

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**EMILY ELAINE MELROSE,**

**Grievant,**

**v.**

**Docket No. 2021-2043-MAPS**

**DIVISION OF CORRECTIONS AND REHABILITATION/  
BUREAU OF JUVENILE SERVICES/  
LORRIE YEAGER JR. JUVENILE CENTER  
AND DIVISION OF PERSONNEL,**

**Respondents.**

**DECISION**

Grievant, Emily Elaine Melrose, is employed by Respondent, Division of Corrections and Rehabilitation (“DCR”) within the Bureau of Juvenile Services at Lorrie Yeager Jr. Juvenile Center. On January 8, 2021, Grievant filed this grievance against Respondent stating, “On December 18, 2020 I was advised via determination letter from Sheryl Webb, Director, with the WV Division of Personnel that my job classification was being reallocated from the current Supervisor 3 (Class 9422 pay grade 13) to an Administrative Services Assistant 2 (Class 9405 pay grade 11). I disagree and dispute this decision.” For relief, Grievant seeks “to be made whole, including, but not limited to: Retaining my current job classification of Supervisor 3; a position that I have performed since November 25, 2017, and be made whole for any, and all, losses.”

The grievance was waived to level two of the grievance process on January 12, 2021. By order entered January 15, 2021, the Division of Personnel was joined as a necessary party. Grievant also appealed to level two on January 21, 2021, although the grievance had already been waived to level two. Following unsuccessful mediation, Grievant appealed to level three of the grievance process on August 31, 2021. A level

three hearing was held on June 1, 2022, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared in person and by representative, Elaine Harris, CWA International Staff Representative - District 2-13. Respondent DCR appeared only by counsel, Mark S. Weiler, Assistant Attorney General. Respondent DOP appeared by Wendy Ways and by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on July 5, 2022, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL"). Respondent DCR declined to file PFFCL.

### **Synopsis**

Grievant is employed by Respondent within the Bureau of Juvenile Services at Lorrie Yeager Jr. Juvenile Center as a Supervisor 3. As part of a general review, the Division of Personnel reviewed the position Grievant occupies and determined it should be reallocated to an Administrative Services Assistant 2. Grievant asserts the position should remain classified as a Supervisor 3. Grievant failed to prove the best fit for the position she occupies is a Supervisor 3. 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 within the Bureau of Juvenile Services at Lorrie Yeager Jr. Juvenile Center as a Supervisor 3 and has been so employed since 2017.
2. The position was posted as a Supervisor 3 position on September 5, 2017, with the working title of Facility Operations Supervisor.

3. Respondent DOP had previously discovered inconsistencies in the placement of employees into the Supervisor 3 position so undertook independent review of those positions at times.

4. In the summer of 2020, as part of a review DOP undertook to revise the Human Resources and Procurement class series, Respondent DOP discovered the Supervisor 3 positions located within Respondent DHS and undertook review of those positions as well.

5. To review the positions, Respondent DOP requested Position Description Forms ("PDF") for each of those positions.

6. The PDF is the official document detailing the duties and responsibilities of a position and it is used by DOP to properly allocate positions within the classified service. W. VA. CODE R. § 143-1-4.5.b.

7. Grievant and her supervisor, Superintendent Travis White, completed the PDF, which was approved by Regional Director James Goddard and forwarded to Respondent DOP on August 3, 2020.

8. Respondent DOP determined that the position should be reallocated to an Administrative Services Assistant 2 ("ASA 2"). Respondent DOP considered the following to be the duties and responsibilities assigned to the position: "1) supervise assigned staff, which includes training of new staff, conducting EPAs, creating monthly schedules, reviewing and approving leave requests and approving timecards for payroll; 2) oversee and review procurement, purchasing and human resources functions for the facility; and 3) responsible for facility permits, licenses and inspections." Respondent DOP notified Grievant and Respondent DHS of the determination by letter dated August 28, 2020.

