BONNIE SUE WALKER,

Grievant,

v. DOCKET NO. 95-DOP-159

WEST VIRGINIA DIVISION
OF PERSONNEL,

Respondent.

D E C I S I O N

Grievant, Bonnie Sue Walker, filed this grievance on February 15, 1995, protesting her non-selection for an Office Assistant III position in the Staffing Services Section. Grievant's classification prior to applying for the opening was an Office Assistant III. Grievant would have retained the same salary had she been selected for the position. Grievant left the office of Staffing Services after the position was filled because her "situation became unbearable". She accepted a position in another office as an Office Assistant II. Grievant does not wish, as relief, to be instated into the Office Assistant III position she applied for; rather, she seeks as relief that her current position be reclassified to an Office Assistant III along with a 10 percent increase in salary.

Following adverse decisions at the lower levels, Grievant appealed to level four on April 18, 1995. Hearing was conducted onAugust 31, 1995, at which time this case became mature for decision.

The material facts in this case are not in dispute and are set forth in the following findings.

Findings of Fact

1. Grievant was employed as an Office Assistant III in Respondent's Staffing Service Section.

2. Dottie Bailey was also employed as an Office Assistant III in the Staffing Services Section. Ms. Bailey was going to retire in or about December, 1994, and Grievant was trained by Ms. Bailey to temporarily fill the position during the posting period. 3. The subject position was posted on January 10, 1995. G Ex. 1.

4. Grievant, as well as 16 other candidates, applied for the posted position. However, because the successful candidate was to be chosen from within the Department of Administration, only two (2) of the candidates, including Grievant, were eligible for the position.

5. Grievant's supervisor, Max Farley, had expressed to Grievant that she was qualified and a likely candidate for the position, but also told her that he needed to interview the other candidate before a decision could be made.

6. Mr. Farley interviewed the other candidate and determined that she possessed some exceptional skills which were necessary to the job.

7. The other candidate was hired for the position over Grievant.

Discussion

Grievant alleges that she was entitled to the posted position because she had performed the duties of the position while it was vacant, and Mr. Farley had told her she was qualified for the position. However, Grievant does not want to be instated into the position now; rather, she wants her current position reclassified to an Office Assistant III, along with a 10% salary increase.

Respondent contends that Grievant has failed to state a claim upon which relief can be granted, and that, in the alternative, it violated no rule, policy, statute or regulation in selecting another candidate over Grievant for the subject position.

Grievant must prove all of the elements constituting her grievance, including a legal basis for the relief sought, by a preponderance of the evidence. See Jarrett/Thomas v. W. Va. Dept. of Admin., Docket No. 95-DOP-130 (June 15, 1995).

With regard to the issue of non-selection, promotion decisions are largely the prerogative of management. While individuals selected for promotion should be qualified and able to perform the duties of their new positions, absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such promotion decisions will not generally be overturned. Ashley v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR-070 (June 2, 1995). In the instant matter, Grievant has quite simply failed to prove by a preponderance of the evidence that she was more qualified than thesuccessful candidate for the position, or that Respondent acted in an unlawful, unreasonable, or arbitrary and capricious manner in awarding the position to the successful candidate. While Grievant, quite naturally, feels disappointed in not being selected for the position,

after having performed the duties of the position and being told by her supervisor that she was qualified for the position, she nevertheless has presented no evidence which serves to undermine Respondent's decision to select the other candidate for the position.

With regard to the relief requested, Grievant again must fail. Grievant is not requesting instatement to the subject position. She wants her current position, voluntarily assumed, to be reclassified to an Office Assistant III with a commensurate 10% salary increase. This relief is unavailable because it is not reasonably related to the alleged harm done. Grievant's non-selection for an Office Assistant III position does not entitle her to have a position correctly classified as an Office Assistant II reclassified to an Office Assistant III. To allow such relief would only serve to compromise the entire classification system. Further, had Grievant been awarded the subject position, she would not have received a salary increase as it would have been a strictly lateral transfer. Thus, her request for a 10% salary increase is entirely speculative and unavailable.

Conclusions of Law

1. Grievant failed to establish by a preponderance of the evidence that she was better qualified for the subject OfficeAssistant III position than the applicant selected. See Ashley v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR-070 (June 2, 1995); Flint v. W. Va. Dept. of Transp., Docket No. 92-DOH-119 (Sept. 23, 1992); Miller v. W. Va. Div. of Human Services, Docket No. 90-DHS-328 (Nov. 27, 1990).

2. Grievant has not established that she is entitled to the relief requested as a matter of law. See Jarrett/Thomas v. W. Va. Dept. of Admin., Docket No. 95-DOP-130 (June 15, 1995).

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel 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.

MARY JO SWARTZ

Administrative Law Judge

Dated: September 19, 1995