

**PATTY SALISBURY,**

**Grievant,**

**v. Docket No. 95-HHR-532**

**DEPARTMENT OF HEALTH AND HUMAN**

**SERVICES/SOCIAL SERVICES AND**

**DIVISION OF PERSONNEL,**

**Respondents.**

### **DECISION**

Grievant [\(See footnote 1\)](#), Patty Salisbury, states that because she has worked fourteen years as a Protective Service Worker, has a Masters degree in counseling, and has "very good" to "excellent" evaluations, her earnings should be within the mid-point range of her salary scale. She requests as relief that her annual salary be increased to approximately \$26,000 to \$27,000.

This grievance was waived at Levels I and II, and denied at Level III. The case was appealed to Level IV, and a hearing was held on February 20, 1996. This case also became mature for decision on that date, as the parties did not wish to submit proposed findings of fact and conclusions of law.

The facts of this case are not in dispute and will be set out below. The issue in question is one of law. Additionally, the major points of this issue have been previously discussed by both this Grievance Board and the West Virginia Supreme Court of Appeals.

### **Findings of Fact**

1. Grievant has worked 24 years for the state, fourteen of which have been as a Protective Service Worker ("PSW").

2. Grievant has a Masters degree in Social Work which is beyond what is required for the position. The educational requirement for the PSW position is a four year college degree.

3. All of Grievant's recent evaluations rate her at the "very good" or "excellent"

category.

4. Upon reclassification, Grievant received a raise to increase her salary to the minimum level of her classification.

5. Grievant's earnings for 1995 were \$21,492.00. [\(See footnote 2\)](#) The average salary of a PSW is \$21,028.00.

6. The pay pattern within HHR reflects that the majority of employees in all "social worker" classifications receive earnings that are in the bottom 25% of the pay scale.

### Discussion

Grievant has cited no violation of any statute, rule, or regulation [\(See footnote 3\)](#). Her major contention is that HHR has unfairly compensated her, given her experience with the state, her evaluations, and her educational background. While the undersigned understands Grievant's frustration and the potential for a decrease in an employee's job satisfaction and morale, Grievant's salary is consistent with the regulations promulgated by the Division of Personnel ("DOP"). "[T]he Division of Personnel's pay plan is not seniority or tenure based[,] and the salaries for the various classified positions are based upon the general nature of the duties expected of the incumbents." *Salmons v. W. Va. Dept. of Transp./Div. of Highways and Div. of Personnel*, Docket No. 95-DOH-004 (Apr. 20, 1995). Thus, Grievant cannot receive a raise because of seniority alone. Because salaries are based on the duties of the position, the fact she has more qualifications than required by her position does not require HHR to grant her a raise. Further, although an employee may receive a salary increase based on merit, such increase must fall within Rule 5.08 of the W. Va. Administrative Rules of DOP.

While the undersigned is sympathetic to Grievant's concern of being placed at or near the same salary as less experienced and less educated peers; this placement does not constitute an abuse of discretion, or an arbitrary, capricious or unlawful act. Instead Grievant's salary follows the guidelines set out in the Reclassification Project and the rules governing salary advancement. See *Hellems, et al. v. Dept. of Transp./Div. of Motor Vehicles and Div. of Personnel*, Docket Nos. 94-DMV-156/157/160/162/163/184 (Jun. 26, 1995).

The remainder of the decision will be presented as formal conclusions of law.

### Conclusions of Law

1. In order to prevail a grievant must prove her case by a preponderance of the evidence. Hickman v. W. Va. Dept. of Transp./Div. of Highways, Docket No. 95-DOH-435 (Feb. 28, 1995).

2. "Division of Personnel's pay plan is not seniority or tenure based[,] and the salaries for the various classifications are based upon the general nature of the duties expected of the incumbents." Salmons v. W. Va. Dept. of Transp./Div. of Highways and Div. of Personnel, Docket No. 95-DOH-004 (Apr. 20, 1995).

3. The placement of Grievant at the minimum pay level of the new pay range is consistent with DOP's regulations governing the Statewide Reclassification Project. See, Roach/Minton v. W. Va. Dept. of Transp./Div. of Highways, Docket No. 94-DOH-232 (Nov. 29, 1994).

4. The continued placement of Grievant at or within the lower end of the PSW pay scale, despite her experience, education, and evaluations, is consistent with the regulations governing salary advancement.

5. Grievant has failed to demonstrate a violation of any statute, rule, or regulation. 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.

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**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated: May 24, 1996**

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[Footnote: 1](#)

Grievant has changed her statement of grievance during the course of the grievance process with the approval of the other parties. She now argues her salary should be based on experience, qualifications, and job performance.

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[Footnote: 2](#)

Because Grievant included her increment earnings when calculating her yearly earnings, it was somewhat difficult to discern exactly what her pay is from the record. Given that Grievant received a \$700 to \$800 raise at the time she was reclassified to raise her salary to the minimum level of the PSW pay scale, her salary minus the increment should be equal to \$19,764.00. This was not the case. Although not reflected in the testimony, it appears Grievant has received another raise sometime between the filing of this grievance and the Level IV hearing.

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[Footnote: 3](#)

Grievant did cite §5(b&c) of the Pilot Administrative Guidelines as supporting her grievance. Since this Section speaks to new hires and Grievant is an incumbent, she may not rely upon that Section to support her contentions. Additionally, that Section states that an individual may be hired above the minimum pay level at the discretion of the Director. (Emphasis added.)