9. “Reallocation” is the “[r]eassignment by the Director of a position from one class to a different class on the basis of a significant change in the kind and/or level of duties and responsibilities assigned to the position or to address a misalignment of title and duties.” W. VA. CODE ST. R. § 143-1-3.72.

10. Grievant and Respondent DHS appealed the classification determination on September 17, 2020.

11. Respondent DOP reviewed the position and again concluded that the position should be classified as an ASA2. Respondent DOP notified Grievant and Respondent DHS of the determination by letter dated December 18, 2020.

12. After Grievant filed the instant grievance, Respondent DOP agreed to review the position a third time, this time also conducting a virtual job audit of the position. During the job audit, Grievant and Superintendent White were provided the opportunity to submit additional information regarding Grievant’s job duties.

13. For a third time, Respondent DOP determined that the position should be classified as an ASA 2. Respondent DOP notified Respondent DHS of the determination by letter dated July 22, 2021.

14. Grievant attempted to appeal the July 22, 2021 determination and was notified by letter on August 24, 2021, that there was no mechanism for a second appeal, although the determination letter had erroneously included appeal language.

15. Classification specifications are “[t]he official description of a class of positions for the purpose of describing the nature of work, providing examples of work performed, and identifying the knowledge, skills, and abilities required while stating the

generally accepted minimum qualifications required for employment.” W. VA. CODE ST.

R. § 143-1-3.19

16. The classification specification for Supervisor 3 is as follows:

**Nature of Work:** Under general supervision, performs advanced level supervisory work overseeing the activities of high-level technical or administrative staff. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by supervisors through results produced and through meetings to evaluate output. Provides information on the units' accomplishments for the agency's annual report. Represents the agency before committees and the general public. Performs related work as required.

**Distinguishing Characteristics:** The Supervisor 3 is distinguished from the Supervisor 2 by the nature of the work supervised, the degree of external contacts, the number of units supervised and by the level of collateral work assigned to the position. The work supervised is typically of a technical or administrative nature as opposed to clerical. Contacts are often with other public officials at the state and federal level. Supervises two or more related units. The level of related work assigned is often administrative and technical in nature.

**Examples of Work:**

- Performs work in an administrative capacity compiling management reports, representing the agency before committees and the public and attending meetings with limited authority to commit the agency to a cause of action.
- Interprets and applies departmental policies and regulations for employees and others in state government; may interpret policies for the general public.
- Advises subordinates of changes in policy and procedure.
- Plans, assigns, and coordinates the work of subordinates.
- Assists subordinates in the overall operation of programs and projects.
- Trains new employees and implements policies, procedures, and regulations of the department.

- Reviews and monitors the programs and projects of subordinates; assists in compiling federally and state-mandated reports.
- Designs and carries out management studies for agency management; composes correspondence for agency administrators' signatures; advises superiors on matters relating projects and programs to the agency or department.
- Answers questions and solves problems for and with subordinates; revises work procedures to align with changes in State or Federal laws or programs.
- Prepares and maintains records and reports for superiors to document activities, evaluates the performance of the unit, documents expenditures and projects trends in the program; uses facts and figures to set management goals for improved performance.
- Completes employees' performance evaluations, approves annual and sick leave, and recommends hiring, disciplinary actions, and other personnel actions.
- Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

17. The classification specification for Administrative Services Assistant 2 is as follows:

**Nature of Work:** Under limited supervision, performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency. Develops policies and procedures for resolving operational problems and for improving administrative services. Supervises the work of office support staff in rendering required services. Work is typically varied and includes extensive inter- and intragovernmental and public contact. Has some authority to vary work methods and policy applications and to commit the agency to alternative course of action. Performs related work as required.

**Distinguishing Characteristics:** Positions in this class are distinguished from the Administrative Services Assistant 1 by the supervisory nature of the work performed, by the size of the unit served and by the independence of action granted. Positions in this class are responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a

large state agency. Authority to vary work methods and to commit the agency to alternative course of action is granted.

