

THOMAS BEVER

v. Docket No. 96-HHR-258

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

DECISION

Grievant, Thomas Bever, employed by the Department of Health and Human Resources (DHHR or Respondent), as a Social Service Worker I, filed a level one grievance on September 29, 1995, in which he alleged “[m]y transfer from the Ohio County to Brooke/Hancock Counties DHHR office is improper and in violation of the intent and purpose of the agency's transfer policy. I ask to be restored to my status as an assigned worker to the Ohio Co. office.” Grievant's immediate supervisor lacked authority to rule on the issue. Following denials at levels two and three, a level four appeal was made on June 21, 1996. An evidentiary hearing was conducted on October 2, 1996, and the matter became mature for decision on November 22, 1996, the deadline for submitting fact/law proposals.

The material facts of this matter are not in dispute and are set forth in the following findings:

Findings of Fact

1. At all times relevant to this matter, Grievant has been employed by DHHR, classified as a Social Service Worker I.
2. Grievant serves clients in Brooke, Ohio, and Hancock counties.
3. Grievant resides in Wheeling, Ohio County.
4. Prior to July 1995, Grievant was assigned to the Ohio County DHHR office.
5. Effective July 3, 1995, Grievant's official headquarters were changed to the Weirton office in Hancock County. This change was part of an expansion of the Weirton office implemented by DHHR for the purpose of providing more direct delivery of services to its clients. Grievant suffered no loss in classification or salary as a result of this change.
6. It is undisputed that approximately 80% of Grievant's caseload is in Hancock County.

7. Grievant is paid mileage from his headquarters for travel undertaken in performance of his duties.

Grievant's claim in this matter is difficult to identify. Only Respondent offered supplemental evidence at the level four hearing; Grievant did not address his claim. The level three transcript includes a statement by Grievant that he believed he had been transferred in violation of an unidentified agency policy, was treated in a discriminatory and unprofessional manner, that the transfer was in violation of the Governor's policy of TQM-Inspire, and was arbitrary and capricious.

Respondent argues that Grievant's use of the term "transfer" is incorrect in that he was not moved from one district to another, but was subject only to a "change in official headquarters." Respondent asserts that the change was proper under Division of Personnel Rule 11.06(a), which provides that "appointing authorities may transfer a permanent employee from a position in one organizational sub-division of an agency to a position in another organizational sub-division of the same or another agency at any time" Respondent further argues that the reassignment was allowable by its own rules contained in the Financial Clerk's Manual, §10710-C(5), which provides that "at the discretion of the area administrator, headquarters must be established that will lead to maximum economy of expenses and maximum efficiency of operations for carrying out the official work assignment of the employee involved, whether this is a satellite human services office or the area office."

Robert Clark, Community Service Manager for Brooke and Hancock counties, testified at the level four hearing that the change in Grievant's headquarters was part of an expansion of the Hancock office, with the goal that Respondent would provide more direct delivery of services. Respondent's efforts had increased the number of employees headquartered in Weirton from four to thirty. Mr. Clark opined that Grievant's caseload supported the change in headquarters. Not only was the change economically sound, but it provided a more efficient use of the employee's time. In any event, Mr. Clark noted that Grievant was treated the same as many other employees, and the change was neither arbitrary or discriminatory.

Ron Klug, DHHR Community Service Manager for the Ohio District, confirmed that Grievant's headquarters were changed to best meet the needs of his clients and to be consistent in treatment with other employees.

Mike McCabe, Director of DHHR's Personnel Services, stated that Grievant was not "transferred" and that the Personnel WV-11 form confirms that the action was a change in headquarters. Mr. McCabe testified that he could not identify any violation of rules or policies, but that to the contrary, the action was consistent with the idea that an employee should be located at the most cost efficient point. Mr. McCabe further noted that the TQM-Inspire program, which considers employee input and may permit action by consensus in matters such as this, is not a law or mandatory policy, and the division manager is not bound by it when allocating resources. While it is clear that Grievant is unhappy with the change in headquarters, he has failed to prove that the action was in violation of any rule or policy, was discriminatory, or arbitrary and capricious. Respondent has offered evidence which establishes a legitimate, non-discriminatory basis for the action. Even if the change should be characterized as a transfer, Respondent's action is consistent with the holding in Goodnight v. W.Va. Div. Of Human Services, Docket No. 91-DHS- 111 (May 31, 1991). In that case, which involved a factual situation virtually identical to the present matter, it was held that the appointing authority may transfer a state employee, at the same or comparable classification and wages, to any geographical area in which the employee is needed.

In addition to the foregoing it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. To prevail in a non-disciplinary grievance, a grievant must prove the allegations of his complaint by a preponderance of the evidence. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. The appointing authority may transfer a state employee, at the same or comparable classification and wages, to any geographical area in which the employee is needed. See Zigmond v. Civil Service Comm'n., et al., 186 S.E. 2d 696 (W.Va. 1972), and Childers v. Civil Service Comm'n., 181 S.E.2d 22 (W.Va. 1971).

3. Grievant has failed to show that the change in headquarters from Wheeling to Weirton was violative of any policy, regulation or law.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred, 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.

DATE: December 31, 1996 _____

SUE KELLER

Senior Administrative Law Judge