Respondent had a legal duty to create and administer an Accounts Payable Supervisor competency test before awarding the position in question.

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 WEST VIRGINIA 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 *a/so* 156 C.S.R. 1 § 6.20 (2018).

Date: June 19, 2019

Ronald L. Reece
Administrative Law Judge