JUNE CASTO,

Grievant,

v.

DOCKET NO. 96-DEP-340

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION/DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, June Casto, filed this grievance on November 11, 1995, seeking to be reclassified from an Administrative Services Assistant III to an Administrative Services Manager I position. The level three grievance evaluator found Grievant had proved her duties and responsibilities more closely fit those found in the classification specification for Administrative Services Manager I and granted the grievance on May 23, 1996. Subsequently, the Division of Personnel ("DOP") refused to reallocate Grievant's position based upon its finding that she did not meet the minimum qualifications of the position. The issue of Grievant's qualifications had not arisen at the level three hearing, even though DOP was a party and did appear at that hearing. Thereafter, Grievant appealed the Division of Personnel's action to level four on August 5, 1996. Grievant and Respondent Division of Environmental Protection ("DEP") requested the matter be submitted on the record developed below, but DOP notified the undersigned that the issue in Grievant'sappeal, that of the minimum qualifications, had not been discussed or decided upon at the lower level. Thereafter, a hearing was scheduled in the Grievance Board's Charleston, West Virginia office on February 13, 1997, for the limited purpose of presenting testimony and evidence regarding DOP's finding that Grievant did not meet the minimum qualifications for the position, and subsequent refusal to process the level three grievance evaluator's recommendation. While it was recognized by all parties that the issue appealed

to level four was different than the original grievance statement, no party objected. Respondents do not challenge the decision of the level three grievance evaluator. Thus, the only issue to be determined is whether DOP erred in denying Grievant's reallocation based upon its assertion that she does not meet the minimum requirements of the position. The material facts are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant has been employed by DEP as an Administrative Services Assistant III since August 1995.

2. Grievant manages the Accounts Payable Unit within the Office of Administration. Grievant reports directly to the Chief of the Office of Administration.

3. Grievant filed a grievance on November 11, 1995, seeking reclassification to an Administrative Services Manager I.

4. Grievant was found to be misclassified in a decision rendered by the level three grievance evaluator on May 23, 1996. Laidley Eli McCoy, Director of DEP, adopted the findings of the level three grievance evaluator on May 30, 1996. 5. DOP denied Grievant's reclassification based upon a determination that she did not meet the minimum qualifications for the Administrative Services Manager I position.

6. The minimum qualifications listed on the classification specification for Administrative Services Manager I are as follows:

> Training: Graduation from an accredited college or university with a degree in the area of assignment.

Substitution: Experience as described below may substitute for the training requirement on a year-for-year basis.

> Experience: Four years of full-time or equivalent part-time paid administrative or supervisory experience in the area of assignment.
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> Special Requirement: A valid West Virginia drivers license may be required.

7. There are thirteen areas of assignment attached to the classification specification for Administrative Services Manager I, including “Accounting, Auditing” and “General Supervisory”.

8. Grievant does not hold a college degree.

9. Grievant has been performing the duties of an Administrative Services Manager I for a little more than two years. Before that, Grievant worked directly for the Chief of the Office of Administration as her assistant. It is undisputed Grievant has at least four years of administrative or supervisory experience.

Discussion

Grievant and DEP argue that DOP erred in finding Grievant does not meet the minimum qualifications of the Administrative Services Manager I, because she has at least four years of administrative or supervisory experience in the area of assignment of “General Supervisory”. DOP argues that Grievant's area of assignment is “Accounting, Auditing” and she does not have at least four years of experience in that area of assignment. A position such as Administrative Services Manager I is a generic administrative title applicable to positions throughout State government. For that reason, a list of areas of assignment is attached to the position description to describe the types of areas in which a holder of that classification might be expected to be employed. The areas of assignment are an official part of the classification specification. The purpose of the areas of assignment is to allow a more specific form of selection for classifications which require special training or experience.

Max Farley, Assistant Director, Division of Personnel, Staffing Services Section, testified his section is responsible for reviewing an applicant's qualifications for a position. Normally, his section will look at the vacancy posting, when necessary, to determine the area of assignment. He testified the agency normally will indicate an area of assignment on the posting. If there is no area of assignment designated on the posting, and his section cannot determine from the posting what area of assignment would be appropriate, they will contact either the agency or the Classification and Compensation Section of DOP for advice. Mr. Farley also testified when there are one or more areas of assignment attached to a classification specification, the applicant does not have to meet all of them, but must meet any one or a combination of those areas. If the agency asks his section to rate an applicant for more than one area of assignment, they will do that. Mr. Farley testified the proper designation of an area of assignment is important in order to avoid possible manipulation of the personnel process by the agency who might wish to employ an individual who is not qualified to hold

a particular position. Mr. Farley testified that an area of assignment must be “somewhat related” to the position in question. Grievant testified she spends 80-85% of her time managing the office of Accounts Payable. The actual auditing and accounting done within that office is performed by six accounting assistants. She reviews the work process and has signature authority on documents prepared in that office. Mary Hunt, the Chief of the Office of Administration testified that Grievant reports directly to her, along with three other managers, who are classified as Administrative Services Manager IIs. She testified that the Accounts Payable division is a process-based function and they are constantly looking for ways to improve the processes, day-to-day management, and human relations. Grievant's tasks are primarily to work with the individuals on work assignments and professional improvement. Ms. Hunt testified that the manager of a division in her office must have general supervisory knowledge, and she is looking for supervisory and management skills as opposed to technical specialties in these management positions. She testified that an individual holding this position does not need to have a background in accounting or auditing to perform the duties of the job.

