RANDY CHILDERS,

Grievant,

v. DOCKET NO. 97-17-175

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Randy Childers, challenges his non-selection for a multi-classified service personnel position, which was awarded to a less senior applicant who held only one of the classifications of the posted position. He seeks instatement to the position, along with back pay, benefits and seniority, with interest. Grievant initiated this proceeding at level one with his immediate supervisor on September 23, 1996, who was unable to grant relief. Grievant appealed to level two, where a hearing was conducted on February 27, 1997, followed by a written decision denying the grievance dated March 21, 1997. Appeal to level four was filed on April 1, 1997, where a hearing was conducted in this Grievance Board's office in Wheeling, West Virginia, on June 16, 1997. The parties' post-hearing written submissions were received by August 6, 1997. For administrative reasons, this matter was reassigned to the undersigned administrative law judge on January 7, 1998. The material facts in this matter are not in dispute and are contained in the following findings.

Findings of Fact

1. Grievant is regularly employed by the Harrison County Board of Education ("HCBOE") as a Carpenter II/Painter, and he has a 261-day contracted employment term. 2. On July 5, 1996, HCBOE posted a vacancy for a full-time Buyer/Clerk/Inventory Supervisor, and the posting specified that the contract term for the position would be 240 days.

3. Grievant took the competency test for the Clerk classification and passed it. He was also deemed by HCBOE to be qualified for the other two aspects of the multi- classification,

Buyer and Inventory Supervisor. L II Tr. at 31.

4. Grievant's seniority date as a regularly employed service personnel employee of HCBOE is July 1, 1982. He was the most senior applicant for the position. See L II, Bd. Ex. 1.

5. The successful applicant was Max Lantz, who was regularly employed as an Inventory Supervisor, with a regular seniority date of September 22, 1985.

6. Mr. Lantz was selected for the position solely because he already held one of the classifications of the multi-classified position. L II Tr. at 29 and 31.

7. When Grievant submitted a bid for the posted position, he specified on the bid sheet that he would like to retain his 261-day employment term. L IV, Resp. Ex. 1. If the position had been offered to Grievant, he would not have accepted it with a 240-day employment term. L IV, Grievant's testimony.

Discussion

In a non-disciplinary matter, Grievant bears the burden of proving all of the allegations of his complaint by a preponderance of the evidence. See W. Va. Code § 18- 29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997). Grievant argues that the Board acted improperly in giving Mr. Lantz preference for the position, simply because he already held one of the classifications of the multi-classification ofBuyer/Clerk/Inventory Supervisor. Grievant is correct in his assertion that he, not Mr. Lantz, was the most senior qualified applicant for the position. (See footnote 1)

Unfortunately for Grievant, however, he made his application for this position contingent upon retaining a 261-day employment term. Grievant made this very clear in his level four testimony, stating quite explicitly that, if offered the position, as posted, for a 240-day term, he would not have accepted. In similar cases, it has been determined that an employee's placement of such conditions on his or her application for a posted position has the effect of rendering such employee ineligible for the position and not a proper “applicant” in accordance with W. Va. Code § 18A-4-8b. Stout/Southern v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); See Nutter v. Harrison County Bd. of Educ., Docket No. 91-17-081 (Dec. 26, 1991). Therefore, such employees have no standing to contest the selection of another candidate for the position. Stout, supra; See Lyons v. Wood County Bd.

of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

With respect to this issue, Grievant has argued that the Grievance Board's decision in Clevenger v. Harrison County Bd. of Educ., Docket No. 17-86-261-3 (Apr. 10, 1987), is controlling. Grievant bases his position on that decision's Conclusion of Law 5, which states "[n]o employee, without his written consent may be relegated to any condition of employment which would reduce his benefits for which he would qualify by continuing in the same position and classification currently or subsequently held. W. Va. Code [sic], 18A-4-8." However, that decision must be distinguished. Unlike Grievant, Ms. Clevengerhad already been serving in the posted position for several months as a "temporary" substitute. Moreover, at that time, the board of education had a practice of allowing employees to perform the duties of a higher classification, then reclassifying them and allowing them to retain their prior longer contract terms. (See footnote 2) However, Ms. Clevenger was denied a request for reclassification to the new position and was forced to apply for it pursuant to posting, and was asked to agree in writing to give up her 261-day contract in order to bid on the new position. (See footnote 3) The administrative law judge in that case found that the board's action was improper, based upon the fact that Ms. Clevenger was entitled to reclassification. As a reclassified employee, Ms. Clevenger was entitled to greater benefits than she would have been as a new applicant, thus the reasoning for the conclusion of law set forth above. This is quite different from the instant case, where the posting is very clear in stating that the contract term is 240 days, and Grievant has not previously served in the position for which he is applying.

Although the Board improperly selected Mr. Lantz for the position in question, Grievant has no standing to contest that decision and is not entitled to relief in this case.

In accordance with the foregoing findings and discussion, the following conclusions of law are appropriately made.

Conclusions of Law

1. In a non-disciplinary matter, Grievant bears the burden of proving all of the allegations of his complaint by a preponderance of the evidence. See W. Va. Code § 18- 29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997).

2. Where Grievant made his bid for a posted 240-day position contingent upon retaining

his 261-day contract term, Grievant made himself ineligible for the position, and he was not a proper "applicant" in accordance with W. Va. Code § 18A-4-8b. Stout/Southern v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); See Nutter v. Harrison County Bd. of Educ., Docket No. 91-17-081 (Dec. 26, 1991).

3. Where Grievant's actions are determined to have rendered him ineligible for employment, he does not have standing to contest the selection of another individual to fill a school service personnel position. Stout, supra; See Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

Accordingly, this grievance is hereby DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Harrison County, and such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 18-29-7. 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: April 3, 1998

V. DENISE MANNING

Administrative Law Judge

Footnote: 1

Previous Grievance Board decisions have held that, unless an employee holds all of the classifications in a multi-classification, he is not entitled to preference in receiving the position. See VanOoyen v. Harrison County Bd. of Educ., Docket No. 96-17-209 (July 25, 1997); Gandee v. Mason County Bd. of Educ., Docket No. 93-26-476 (Sept. 30, 1994).

Footnote: 2

Employees were opposed to the Board's new practice, at that time, of posting new positions under shorter contract terms, so the employees refused to bid upon them and lose their 261-day contracts. Therefore, having no applicants for new positions, the Board would give the duties to existing employees and eventually reclassify them to the new position, allowing the employee to retain the 261-day employment term.

Footnote: 3

Ms. Clevenger was serving in a Custodian III position with a 261-day term, and the position for which she applied was a Custodian IV position with a shorter contract term.