STEVEN WOODALL,

Grievant,

v. DOCKET NO. 93-DOH-393

WEST VIRGINIA DEPARTMENT OF

TRANSPORTATION/DIVISION OF HIGHWAYS,

Respondent.

D E C I S I O N

This is a grievance by Steven Woodall (hereinafter "Grievant"), an employee of the Division of Highways, challenging his classification as an "Associate Engineering Technician - Materials." Grievant submits that his proper classification is "Engineering Technician - Materials." Grievant initiated the current grievance on March 25, 1993. Following denial of his grievance at Levels I and II, a Level III hearing was conducted on June 14, 1993. On September 15, 1993, Mr. Fred VanKirk, Division of Highways Commissioner, adopted the findings of a three-member board of Grievance Evaluators, denying the grievance on its merits. Grievant submitted a timely appeal of that decision to Level IV anda hearing was held in the Board's Charleston office on November 8, 1993. (See footnote 1)

Grievant stated his grievance as follows:

> Grievant Steven Woodall works as an Aggregate Laboratory Technician in the Materials Department and is classified a Level II Associate Engineering Technician. Grievant worked under the supervision of Aggregate Laboratory Coordinator Russell Bowen, who was classified a Level III Engineering Technician. Mr. Bowen transferred to District Seven Materials on July 2, 1990. Grievant was assigned Mr. Bowen's duties of Laboratory Coordinator plus maintain his own duties of Laboratory Technician. Mr. Bowen's duties were the same as other Coordinators in District 2 Materials, and also the same as coordinators in other districts. All of these employees are classified Level III Engineering Technicians. Grievant was discriminated against when his salary was not adjusted at the time of Mr. Bowen's transfer.

Relief: Grievant's relief is salary in Level III Engineering Technician pay range, and salary adjusted retroactive to July 2, 1990.

At the Level IV hearing, the Respondent moved to dismiss the present grievance based upon the doctrine of res judicata. The undersigned denied Respondent's motion on an interlocutory basis at that time, primarily because the Grievant was not provided advance notice of the motion and was, therefore, not prepared to respond. (See footnote 2) Respondent renewed this motion in its post-hearing submission. Forreasons hereinafter set forth, the undersigned finds this motion dispositive of the present grievance.

In a prior decision by this Board, styled Woodall v. West Virginia Department of Transportation/Division of Highways (See footnote 3) [hereinafter "Woodall I"], Administrative Law Judge Anderson rendered the following Conclusion of Law: "Grievant failed to establish by a preponderance of the evidence that his duties more closely match the specification for an Engineering Technician - Materials than the specification for his present classification of Associate Engineering Technician - Materials." Grievant does not purport that the instant grievance involves a different issue than Woodall I nor that his duties and responsibilities as an employee have been materially changed since the facts were heard in Woodall I. Instead, Grievant is seeking to relitigate the findings in Woodall I based upon contentions that a witness for the Respondent changed his testimony from Level III to Level IV in response to evidence produced by Grievant at Level III, and similar discrepancies in testimony. In particular, Grievant alleges that the Respondent "acted in bad faith and deceit by misrepresenting the job description of a Level III, Engineering Technician, Materials." (See footnote 4)

This Board previously applied the doctrine of res judicata to repetitive grievances in Ramsey v. West Virginia Department ofHealth and Human Services. (See footnote 5) Res judicata is a well-established legal doctrine stating that a final judgment rendered on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties to that proceeding and, as to those same parties, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. Black's Law Dictionary 678 (Abridged 5th Ed. 1983). In Ramsey, this Board applied the holding of the West Virginia Supreme Court of Appeals in Wolfe v. Forbes (See footnote 6) which recognized four conditions to meet in order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and

(4) identity of the quality in the persons for or against whom the claim is made. Id.

After carefully reviewing the decision in Woodall I, as well as the pleadings and evidence presented at the Level III and IV hearings in this matter, the undersigned finds that the present grievance is identical to the grievance filed by the Grievant inWoodall I. Grievant is complaining about the same issue and seeking the same relief. Moreover, this grievance involves the same parties, with the exception that the Division of Personnel in the West Virginia Department of Administration was not joined as a party to this grievance, as their input was not considered essential to resolution of the grievance. This distinction does not result in a sufficient difference to preclude application of res judicata.

In addition, after reviewing the decision in Woodall I, it appears that Grievant's "new" evidence purporting to demonstrate how he performed the same duties as his predecessor, Mr. Bowen, would not be persuasive, given the earlier finding by Administrative Law Judge Anderson that Mr. Bowen was apparently misclassified at the time of his departure. Woodall I at 2-3. Thus, even if all of Grievant's allegations are accepted as fact, he would still not prevail upon the merits.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are made in this matter.

FINDINGS OF FACT

1. Grievant is employed as an Associate Engineering Technician - Materials by the Department of Highways, District 2, in Huntington, West Virginia.

2. In 1993, the Grievance Board processed a grievance filed by this Grievant alleging that he should have been classified as an "Engineering Technician - Materials" as of July 2, 1990, when he assumed the duties of his departing supervisor, Mr. Russell Bowen.

3. The Level IV decision issued by this Board on March 22, 1993, found that Grievant failed to prove that his duties more closely match the specification for Engineering Technician - Materials than the specification for his present classification of Associate Engineering Technician - Materials. Woodall v. W. Va. Dept. of Transp./Div. of Highways and W. Va. Dept. of Admin./Div. of Personnel,

Docket No. 92-DOH-383 (Mar. 22, 1993).

4. On March 25, 1993, Grievant filed another grievance against the same employer involving the same issue and seeking the same relief.

CONCLUSION OF LAW

This grievance involves the same parties, cause of action, relief requested, and factual situation as that of a prior matter decided by this Board on March 22, 1993, and is barred from further consideration by the doctrine of res judicata. Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975); Ramsey v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-478 (July 31, 1991). See Liller v. W. Va. Human Rights Comm'n., 376 S.E.2d 639 (W. Va. 1988). See also Kessler v. GSA, 252 F. Supp. 629 (D. N.Y. 1966).

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

Administrative Law Judge

Dated: February 2, 1994

Footnote: 1Upon receipt of timely post-hearing submissions, this matter became mature for decision on December 29, 1993.

Footnote: 2However, Grievant was properly referred to this Board's previous Level IV decision in the Respondent's response at Level II.

Footnote: 3Docket No. 92-DOH-383 (Mar. 22, 1993).

Footnote: 4 *Conclusion of Law No. 4, Grievant's Proposed Findings of Fact and Conclusions of Law, Dec. 28, 1993.*

Footnote: 5 *Docket No. 90-H-478 (Jul. 31, 1991).*

Footnote: 6 *159 W. Va. 34, 217 S.E.2d 899 (1975), citing Margeurite Coal Co. v. Meadow River Lumber Co., 98 W. Va. 698 (1925), and Syllabus, Hannah v. Beasley, 132 W. Va. 814, 53 S.E.2d 729 (1949). Subsequent to Wolfe v. Forbes, the West Virginia Supreme Court of Appeals explicitly recognized that res judicata may be applied by an administrative agency to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v.*
W. Va. Human Rights Comm'n., 376 S.E.2d 639, 646 (W. Va. 1988). See Duvall v. Kanawha County Bd. of Educ., Docket No. 92-20-294 (Feb. 3, 1993).