

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**HOLLY SIMS,**  
Grievant,

v.

**Docket No. 2020-1037-DHHR**

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

**DECISION**

Grievant, Holly Sims, filed a level one grievance on or about March 10, 2020, against her employer, Department of Health and Human Resources. Grievant asserts that she was “[n]ot provided pay raise that successful completion of one year as a CPS worker.” Grievant seeks to be “made whole in every way to include pay raise, interest, and retirement.” On June 24, 2020, Respondent Department of Health and Human Resources/Bureau for Children and Families waived the case from level one to level two. The Division of Personnel was joined to the action by Order of Joinder entered August 18, 2020. A level two mediation session was conducted October 8, 2020. This case was placed in abeyance by order entered October 14, 2020. Grievant appealed to level three on November 10, 2020. A level three hearing was conducted by Zoom on December 9, 2021, before the undersigned originating in the Westover office. Grievant appeared in person and by her representative, Chester Sprankle. The Department of Health and Human Resources appeared by its counsel, Mindy M. Parsley, Assistant Attorney

General. The Division of Personnel appeared by its counsel, Karen O'Sullivan Thornton, Assistant Attorney General.

### **Synopsis**

Grievant is employed by the Department of Health and Human Resources in a position classified as a Child Protective Service Worker. The position was reallocated from a Child Protective Service Worker Trainee to a Child Protective Service Worker after the Division of Personnel received a Position Description Form for the position. The Division of Personnel made a classification determination that resulted in reallocation after the Grievant completed a one-year training in September of 2019. The Division of Personnel reviews and makes a classification determination on a Position Description Form. The Division of Personnel policy applicable to the case sets out the payment of back pay in reallocations. Grievant failed to prove her claim of back pay to September 2019. The record did establish by a preponderance of the evidence that Grievant was entitled to back pay due to the delay of the Department of Health and Human Resources to timely process the reallocation after receiving the determination from the Division of Personnel. This grievance is granted, in part, and denied, in part.

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

### **Findings of Fact**

1. Grievant is employed by the Department of Health and Human Resources as a Child Protective Services Worker in the Marion/Monongalia District of the Bureau for Children and Families.
2. On or about September 17, 2019, Grievant completed her training period and became eligible for reallocation to a Child Protective Services Worker.

3. Grievant was not reallocated from a Child Protective Services Worker Trainee to Child Protective Services Worker until May 23, 2020.

4. Grievant completed a Position Description Form for the reallocation of her position in December of 2019. That form was received by the Department of Health and Human Resources on January 6, 2020. That original form was misplaced and not processed.

5. After the Department of Health and Human Resources discovered that the initial Position Description Form was not processed, Grievant completed a new Position Description Form and submitted it on March 10, 2020.

6. The Position Description Form was sent back to the Grievant on March 31, 2020, to complete a couple sections which had been left blank.

7. The Position Description Form was completed and forwarded to the Department of Health and Human Resources' human resources division for approval. It was then submitted to the Division of Personnel.

8. The Division of Personnel reviewed the form and determined that the position should be reallocated to the classification of Child Protective Service Worker on April 7, 2020. The Department of Health and Human Resources was notified of the determination by email communication on the same day.

9. The personnel transaction to effectuate the reallocation was processed by the Department of Health and Human Resources in the wvOasis system with an effective date of May 23, 2020.

10. The relevant policy provides that, "[A] settlement agreement for back wages will NOT be certified by the DOP for reallocation if a classification determination and

corresponding personnel transaction are complete with the following timeframes: The Division of Personnel communicates a classification determination to the appointing authority within sixty (60) calendar days of receipt of a signed Position Description Form . . . The appointing authority processes the corresponding personnel transaction within thirty (30) calendar days of receipt of the classification determination.” Division of Personnel Exhibit No. 9.

11. The Division of Personnel met its established timeframe.

12. The Department of Health and Human Resources did not meet its established timeframe pursuant to the applicable policy. The Department of Health and Human Resources had thirty calendar days from receipt of the classification determination to process and effectuate the personnel transaction for the reallocation of the position.

13. The Department of Health and Human Resources received the classification determination from the Division of Personnel on April 7, 2020, and the transaction was not effective until May 23, 2020.

14. Based on the applicable policy, Grievant is entitled to back pay for the period of time from the thirty first day after the Department of Health and Human Resources received the classification determination from the Division of Personnel to the day the reallocation became effective.

