

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**AMANDA QUEEN,
Grievant,**

v.

Docket No. 2020-0460-DHHR

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

DECISION

Grievant, Amanda Queen, is employed by Respondent, Department of Health and Human Resources/Bureau for Children and Families (DHHR/BCF). Respondent Division of Personnel (DOP) ensures that all of DHHR's positions are properly classified. On October 10, 2019, Grievant filed this grievance against Respondents, seeking to have the position she occupies reallocated to the classification of Human Resources Generalist 2.

DHHR waived the matter from level one to level two of the grievance process on October 15, 2019. DOP was joined as a necessary party on November 18, 2019, through an Order of Joinder. Level two mediation occurred on March 16, 2020. Grievant appealed to level three of the grievance process on March 16, 2020. A level three hearing was held on September 16, 2020, before the undersigned via an online platform. Grievant appeared as her own representative. DHHR/BCF appeared by Pam Holt, Director of Human Resources for BCF, and was represented by Jake Wegman, Assistant Attorney General. DOP appeared by Wendy Mays, Assistant Director of the Classification and Compensation section, and was represented by Karen O'Sullivan Thornton, Assistant Attorney General. DHHR/BCF advocates for Grievant's reclassification as an HR

Generalist. DHHR/BCF and DOP submitted Proposed Findings of Fact and Conclusions of Law (PFFCL). This matter became mature for decision on October 30, 2020.

Synopsis

Grievant is employed by DHHR/BCF in a position classified as HR Associate. Grievant and DHHR/BCF contend that DOP should have classified Grievant's position as HR Generalist 2 based on her complex work assignments. In support thereof, they presented evidence that some of Grievant's work matches examples of work listed in the class specifications for HR Generalist 2. Grievant nevertheless failed to prove that DOP acted in an arbitrary and capricious manner in determining that the permanent predominant duties of Grievant's position were regular and routine, and lacking the complexity and type of work necessary to warrant reallocation to an HR Generalist 2. 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. On September 16, 2017, DHHR promoted Grievant to a human resources (HR) position that was classified as an Administrative Service Assistant 3 (ASA3), paygrade 13. (DOP Exhibit 4 & testimony of Pam Holt, Director of HR of BCF)
2. At the time of this promotion, Grievant occupied a position that had been incorrectly classified by DOP using inaccurate information provided by DHHR. (DOP Exhibits 1-3 & testimony of Holt and Wendy Mays, Assistant Director of the Classification and Compensation section of DOP)

3. On May 17, 2018, DOP created a new class series of HR positions approved by the West Virginia State Personnel Board (SPB). This class series took effect on August 4, 2018. (DOP Exhibit 5 & Mays' testimony)

4. The new HR class series includes four classifications in ascending order: HR Assistant, HR Associate, HR Generalist 1, and HR Generalist 2. (DHHR Exhibit 5)

5. A Position Description Form (PDF) is the official document setting forth the duties and responsibilities of a position and is to be used by DOP to properly allocate positions within the classified service. W. VA. CODE R. § 143-1-4.5

6. After the creation of the new HR class series, employees in HR positions were required to submit PDFs so DOP could properly allocate each position to a classification within the new series. (Mays' testimony)

7. DOP received Grievant's PDF on July 3, 2018. On August 17, 2018, DOP determined that the position occupied by Grievant should be reallocated to HR Associate, paygrade 10. (DOP Exhibit 6 & Mays' testimony)

8. By letter dated August 20, 2018, DOP notified DHHR and Grievant that Grievant's position was being reallocated to the HR Associate classification, paygrade 10, based on the duties identified by the Grievant in her PDF. (DOP Exhibit 6 & Mays' testimony)

9. By memorandum dated September 3, 2018, Grievant appealed DOP's classification determination. (DOP Exhibit 7)

10. DHHR/BCF considers Grievant to be the manager of BCF Region 3 because she is involved in all HR functions for BCF in that region. BCF has 2700 employees statewide. As such, the Director of HR for BCF, Pam Holt, must delegate her

HR duties regionally. Grievant and the other HR “managers” for each region are delegated a great deal of authority in completing HR duties for their region. DHHR/BCF advocated for reallocating the positions held by Grievant and other regional HR “managers” to HR Generalists because they attend management meetings, provide crucial HR advice, work with new hires, and perform a variety of functions. (Testimony of Heather Grogg, Regional Director for BCF Region 3, & Ms. Holt)

11. HR Director Holt does not assign HR Associates the complex tasks, such as attending job fairs and providing training to other employees, that she assigns to Grievant. (Holt’s testimony)

12. In conjunction with Grievant’s appeal, DOP conducted a job audit of Grievant’s position. It also directed a field audit on September 28, 2018. DHHR withdrew the appeal before a ruling was made.

