

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**GREG GRAHAM AND CHUCK OCHELTRREE,**

**Grievants,**

**v.**

**Docket No. 2019-1206-CONS**

**WEST VIRGINIA UNIVERSITY,**

**Respondent.**

**DECISION**

Grievants, Greg Graham and Chuck Ocheltree, are employed by Respondent, West Virginia University (WVU). On March 5, 2019, Grievants filed a level one grievance against Respondent, stating, "Grievants are forced to perform all duties a plumber would take on, putting an additional burden on the grievants to perform task of both a trade specialist and plumber. This results in focusing nearly 50% of their time on the duties of plumber, decreasing the amount of time necessary to perform their assigned duties. This is a violation of Title 133 Procedural Rule Higher Education Policy Commission Series 8."<sup>1</sup> For relief, Grievants request a "\$5.00 per hour pay raise to compensate the amount of time and effort put into additional work assignments. Update PIQs<sup>2</sup> to reflect taking up all duties of a plumber."

A level one conference was held on March 20, 2019. A level one decision denying the grievance was issued on April 9, 2019. Grievants appealed to level two on April 22, 2019. A mediation session was held on September 6, 2019. Grievants appealed to level three on October 15, 2019. A level three hearing was held before the undersigned at the

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<sup>1</sup>Grievants did not dispute the level one finding that 133 CSR 8 was repealed by the Higher Education Policy Commission.

<sup>2</sup>Position Information Questionnaires.

Grievance Board's Westover office on March 3, 2020. Grievants appeared in person and by representative Brad Hamilton, ODS, WVEA. Respondent appeared by counsel Samuel Spatafore, Assistant Attorney General. This matter became mature for decision on May 29, 2020. Each party submitted written Proposed Findings of Fact and Conclusions of Law (PFFCL). In their PFFCL, Grievants acknowledged that WVU updated their Position Information Questionnaires (PIQs) and recently provided them a small pay raise. Grievants did not explicitly withdraw their request for updated PIQs. They did reiterate their request for a \$5 per hour pay raise.

### **Synopsis**

Grievants are employed by WVU as Trades Specialists. Upon the departure of a coworker, Grievants were assigned many of his plumbing duties. Grievants contend that even though WVU recently updated their Position Information Questionnaires and provided them a small raise, they remain underpaid. They request a \$5 per hour pay raise. WVU counters that Grievants are properly paid within their classification and paygrade. Grievants did not prove that they are entitled to the requested raise. Accordingly, this 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. Grievants are employed as Trades Specialists by Respondent, West Virginia University (WVU), and have been assigned to Jackson's Mill at all pertinent times.
2. Grievant Graham is classified as a Trades Specialist Lead I, pay grade 14, and Grievant Ocheltree is classified as a Trades Specialist I, pay grade 13.

3. In 2016, after another Trades Specialist left his employment at Jackson's Mill, WVU assigned his everyday plumbing duties<sup>3</sup> to Grievants without unburdening them of their existing duties or increasing their pay.

4. The percentage of time Grievants spend performing plumbing duties has increased to 50% of their overall work time.

5. A Position Information Statement (PIQ)<sup>4</sup> provides each employee with a description of their duties and responsibilities.

6. Grievants' PIQs list plumbing as one of their many duties.

7. Respondent created new PIQs for Grievants prior to the level three hearing.<sup>5</sup>

8. Grievant Graham and Grievant Ocheltree also received a minimal pay increase prior to the level three hearing, but it was below the \$5 per hour raise they requested.<sup>6</sup> (Grievants' PFFCL)

9. Grievants' PIQs in existence at the level one filing of this grievance list Grievant Graham's plumbing duties at 10% and Grievant Ocheltree's at 15% of their total work time. (Respondent's Exhibit 1 & 2)

10. Grievants are appropriately classified for the duties they perform and none of their duties require a plumber's license. (Testimony of Rebecca Meyer, WVU's Director of Classification and Compensation)

11. Grievants are paid within their classification and pay grade.

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<sup>3</sup>The intensive plumbing needs are satisfied by outside contractors.

<sup>4</sup>The term "PIQ" can be used interchangeably with the term "job description."

<sup>5</sup>These were not submitted into evidence.

<sup>6</sup>Grievants' PFFCL allege that Grievant Graham received a raise of \$2.40 an hour and that Grievant Ocheltree received a raise of \$.84 an hour prior to the level three hearing.

12. The additional duties assigned to Grievants do not routinely result in overtime.

13. Grievants did not request backpay.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving his 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.*

Grievants contend that the increase in their plumbing duties entitles them to a pay raise and updated duty time percentages in their Position Information Questionnaires (PIQs). Grievants allege that half of their duties are now plumbing related, in contravention of their PIQs which list plumbing at 10% - 15% of their overall work time. Grievants assert that WVU never unburdened them of their prior duties, resulting in their having more overtime work. Grievants claim that WVU promised them a pay raise with their additional plumbing duties. Grievants acknowledge that WVU recently updated their PIQs and provided them a small raise, but nowhere near the \$5.00 per hour raise they deem fair.

WVU contends that Trades Specialist is a general classification covering plumbing duties, that Grievants are in the same classification as their former coworker who had performed many of the plumbing duties assigned to them, that Grievants are properly

paid within their classification and pay grade, and that Grievants work only minimal overtime. WVU points out that Grievants do not allege they were misclassified and that Grievants have not performed duties outside their job description.

Regarding their PIQs, Grievants acknowledge that these were recently updated. However, they have not implicitly withdrawn their request that the PIQs be updated to reflect their additional plumbing duties. Regardless, Grievants failed to prove that the work time percentages on their updated PIQs are at odds with their current work obligations. Grievants also failed to present any authority for the proposition that WVU was required to update their PIQs or abide by the time percentages therein.

As for a pay raise, Grievants acknowledge that they recently received one, but contend they are still underpaid in light of their additional plumbing duties. Grievants maintain they are entitled to a \$5.00 per hour raise. Grievants failed to support their claim that WVU was required to provide them a raise in conjunction with their additional plumbing duties. Further, Grievants did not present evidence in support of their contention that their overtime work increased after they were assigned additional plumbing duties. They failed to present any paystubs reflecting their overtime and did not testify that their overtime work increased. On the other hand, Truman Wolf, the Director at Jackson's Mill, testified that Grievants continued to regularly work 37.5 hours after their plumbing duties increased and that they only occasionally worked overtime. Grievants failed to prove that their overtime work increased significantly with their additional duties. The evidence demonstrates that Grievants are appropriately classified for the duties they perform and that they are properly compensated within their classification and pay grade.

The following Conclusions of Law support the decision reached.

## Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving his 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. Grievants did not prove that the plumbing duty percentages on their updated PIQs were below 50% or that WVU was obligated to update their PIQs.

3. Grievants did not prove that they were improperly compensated.

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: June 26, 2020**

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**Joshua S. Fraenkel**  
**Administrative Law Judge**