**Examples of Work:**

- Confers with inter- and intra-agency personnel to transact business, gather information, or discuss information; may be in a position with public or federal government contact.
- Conducts performance surveys and reviews agency methods of operation; devises flowcharts and graphs; may conduct cost analysis studies.
- Gathers and compiles information for state records; writes reports, balances tally sheets, and monitors inventories, purchases, and sales.
- Updates records and contacts employees to gather information; represents the agency in the area of assignment in both internal and external meetings.
- Maintains files of information in hard copy files or electronic format; runs reports for regular or intermittent review.
- Determines the need for changes in procedures, guidelines and formats; devises a solution; monitors the success of solutions by devising quantitative/qualitative measures to document the improvement of services.
- Writes manuals in the area of assignment; clarifies the wording and describes new procedures accurately.
- Supervises the work of Office Assistants, Accounting Assistants or other support staff.

18. Respondent DOP's Pay Plan Policy defines relevant terms relating to its classification and compensation plan.

19. "Administrative" is defined as "[w]ork activities relating to a principal mission or program of an agency or subcomponent thereof that supports that agency's mission or program. This involves analyzing, evaluating, modifying, and/or developing programs, policies, and procedures that facilitate the work of agencies' objectives while applying relevant analysis, theory, and principles."

20. "Administrative support" is defined as "[s]upport services such as personnel, budget, purchasing, data processing which support or facilitate the service programs of

the agency, also means work assisting an administrator through office management, clerical supervision, data collection and reporting, workflow/project tracking, etc.”

21. “Technical” is defined as “[w]ork requiring the practical application of scientific, engineering, mathematical, or design principles.”

22. Grievant reports directly to the facility’s Superintendent, Travis White.

23. Grievant’s position is one of three direct reports of Superintendent White, which he views as his management team, that also includes a Correctional Officer V and Corrections Unit Manager.

24. Grievant is responsible for the overall operations of the support staff of the facility. Her primary duty is to supervise the work of the facility’s support staff, which occupies approximately 85% of her time. The remainder of her duties encompasses various administrative and administrative support tasks such as serving as the facility’s Safety Officer and Purchasing Agent, negotiating and finalizing facility contracts, conducting facility inspections, and maintaining fixed assets and inventory records.

25. At the time of the initial PDF, Grievant supervised eight employees holding the following classifications: Cook, Custodian, Laundry Worker, Building Maintenance Mechanic, Facilities/Equipment Maintenance Technician, Human Resource Assistant, and Office Assistant II.

26. At the time of the appeal, Grievant supervised nine employees holding the following classifications: Cook, Custodian, Laundry Worker, Building Maintenance Mechanic, Human Resource Associate, and Procurement Associate.

27. At the time of the level three hearing, Grievant supervised nine employees holding the following classifications: Cook, Custodian, Laundry Worker, Building



Maintenance Mechanic, Facilities/Equipment Maintenance Technician, Human Resource Associate, Procurement Associate, and Corrections Facility Coordinator I.

28. Grievant's subordinates do not perform administrative or technical work as defined by Respondent DOP.

29. The position should not have been posted as a Supervisor 3 and has remained misclassified since that time.

30. Notwithstanding the reallocation of the position by Respondent DOP from Supervisor 3 to ASA 2, Respondent DHS has failed to take any steps to effectuate the reallocation.

### **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 argues that the Supervisor 3 classification is the best fit for the position and that Respondent DOP erred in reallocating the position to an ASA 2 as Grievant's job duties had not changed. Respondent DOP asserts that the ASA 2 classification is the best fit for the position and that Grievant failed to prove Respondent DOP acted in an arbitrary or capricious manner in its classification determination.

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)).

The key to the analysis of allocation cases is to ascertain whether Grievant's current classification constitutes the "best fit" for their 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). 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). 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).” *Clark v. Ins. Comm’n & Div. of Pers.*, Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

The Supervisor 3 classification “performs advanced level supervisory work overseeing the activities of high-level technical or administrative staff.” The ASA 2 classification “performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency.”