13. DHHR then submitted a second PDF to DOP on September 20, 2019. (DOP’s Exhibit 8)

14. By letter to DOP dated September 20, 2019, HR Director Holt opined that all Regional Central Office HR positions, including Grievant’s position, should be classified as HR Generalists because these positions act under limited supervision in all HR areas, including working with new hires, resignations, and providing advice to BCF Commissioners and Deputy Commissioners. (DOP’s Exhibit 8)

15. By letter dated October 8, 2019, DOP again determined that the position described in the second PDF was that of HR Associate. (DOP’s Exhibit 8 & Mays’ testimony)

16. In reviewing a position reallocation, DOP considers only permanent predominant duties. (Mays' testimony)

17. The daily duties and responsibilities of the position occupied by Grievant, and the amount of time she spends on the tasks of that position, are as follows:

- 2 hours - check emails dealing with new hire packets, backup documentation, offer letters, resignations, general questions, pay roll questions, and timecards
- 1 hour - work on weekly vacancy report
- 30-45 mins - work on biweekly budget report
- 30 mins - prepare offer letters for new hires
- 1 hour – track Employee Performance Appraisal (EPA)
- 15-30 mins - sends information to field staff from DHHR's Office of Human Resource Management (OHRM)
- 30 mins - lunch
- 45 mins – gather and prepare agenda of HR related information provided by Pam Holt, OHRM, etc. for field staff
- 1 hour - enter Personnel Transactions

(Grievant's testimony)

18. Timewise, the predominant duties of the position occupied by Grievant are as follows:

30-35% - transcribing personnel transactions into wvOasis from the paper submissions of field staff.
10% - auditing time entries in the Kronos timekeeping system to ensure that employees have the correct leave balances.

(Grievant's testimony)

19. Grievant did not provide evidence as to the frequency of the non-daily tasks she performs, which were tasks she and DHHR relied on in advocating for her reallocation to HR Generalist.

20. The class specifications for the HR Associate classification are as follows:

Nature of Work:

Under general supervision, performs professional human resources work in one or more areas such as recruitment, employment, employee relations, classification, compensation, benefits, payroll, time keeping, personnel records or other human resources functions. Analyzes information to determine appropriate procedures within law, rule and policy to use in the administration of a variety of human resources functions. This class is also used as the beginning of the professional human resources class series. Performs related work as required.

Distinguishing Characteristics:

Work at this level is characterized by limited authority and moderate complexity and includes the application of established standards, guidelines, rules and regulations, with little latitude to vary methods and procedures. Work is performed with greater independence than that of the Human Resources Assistant level. These positions are distinguished by the greater depth of knowledge required. May supervise clerical employees in an outlying office.

Examples of Work:

Prepares human resources related documents and transactions in the designated area.

Enters work hours, status changes and new employee information and prepares for payroll processing.

Prepares and reviews forms for human resources, payroll and related areas.

Maintains accurate human resources records.

Provides guidance to employees and/or agencies on matters related to designated human resources areas.

Enters and records human resources related data.

Ensures that data and records are maintained in a manner which is user friendly and can be readily accessed and utilized.

Ensures work is in compliance with relevant federal and state laws.

(DOP Exhibit 10)

21. The class specifications for the HR Generalist 2 classification are as follows:

Nature of Work:

Under limited supervision, performs advanced level, professional human resources work in one or more areas such as recruitment, employment, employee relations,

classification, compensation, benefits, payroll, time keeping, personnel records or other human resources functions. Requires analytical skills and the ability to organize complex work in a project or team setting where accountability is assigned for meeting timetables for major projects in the functional area. The work involves the completion of more difficult, sensitive or controversial assignments in the functional area. Performs related work as required.

