

WILLIAM EXLINE,

Grievant,

v. Docket No. 00-BOT-195 [\(See footnote 1\)](#)

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

William Exline (Grievant), a Lead Campus Service Worker employed by Respondent Board of Trustees/West Virginia University (WVU), filed a grievance pursuant to W. Va. Code §§ 18-29-1, et seq., alleging that he should have been selected to fill a Supervisor/Building and Campus Services position. This grievance was denied at Level I, on or about March 9, 2000, by immediate supervisor Steve Bodkins.

An evidentiary hearing was conducted at Level II, on May 1, 2000. Grievant was represented at this hearing by Mary Linn, of the West Virginia Education Association, and WVU was represented by Mary R. Brandt, Esq. This grievance was denied at Level II, on May 5, 2000, by Scott C. Kelley, WVU's Vice President for Administration, Finance and Human Resources. The record contains no information about proceedings at Level III.

The parties agreed that this grievance could be submitted for decision at Level IV based upon the record developed at the lower levels. The parties were given until June 13, 2000, to submit proposed findings of fact and conclusions of law, both did so, and this grievance became mature for decision on that date. [\(See footnote 2\)](#)

The following Findings of Fact pertinent to resolution of this grievance have been determined by a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievant is employed by WVU as a Lead Campus Service Worker.
2. On December 2, 1999, WVU posted a job vacancy for a Supervisor/Building and Campus Services.
3. The position required, among other qualifications, a high school diploma, [\(See footnote 3\)](#) the ability to supervise the daily activities of all Campus Service Workers, the ability to coordinate and schedule preventive maintenance and repairs, the ability to order, secure, distribute, and submit requisitions for supplies, a working knowledge of E-mail, Lotus 123, Microsoft Excell, Word Perfect,

Microsoft Word, Star, ACM, and Punch Manager programs, experience with the automated budget system, and the ability to become proficient in CTR [\(See footnote 4\)](#) programs.

4. There were five qualified, nonexempt classified employee applicants for the position.
5. Eight interviewers assigned scores of one to ten to each applicant for each of thirteen factors. Accordingly, a perfect score would be 1,040.
6. The thirteen factors were supervisory experience and knowledge, administrative experience, budget management experience, leadership ability, knowledge of custodial operations and techniques, security and key control, computer knowledge and ability, ability to interact with peer staff, ability to interact with students, knowledge and understanding of the position description, appearance, customer relations, and knowledge of payroll and CTR functions.
7. The successful applicant, Brenda White (White) had the highest score: 856.
8. Grievant had the lowest score: 628.
9. White had greater supervisory, budgetary, and computer skills than Grievant.

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); Steadman v. Securities and Exchange Comm'n, 450 U.S. 91 (1981); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. 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 contends that he was the most qualified applicant for the position of Supervisor/Building and Campus Services. WVU responds that the successful applicant, White, was ranked as the best candidate and had superior supervisory, budgetary, and computer skills, and that Grievant ranked last of the five candidates for the position.

"If more than one qualified, nonexempt classified employee applies [for a position], the best-qualified nonexempt classified employee shall be awarded the position." W. Va. Code § 18B-7-

1(d). An agency's decision by appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong. Rumer v. BOT/Marshall Univ., Docket No. 95-BOT-064 (May 31, 1995); Bourgeois v. BOT/Marshall Univ., Docket No. 93-BOT-268A (Mar. 29, 1994); Sloane v. W. Va. Univ., Docket No. BOR-88-108 (Sept. 30, 1988).

In applying the "arbitrary and capricious" standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W.Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, *supra* at 286, Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96- 20-362 (Jan. 30, 1997).

A preponderance of the evidence in this grievance shows that White had greater supervisory, budgetary, and computer skills than Grievant, and was properly ranked as the best candidate after a fair selection process. Grievant had never held a Supervisor's position; had never hired, fired, or disciplined employees; had no experience with the CRT system; had much less experience with the required computer programs than White, and no experience with several of them; had less experience ordering, securing, distributing, and submitting requisitions for supplies; had no experience with the automated budget system; and was ranked fifth of the five candidates for the position. It cannot be said that relevant factors were not considered by WVU in reaching its decision, or that there was a clear error of judgment. Bowman, *supra*. Grievant was not the best-qualified employee for the position. W. Va. Code § 18B-7-1(d).

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. In a non-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); Steadman v. Securities and Exchange Comm'n, 450 U.S. 91 (1981);

Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. 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.

3. “If more than one qualified, nonexempt classified employee applies [for a position], the best-qualified nonexempt classified employee shall be awarded the position.” W. Va. Code § 18B-7-1(d).

4. An agency's decision by appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong. Rumer v. BOT/Marshall Univ., Docket No. 95-BOT-064 (May 31, 1995); Bourgeois v. BOT/Marshall Univ., Docket No. 93-BOT-268A (Mar. 29, 1994); Sloane v. W. Va. Univ., Docket No. BOR-88-108 (Sept. 30, 1988).

5. In applying the “arbitrary and capricious” standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W.Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra at 286, Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96- 20-362 (Jan. 30, 1997).

6. Grievant failed to establish, by a preponderance of the evidence, either that he was the most qualified candidate for the position of Supervisor/Building and Campus Services, or that WVU's selection of the successful candidate was arbitrary and capricious or clearly wrong. 7. Grievant failed to establish, by a preponderance of the evidence, a violation of W. Va. Code § 18B-7-1(d).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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.

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.

ANDREW MAIER
ADMINISTRATIVE LAW JUDGE

Dated July 27, 2000

[Footnote: 1](#)

This is the corrected docket number for this grievance.

[Footnote: 2](#)

Thereafter, this grievance was reassigned, for administrative reasons, to the undersigned Administrative Law Judge on July 20, 2000.

[Footnote: 3](#)

Grievant's resume does not reflect a high school diploma.

[Footnote: 4](#)

This computer system apparently records payroll, leave, and compensation time at WVU.