JANET SHELTON

v. Docket No. 95-BEP-228

BUREAU OF EMPLOYMENT

DECISION

The grievant, Janet Shelton, is employed by the West Virginia Bureau of Employment Programs (BEP) as an Employment Programs Interviewer (EPI) in the Job Service division of the agency's Ronceverte office. She filed this complaint at Level I January 10, 1995, protesting her non-selection for the position of EPI in the office's Unemployment Compensation division. The grievant's supervisor was without authority to address the matter and the grievance was denied at Levels II and III. (See footnote 1) Appeal to Level IV was made June 7, 1995, and a hearing was held September 12, 1995. The parties declined to submit proposed findings of fact and conclusions of law.

BEP's offices are comprised of the Job Service and Unemployment Compensation divisions. The former is concerned with the assessment and placement of unemployed persons and the latter manages benefit payments to claimants. Both divisions employ EPIs.At the time of the actions complained of, Supervisor Betty Carrola headed the Ronceverte Job Service and Supervisor Mavis Durham oversaw the Unemployment Compensation division.

In September 1994, an EPI position in Job Service was announced and Angela Remley, a temporary worker in Unemployment Compensation, (See footnote 2) made application. During her interview, Ms. Remley was advised by Ms. Carrola that she would most likely be chosen for the post. Ms. Remley subsequently informed her supervisor, Ms. Durham, that she had made the application. Ms. Durham responded that she would be retiring soon and that she intended to ask that a new EPI position be assigned to Unemployment Compensation. Ms. Durham at least implied that Ms. Remley might want to reconsider her Job Service application and seek the new position. Ms. Remley withdraw her application for the Job Service EPI post.

On October 14, 1995, the new position was posted and Ms. Remley and others made timely

applications. The grievant, who believed that her chances for advancement would be greater in Unemployment Compensation, also made application. The West Virginia Division of Personnel (Personnel) ultimately provided Ms. Durham a register of candidates who had successfully completed the testing process for the position. The grievant and Ms. Remley appeared on the register.

Ms. Durham interviewed all candidates whose names were listed on the register. She eventually recommended to BEP's central office in Charleston that Ms. Remley be awarded the post. The recommendation was accepted and Ms. Remley began her duties on or about December 15, 1994.

The grievant asserts that Ms. Durham had decided to award the position to Ms. Remley prior to the posting and interview process. She maintains that this "predisposition" was violative of that portion of Personnel's hiring regulations which provides that, "The appointing authority shall give due consideration to those employees who apply and are eligible for the posted vacancy."

BEP contends that Ms. Durham accurately assessed all candidates and correctly determined that Ms. Remley was the most qualified. The agency denies that any regulation, policy or statute was violated in the process. For the reasons set forth below, the undersigned concludes that the grievant has failed to substantiate her claims.

An extensive analysis of the grievant's evidence is not necessary. For the most part, that evidence consists of the testimony of various employee witnesses who related that they had heard individuals concerned with the selection process make various statements about that process. Almost without exception, these witnesses provided hearsay testimony, much of which was not relevant to or supportive of the grievant's claims. The undersigned finds, as did the Level III evaluator, that this evidence is unreliable and cannot support a finding that Ms. Remleywas favored. See, Perdue v. Dept. of Health and Human Resources, Docket No. 93-HHR-050 (February 4, 1994).

The scant reliable evidence of record establishes that although Ms. Remley was not classified as an EPI at the time of her application, she had actually performed the duties of the job for the previous five years in her capacity as a temporary full time worker in Unemployment Compensation. It further establishes that while the grievant had a long employment history as an Office Assistant with the Department of Health and Human Services, she had only served as an EPI for less than two years at the time of the posting. The record otherwise supports that Ms. Remley was more qualified for the job than the grievant.

Finally, even if the whole of the grievant's evidence was accepted as reliable and credible, it would

demonstrate, at best, that if Ms. Durham had preconceived ideas about the candidates, they were based on her work-related knowledge of their employment backgrounds. In short, there is no reliable evidence of record that Ms. Durham and Ms. Remley had a personal relationship or that their professional association was such that Ms. Durham would attempt to thwart the selection process in Ms. Remley's favor.

Accordingly, the 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.

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: October 31, 1995

Footnote: 1The transcript of the Level III hearing and exhibits admitted are part of the record herein.

Footnote: 2The record is unclear on whether Ms. Remley held a particular position. As hereinafter discussed, the record supports that regardless of her title, she functioned as an EPI in Unemployment Compensation during the five years preceding the announcement of the position in issue.