Distinguishing Characteristics:

Work at this level is characterized by project and team leader responsibility or by personnel generalist responsibility in a liaison role for a department with outside agencies. The work is usually of considerable difficulty and complexity. These positions may report to a manager, supervisor or office administrator, and perform duties related to multiple areas of human resources. Work is performed with greater independence than previous levels in the series. These positions may supervise administrative support staff or act as lead worker over paraprofessional and/or support staff within the series.

Examples of Work:

Reviews proposed human resources documents and transactions for conformity to budget amounts, Division of Personnel policies and merit system rules and regulations; ensures timely processing of human resources transactions. Trains subordinates and newly appointed human resources staff in all aspects of successful completion of work assignments.

Acts as team leader in successful completion of projects.

Prepares and approves, within delegated levels of authority, human resources related documents and transactions in multiple human resources areas.

Prepares and/or reviews forms for human resources, payroll and related areas.

Maintains accurate human resources records.

Prepares recruitment announcements and advertisements and provides guidance to supervisors and managers on the recruitment process.

Provides guidance to employees, managers and supervisors regarding benefits.

Conducts human resources related training.

Recommends changes to human resources procedures.

Serves as a point of contact and liaison for agency human resources staff on one or more matters related to recruitment,

employment, employee relations, classification, compensation, benefits, payroll, time keeping, and personnel records.

Inputs data into and maintains statewide human resource information systems.

Prepares reports at an agency or statewide level that can be used by managers and the Division of Personnel for the purposes of managing human resources.

Ensures that data and records are maintained in a manner which can be readily accessed and utilized.

Ensures work done is in compliance with relevant federal and state laws.

May supervise administrative support staff and/or lead para-professional and/or support staff.

(DOP Exhibit 12)

22. The Classification and Compensation section of the DOP is responsible for, among other things, drafting the class specifications and ensuring that all classified positions in state government are classified and paid appropriately within the State's Classification and Compensation Plans. (Mays' testimony)

23. The DOP Pay Plan Policy provides the following relevant definitions:

"Lead Work/Lead Worker"

This is a level of work at which an incumbent is assigned the ongoing responsibility of scheduling and/or reviewing the work of other co-workers and guiding and training them while performing identical or similar kinds of work.

"Supervisor"

Formally delegated responsibility for planning, assigning, reviewing, and approving the work of three or more full-time employees or four or more .83 full-time equivalent Seasonal employees which includes initiating disciplinary actions, approving leave requests, conducting performance evaluations, and recommending salary increases.

"Class Series"

A grouping of two or more classes having the same kind of work with ascending level of difficulty and complexity.

(DOP Exhibit 13)

24. DOP determined that the duties of the position occupied by the Grievant do not fit within the HR Generalist 2 class specification, as the position does not possess the necessary level of difficulty and complexity, and that the predominant responsibilities of Grievant's position are not supervisory or those of the lead worker as necessary to rise above the HR Associate classification. DOP found that Grievant's position is more aligned with the position of HR Associate, whose predominant duties are regular and routine and do not encompass the discretion to depart from well-established processes and procedures. (Mays' testimony)

25. Based on the testimony and evidence provided by Grievant and DHHR, as well as all other information available to her, Ms. Mays, as Assistant Director of the Classification and Compensation section, reiterated the prior determination by DOP that the position occupied by Grievant was properly allocated to the HR Associate classification. (Mays' testimony)

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 and DHHR/BCF contend that the position occupied by Grievant should be classified as an HR Generalist 2, rather than an HR Associate, because of the complexity of Grievant's work in attending management meetings, working with new hires, processing resignations, attending job recruiting fairs, training staff, providing critical HR advice, advising upper management on HR issues, and making salary determinations. They argue that Grievant has too many duties for a paygrade 10 and that she was downgraded from a paygrade 13 when she was transferred to the new HR class series even though the volume and complexity of her duties were not reduced. They assert that Grievant performs under limited supervision and that her duties have much more authority and complexity than the clerical duties assigned to HR Associates. DOP counters that it properly allocated Grievant's position to the HR Associate classification based on the routine nature of Grievant's permanent predominant duties rather than sporadic examples of work that fall under the HR Generalist 2 classification.

