RAY CURRY

v. Docket No. 89-DHS-401

WV DEPARTMENT OF HUMAN RESOURCES/WV DIVISION OF PERSONNEL

DECISION ON REMAND

In Curry v. W.Va. Dept of Human Services and W.Va. Div. of Personnel, Docket No. 89-DHS-401 (July 31, 1992), (Curry I), it was determined that the grievant, an employee of the Department of Human Services (DHS) since 1972 (See footnote 1), had been misclassified during various periods of his employment since April 1, 1976. The grievant filed an appeal to the Circuit Court of Mingo County alleging that the decision was in error to the extent that it did not properly address the periods of October 1, 1976 to March 16, 1980.

By order dated November 4, 1993, the Court remanded the case to the Education and State Employees Board "for the purpose of reconsidering whether the [grievant] was classified correctly fromthe period of October, 1976, until March 17, 1980." (See footnote 2) By letter dated February 17, 1994, the undersigned inquired of the parties whether they desired further evidentiary proceedings on the issue identified by the Court. The grievant responded that the record developed in the previous Level IV proceedings was sufficient for the review ordered. The agency-respondents did not reply. By letter dated February 25, 1994, the undersigned advised the parties to submit proposed findings of fact and conclusions of law by March 2, 1994. Only the grievant submitted such proposals.

After a thorough review of the record developed in the prior Level IV hearing and the grievant's proposals, the undersigned makes the following conclusions.

1) The undersigned erred in Curry I in not addressing the time periods referenced in the Court's order. The issue of the grievant's proper classification during those periods was raised either in the original Level I pleadings or during the course of the Level IV hearing.

2) From April 1, 1976 to September 30, 1976, the grievant, while classified as an Eligibility Specialist III, performed the duties of an Eligibility Supervisor III. (See footnote 3)

3) From October 1, 1976 to January 30, 1979, while classified as an Eligibility Supervisor I, the grievant performed the duties of an Eligibility Supervisor III. (See footnote 4)

4) On January 30, 1979, the Eligibility Supervisor classification series was abolished and replaced with the Economic Service Supervisor series. As of that date the grievant was entitled to the benefits of the new series. He was officially promoted to Economic Service Supervisor II on March 17, 1980.

5) Since January 30, 1979, the grievant has performed the duties of an Economic Service Supervisor III.

6) The grievant is entitled to back pay plus interest for the periods referenced in the foregoing conclusions.

Accordingly, the case is respectfully returned to the Circuit Court of Mingo County for further proceedings and/or findings.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: March 14, 1994

Footnote: 1 The agency's name has since been changed to the Division of Health and Human Resources. For the purposes of this decision the agency's former designation is used.

Footnote: 2 The undersigned did not receive the order until February 16, 1994. The reason for the delay is not known.

Footnote: 3 In one of his March 2, 1994 proposals, the grievant asserts that he was performing as an Economic Service Supervisor III during this period. Since the Economic Service Supervisor series was not established until January 30, 1979, the grievant could not have been working in that classification. It is assumed that the reference to Economic Service Supervisor in the proposal is simply an error.

Footnote: 4 The grievant also asserts that he performed as an Economic Service Supervisor III during this period. Again, it is assumed that the grievant's proposals misstate his position.