### **Discussion**

This grievance does not involve a disciplinary matter. Consequently, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018);

*Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990).

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. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

WEST VIRGINIA CODE § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified and classified exempt service. As a general rule, State agencies which utilize such positions must adhere to that plan in making assignments to their employees. It is the Division of Personnel who is charged with setting and interpreting the minimum qualifications for classified positions within the state classified system. *Pure v. Div. of Corrections and Div. of Personnel*, Docket No. 2017-1400-MAPS (Nov. 3, 2017).

Grievant asserts that she is entitled to back wages to one year after being hired for a Child Protective Service Worker Trainee position due to the position not being reallocated in a timely manner. The Department of Health and Human Resources acknowledges that there were delays in the processing of the Position Description Form; however, both Respondents contend that the delays were not unreasonable and that Grievant was also responsible for some of the delay. The Division of Personnel contends that the classification review and determination was made in a timely fashion and that any back wage award must comply with applicable policy. In the instant case, that policy limits Grievant to back wages for the delay in processing the personnel transaction to effectuate the reallocation of the position.

Reallocation of a position from a Child Protective Service Worker Trainee to a Child Protective Service Worker is not automatic. The employee must have served in the

Trainee position for a one year period of time; the employee's supervisor must confirm that the employee is now performing advanced and complex social casework in the area of Child Protective Service; the employee must complete a Position Description Form; the supervisor and appointing authority must review the Position Description Form and complete their sections of the form; the Position Description Form must be reviewed by the Division of Personnel to make a classification determination. If the Division of Personnel determines that the position should be reallocated, the Department of Health and Human Resources must submit the personnel transaction for approval to the wvOasis system.

Grievant completed a Position Description Form for the reallocation of her position in December of 2019. That form was received by the Department of Health and Human Resources on January 6, 2020. That original form was misplaced and not processed. After the Department of Health and Human Resources discovered that the initial Position Description Form was not processed, Grievant completed a new Position Description Form and submitted it on March 10, 2020. The Position Description Form was sent back to the Grievant on March 31, 2020, to complete a couple sections which had been left blank. The Position Description Form was completed and forwarded to the Department of Health and Human Resources' human resources division for approval. It was then submitted to the Division of Personnel. The Division of Personnel reviewed the form and determined that the position should be reallocated to the classification of Child Protective Service Worker on April 7, 2020. The Department of Health and Human Resources was notified of the determination by email communication on the same day. The personnel

transaction to effectuate the reallocation was processed by the Department of Health and Human Resources in the wvOasis system with an effective date of May 23, 2020.

The undersigned has previously ruled that back wages will not be authorized for reallocation if a classification determination is communicated to the appointing authority by the Division of Personnel Class and Comp section within sixty calendar days of receipt of the signed Position Description Form. Thereafter, the agency is under an obligation to process the corresponding personnel transaction within the following thirty calendar days. Back wages may only be authorized for the period of time the process was delayed beyond the ninety calendar days. *Cutright v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 2017-2167-DHHR (March 9, 2019).

A completed Position Description Form on the proper form was submitted by the Department of Health and Human Resources to the Division of Personnel on April 6, 2020, and a review of the form was expedited with a clarification determination being made on April 7, 2020. The reallocation of the position was effective on May 23, 2020. The Position Description Form was timely processed by the Division of Personnel, but fell short of meeting the timeframe established for the agency. The record established that Grievant is entitled to back pay for the fifteen days caused by the Department of Health and Human Resources delay in processing the reallocation.

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 his 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 Personnel Board and the Director of the Division of Personnel have wide discretion in performing their duties although they cannot exercise their discretion in an arbitrary or capricious manner. *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug. 30, 1999).

3. "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 Resources*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

4. Grievant has demonstrated by a preponderance of the evidence that the delay by the Department of Health and Human Resources in processing her reallocation was unreasonable and a violation of the applicable policy.

5. Grievant has demonstrated by a preponderance of the evidence that she is entitled to an award of back pay for the fifteen-day delay in processing her reallocation.



Accordingly, this grievance is **GRANTED**, in part, and **DENIED**, in part. Respondent is **ORDERED** to pay Grievant back wages for the unreasonable fifteen-day delay in processing her reallocation.

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* 156 C.S.R. 1 § 6.20 (2018).

**Date: February 23, 2022**

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**Ronald L. Reece**  
**Administrative Law Judge**