DOP is responsible for ensuring that all positions in the classified and classified-exempt service are appropriately classified based primarily upon a review of the duties and responsibilities of each position. W. VA. CODE R. § 143-1-4 *et seq.* Grievant and DHHR/BCF believe that because Grievant performs some examples of work listed under the HR Generalist 2 class specification, the position Grievant occupies should be classified as HR Generalist 2. However, DOP's class specifications generally contain the following five sections: "Nature of Work," "Distinguishing Characteristics," "Examples of Work," "Knowledge, Skills and Abilities," and "Minimum Qualifications." These specifications are to be read in pyramid-fashion, from top to bottom, going from the more general/more 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 class specification is the most critical section. See generally, *Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his/her required duties. *Simmons v. W. Va. Dep't of Health and Human Resources*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). *Carroll v. Dep't of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004), citing *Broaddus, supra*; *Barrett et al v. Dep't of Health & Human Res. & Div. of Personnel*, Docket No. 04-HHR389 (Dec. 6, 2007). Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified per se. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Furthermore, incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification if the remainder of their duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994). Grievance Board case law is clear and long standing as relates to the issue of predominant duties. *Broaddus, supra*. DOP is required to classify a position based on predominant duties, not duties that are performed on an occasional and intermittent basis. *Adkins v. Workforce W. Va. and Div. of Pers.*, Docket No. 2009-1457-DOC (Oct. 13, 2009).

Employees have a substantial obstacle to overcome when contesting their classification, as the grievance board's review is supposed to be limited to determining

whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). 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, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

"[T]he 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996)." Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd*

Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

During her testimony, Grievant was given the opportunity to describe in detail the duties and responsibilities in which she engages during a typical workday. These duties include checking emails, working on reports, preparing letters, tracking EPAs, sending information provided by the Bureau and OHRM to field staff, and entering personnel transactions into wvOasis. Grievant also identified the predominant duties of the position she occupies, with 30-35% of her time requiring entering personnel transactions into the wvOasis system and 10% of her time spent auditing employee time entries in the Kronos timekeeping system. Contrary to protocol, the argument advanced by Grievant for changing her position classification relies on her work volume, her occasional and intermittent work, and her wide variety of duties and responsibilities.

The “Nature of Work” section under the HR Associate class specification provides the following:

Under general supervision, performs professional human resources work in one or more areas such as recruitment, employment, employee relations, classification, compensation, benefits, payroll, time keeping, personnel records or other human resources functions. Analyzes information to determine appropriate procedures within law, rule and policy to use in the administration of a variety of human resources functions. This class is also used as the beginning of the professional human resources class series. Performs related work as required.

All the daily and predominant duties performed by Grievant are encompassed by the “Nature of Work” section for HR Associate.

As stated, the predominant duties of a position control its classification. In reviewing the multiple PDFs submitted by Grievant and DHHR/BCF for Grievant's position, DOP determined that the predominant daily duties of Grievant's position are regular and routine rather than complex, and that they do not allow for discretion on the part of the Grievant. Grievant was given an opportunity at the level three hearing to detail her regular and routine duties. However, none of the duties she testified to performing on a typical day approach the complexity and discretion required for HR Generalist 2.

Thus, DOP was not unreasonable in its determination that Grievant only sporadically engaged in the following more complex activities: attending management meetings, attending job recruiting fairs, training staff, providing critical HR advice, advising upper management on HR issues, and making salary determinations. Further, Grievant presented no evidence that she serves in a lead worker capacity, as a supervisor, or in a managerial role.¹ DOP's interpretations of the class specifications should be given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. pt. 3, *Blankenship, supra*; *Princeton Community Hosp. v. State Health Planning*, 174 W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply

¹The DOP Pay Plan Policy defines "Manager/Managerial" as:

Oversees a formally designated organization unit or program that requires extensive planning, organizing, and monitoring of work activities of subordinate staff, controlling resources including staff, budget, equipment, and all the means used to accomplish work within the assigned area of responsibility. Employee is held accountable for establishing and meeting the objectives and goals of the unit or program.

substitute his or her judgment for that of DOP. *See generally, Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276 (1982).