DOP, testifying through Lowell D. Basford, Assistant Director, Classification and Compensation, argued that the area of assignment for the subject position is Accounting, Auditing, because it is responsible for the Accounts Payable division and supervises accounting assistants. Mr. Basford testified the incumbent in that position was an accountant. However, as Mr. Basford has testified to numerous times before, it is the position, not the individual who is classified. Thus, the fact that the incumbent to the position was an accountant holds no significance when the minimum qualifications for the position do not require an accounting degree. Sandra Kee, Personnel Administrator for DEP, testified that, after Grievant won her grievance at level three, she submitted Grievant's WV-11 to DOP for processing. Although not quite clear from the testimony, it appears that someone from DOP returned the WV-11 indicating an area of assignment needed to be designated. Ms. Kee's office called the Staffing Services Section and was told by someone there that Mr. Basford had indicated the area of assignment had to be Accounting, Auditing. Thereafter, Ms. Kee forwarded the WV-11 back to Staffing Services, with a “buckslip” requesting Grievant be rated for the Accounting, Auditing area of assignment. Ms. Kee testified she did not want this to be the area of assignment, and wondered why the agency was not able to designate the area of assignment, but submitted the information as she believed was directed by DOP. Subsequently, DOP denied Grievant's

reclassification because she did not meet the minimum qualifications for the Accounting, Auditing area of assignment.

Ms. Kee testified she then wrote a letter to Robert L. Stevens, Jr., Director, DOP, on October 11, 1996, requesting Grievant be reevaluated under the General Supervisory area of assignment. Mr. Stevens replied on October 21, 1996, that Grievant would not be reevaluated because DEP had initially requested she be rated under the Accounting, Auditing area of assignment.

Mr. Basford denies DOP ever told Ms. Kee what the area of assignment had to be, and argues it was DEP who insisted the area of assignment be Accounting, Auditing. He indicated to allow DEP to change its mind now about the area of assignment would permit the agency to manipulate the process to get the person they wanted into a particular position. The evidence and testimony do not support Mr. Basford's testimony. In addition to Ms. Kee's testimony, Mr. Farley testified that, when reviewing Grievant's WV-11 andfinding there was no area of assignment indicated, his section called Mr. Basford's section and was informed that the area of assignment was to be Accounting, Auditing. This transaction would have occurred before Ms. Kee was even aware there was a problem with the processing of Grievant's reclassification. It was only after Mr. Farley's section returned the WV-11 and told Ms. Kee that DOP told them the area of assignment was Accounting, Auditing, that Ms. Kee resubmitted the WV-11 with the buckslip which designated Accounting, Auditing as the area of assignment.

Thus, it appears that Mr. Basford or someone in Mr. Basford's section did designate the area of assignment for the purposes of rating by Mr. Farley's section, before DEP ever indicated what area of assignment it wanted. Further, Mr. Basford's testimony, and his questioning of Mr. Farley at level four, indicate that he firmly believes Grievant is not qualified for the Administrative Services Manager I position, despite the level three grievance evaluator's decision. His attempt to elicit testimony from Mr. Farley that an Accounting, Auditing area of assignment would ensure the most qualified candidate was hired for the position evidences a motivation on Mr. Basford's part to try to accomplish one way what he could not otherwise accomplish.

DOP has presented no rules or regulations which would prohibit an agency from designating an area of assignment for a position vacancy, or from designating more than one area of assignment for a position vacancy. Indeed, there is nothing which would have prevented the agency from designating the area of assignment as Accounting, Auditing <u>or</u> General Supervisory at the time it

processed the paperwork for the vacancy. The fact that DEP first indicated Accounting, Auditing, at the direction of DOP, and then added GeneralSupervisory as a preferred area of assignment violates no rules or regulations, and DOP's denial of Grievant's reclassification must be found to be arbitrary and capricious.

Conclusions of Law

1. It is incumbent upon the Grievant to prove her case by a preponderance of the evidence. Hayes v. DNR, Docket No. NR-88-038 (Mar. 28, 1989).

2. Grievant has proven by a preponderance of the evidence that she meets the minimum qualifications necessary for the Administrative Services Manager I classification specification, with a General Supervisory area of assignment.

3. There is no rule, regulation, law or statute which prohibits an agency from designating the desired area of assignment for a position vacancy, or from designating more than one area of assignment of a position vacancy.

4. Grievant has proven by a preponderance of the evidence that DOP's refusal to process her reclassification from an Administrative Services Assistant III to Administrative Services Manager I was arbitrary and capricious.

Accordingly, this grievance is **GRANTED**. Respondent Division of Personnel is hereby **ORDERED** to institute the level three grievance evaluator's order to reclassify Grievant as an Administrative Services Manager I, with back pay and benefits, if any, from June 29, 1995, per the relief sought by Grievant in her grievance statement.

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 filedwithin 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: April 18, 1997