**JAMES K. TOLER,**

**Grievant,**

**v.** **Docket No. 99-HHR-264**

**WEST VIRGINIA DEPARTMENT OF HEALTH AND**
**HUMAN RESOURCES/BUREAU FOR CHILDREN AND FAMILIES,**

**Respondent.**

## DECISION

James K. Toler (Grievant) is employed by the West Virginia Department of Health and Human Resources/Bureau for Children and Families Fayette County Office (DHHR). He filed this grievance on March 31, 1999, alleging that DHHR has failed to adequately compensate him for the number of employees he is required to supervise.

This grievance was denied at Level I, on March 2, 1999; and at Level II, on March 16, 1999, by persons whose names are not contained in the record of this grievance. This grievance was denied at Level III, on June 16, 1999, by Commissioner Jack B. Frazier. The parties agreed that this grievance could be decided at Level IV upon the record created at the lower levels. The parties were given until August 28, 1999, to submit proposed findings of fact and conclusions of law, and this grievance became mature for decision on that date. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

## FINDINGS OF FACT

1. Grievant is employed by DHHR in its Fayette County Office. 2. When DHHR began implementing the West Virginia Works program in October of 1997, Grievant applied for and accepted the position of Family Support Supervisor.

3. Grievant received a five percent pay increase with his new position.

4. At the time he accepted the new position, Grievant's understanding was that DHHR would assign two supervisors for every ten employees.

5. In reality, DHHR assigned one supervisor for every nine employees.

6. Grievant now supervises eleven employees.

7. DHHR is in the process of hiring a second Family Support Supervisor for its Fayette County Office.

8. Grievant's supervisory span is comparable to those of other Family Support Supervisors.

9. Grievant's duties fall squarely within the classification specification for Family Support Supervisor.

10. The ratios of supervisors to subordinates necessarily vary within DHHR, as caseloads vary from office to office.

11. The class specification for Family Support Supervisor does not specify the number of employees a Family Support Supervisor supervises.

## DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va.Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant alleges that DHHR has failed to adequately compensate him for the number of employees he is required to supervise. As relief, he seeks a ten percent pay increase.

However, Grievant presented no evidence, and called no witnesses, to show that DHHR violated any statute, rule, policy or regulation in assigning him to supervise eleven employees. See W. Va.

Code § 29-6A-2(i). Grievant also presented no statute, rule, policy or regulation that would entitle him to a ten percent pay increase.

DHHR, on the other hand, presented testimony of two witnesses and documentary evidence proving that Grievant's supervisory span is comparable to those of other Family Support Supervisors; that the duties assigned to him fall squarely within the classification specification for Family Support Supervisor; and that ratios of supervisors to subordinates necessarily vary within DHHR, as caseloads vary from office to office. Further, the class specification for Family Support Supervisor does not specify the number of employees a Family Support Supervisor supervises.

Accordingly, Grievant has failed to meet his burden of proof in this grievance, and it must be denied. Consistent with the foregoing findings and discussion, the following conclusions of law are made.

## CONCLUSIONS OF LAW

1. Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

2. Grievant failed to demonstrate that DHHR violated any statute, rule, policy or regulation in assigning him to supervise eleven employees. See W. Va. Code § 29-6A- 2(i).

3. Grievant has failed to meet his burden of proof.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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**ANDREW MAIER**

**ADMINISTRATIVE LAW JUDGE**

**Dated September 23, 1999**