The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of DOP. *Moore v. W. Va. Dep't of Health & Human Resources*, Docket No. 94-HHR-126 (Aug. 26, 1994); *Celestine v. State Police*, Docket No. 2009-0256-MAPS (May 4, 2009); *Logsdon v. Div. of Highways*, Docket No. 2008-1159-DOT (Feb. 23, 2009). Rather, 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); *Logsdon, supra*. Based upon a review of the PDFs for Grievant's position, DOP determined the position should be classified as a HR Associate. Grievant failed to prove that this determination was arbitrary and capricious.

The position occupied by Grievant does not fit within the HR Generalist 2 classification because the position is not assigned lead worker or supervisory responsibilities. Further, it does not function within the level of difficulty and complexity anticipated for the HR Generalist 2 or at any higher level within the class series than that to which it has been assigned. The testimony and evidence provided by the Grievant, as it relates to the predominant duties of the position and the daily duties and responsibilities assigned, only serves to reaffirm DOP's classification determination that Grievant's position should be classified as an HR Associate due to the regular and routine nature of her duties. As for Grievant's remaining argument for a position reallocation to HR Generalist 2, Grievant failed to provide evidence as to a correlation between her paygrade

and the proper classification of her position. Nor did she set forth the paygrade to which she believes she should be allocated.

Grievant did not prove by a preponderance of evidence that DOP acted arbitrarily and capriciously in determining that the permanent predominant duties of Grievant's position were regular and routine, and that they lacked the complexity and type of work necessary to warrant reallocation from HR Associate to HR Generalist 2. 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. Employees have a substantial obstacle to overcome when contesting their classification, as the grievance board's review is supposed to be limited to determining whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

3. The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of DOP. *Moore v. W. Va. Dep't of Health & Human*

Resources, Docket No. 94-HHR-126 (Aug. 26, 1994); *Celestine v. State Police*, Docket No. 2009-0256-MAPS (May 4, 2009); *Logsdon v. Div. of Highways*, Docket No. 2008-1159-DOT (Feb. 23, 2009). Rather, 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); *Logsdon, supra*.

4. The State Personnel Board and the Director of DOP have wide discretion in performing their duties although they cannot exercise their discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug 30, 1999), *Aff'd Kan. Co. C. Ct.* Docket No. 99-AA-151 (Mar. 1, 2001).

5. 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, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd Mercer Cnty. Cir. Ct.* Docket No. 97-CV-374-K (Oct. 16, 1998).

6. “[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer].” *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

7. Personnel class specifications generally contain five sections as follows: first is the “Nature of Work” section; second, “Distinguishing Characteristics”; third, the “Examples of Work” section; fourth, the “Knowledge, Skills and Abilities” section; and finally, the “Minimum Qualifications” section. These 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 class specification is its most critical section. *Atchison v. W. Va. Div. of Health*, Docket No. 90-H-444 (Apr. 22, 1991); *See generally, Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

8. The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his/her required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991); *Propst v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 93-HHR-351 (Dec. 3, 1993).

9. In ascertaining which classification constitutes the best fit, DOP looks at the predominant duties of the position in question. These predominant duties are deemed to be "class-controlling." *Carroll v. Dep't of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004), citing *Broaddus v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990); *Barrett et al v. Dep't of Health & Human Res. & Div. of Personnel*, Docket No. 04-HHR389 (Dec. 6, 2007). Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one quality or requirement does not exclude others. W. VA. CODE R. §134-1-4.04(a). Even though a job description does not include all the actual tasks performed by a grievant it does not make that job classification invalid. *Id* at §4.04(d). *Lee v. Dep't of Administration and Div. of Personnel*, Docket No. 02-ADMN-014 (May 30, 2002).

10. DOP is required to classify a position based on predominant duties, not duties that are performed on an occasional and intermittent basis. *Adkins v. Workforce W. Va. and Div. of Pers.*, Docket No. 2009-1457-DOC (Oct. 13, 2009). Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified per se. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Furthermore, incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their

duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994).

11. Grievant did not prove by a preponderance of the evidence that DOP acted in an arbitrary and capricious manner in determining that the permanent predominant duties of Grievant's position were regular and routine and lacking the complexity and type of work necessary to warrant reallocation from HR Associate to HR Generalist 2.

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: December 8, 2020

Joshua S. Fraenkel
Administrative Law Judge