Although Grievant asserts that Respondent DOP failed to take into consideration the entirety of her duties and asserts that she does work apart from the supervision of her subordinates, a classification determination is made based on the predominate duties of the position. Approximately 85% of Grievant’s time is spent supervising her subordinates, so that is the predominant duty of the position. In this case, the determinative difference between the two classifications is the type of position that is supervised. Therefore, the nature of the work of Grievant’s subordinates is key in determining the proper allocation of the position she occupies. For the position to be allocated to the Supervisor 3 position, the work performed by Grievant’s subordinates must be work which meets the definition of “technical” or “administrative” found in the DOP Pay Plan Policy.

Grievant argues that it is not required for the work of her subordinates to be “technical” or “administrative” because the “distinguishing characteristics” section of the classification specification states only that “[t]he work supervised is *typically* of a technical or administrative nature as opposed to clerical” and “[t]e level of related work assigned is *often* administrative and technical in nature.” (emphasis added). The “distinguishing characteristics” section of the Supervisor 3 classification specification is specifically to distinguish between a Supervisor 3 and a Supervisor 2. The controlling statement in the classification specification relating to this grievance is found in the first section, “nature of work,” which unequivocally states that the position “oversee[s] the activities of high-level technical or administrative staff.”

Alternately, Grievant argues that the staff she supervises are high-level technical or administrative staff. “Technical” is defined as “[w]ork requiring the practical application of scientific, engineering, mathematical, or design principles.” “Administrative” is defined as “[w]ork activities relating to a principal mission or program of an agency or subcomponent thereof that supports that agency’s mission or program. This involves analyzing, evaluating, modifying, and/or developing programs, policies, and procedures that facilitate the work of agencies’ objectives while applying relevant analysis, theory, and principles.”

For the relevant time-period, Grievant supervised the following positions: Cook, Custodian, Laundry Worker, Building Maintenance Mechanic, Human Resource Associate, and Procurement Associate. At the time of the level three hearing, she also supervised a Facilities/Equipment Maintenance Technician, and a Corrections Facility Coordinator I. The sole evidence Grievant provided that these positions perform duties

that would meet Respondent DOP's definition of those terms was Grievant's opinion that they do. Grievant provided no evidence regarding the assigned duties of those positions or any explanation how the duties of the positions would meet Respondent DOP's definitions of high-level technical or administrative. Grievant cannot meet her burden to prove this contention as Grievant failed to provide sufficient evidence to demonstrate that the duties of her subordinates meet the definition of "technical" or "administrative"

Grievant also argues Respondent DOP should not have reallocated the position because Grievant's duties had not changed. This assertion is incorrect. Although the initial notification by Respondent DOP of the classification decision stated that a reallocation must "be accompanied by a significant change in the duties and responsibilities assigned to a position" this was an unfortunate misstatement of the rule. Respondent DOP's administrative rule defines "reallocation" as "[r]eassignment by the Director of a position from one class to a different class on the basis of a significant change in the kind and/or level of duties and responsibilities assigned to the position *or to address a misalignment of title and duties.*" W. VA. CODE ST. R. § 143-1-3.72 (2016) (emphasis added). In this case, the duties of Grievant's position have been misaligned since the time of its original posting. Pursuant to its administrative rule, Respondent DOP had the authority to reallocate the position to address the misalignment of duties.

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. 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).

3. 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).

4. 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)).

5. The key to the analysis of allocation cases is to ascertain whether Grievant’s current classification constitutes the “best fit” for their 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).

6. “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).

7. “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).

8. 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).” *Clark v. Ins. Comm’n & Div. of Pers.*, Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

9. Grievant failed to prove that the Division of Personnel’s classification determination was arbitrary or capricious or that the Supervisor 3 classification was the best fit for the position she occupies.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>1</sup> Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

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<sup>1</sup> On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The

§ 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

**DATE: August 15, 2022**

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**Billie Thacker Catlett**  
**Chief Administrative Law Judge**

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West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.