REBA CROUCH,

Grievant,

v. Docket No. 01-06-518

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Reba Crouch, filed this grievance against her employer, the Cabell County Board of Education ("CCBOE") on June 16, 2001. The Statement of Grievance alleges she was the most senior, regularly employed applicant for a summer position, and she did not receive it. Relief Sought was summer seniority for the position as of 2001. (See footnote 1)

This grievance was denied at all lower levels. Grievant appealed to Level IV on October 10, 2001, and the parties agreed to submit this case on the record developed below. This case became mature for decision on December 17, 2001, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 2)

Issues and Arguments

Grievant, a regular employee, alleges she bid on a posted summer position in which she had substituted the prior summer. (See footnote 3) **She asserts she had priority over the substitute employee who was selected for the position. Respondent maintains Grievant did not apply for the position, and her bid was never placed in the locked application box located in the Central Office, as is required by the application process. Respondent asserts either: 1) Grievant was confused about submitting her application; or 2) Grievant did not believe she had to apply for the position, as she substituted in the position the prior summer, and after the position was awarded to someone else, she made up the story about the lost application.**

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been regularly employed as a Cook by CCBOE for two and one half years. (See footnote 4)

2. On May 3, 2001, CCBOE posted two-week long cook positions. One was half-time and the other was full-time.

3. Grievant had substituted briefly in one or both of these positions the previous summer.

4. CCBOE requires employees to submit all bids to a locked box in the Central Office.

5. When the bids for these cook positions were opened, Grievant's bid was not present.

6. A thorough search of multiple files and the surrounding area did not reveal Grievant's application. 7. Within the past five years, there had not been a complaint of CCBOE ever losing a bid before this grievance was filed.

8. The full-time position was awarded to a cook with greater seniority than Grievant, and this position is not at issue in this grievance.

9. The half-time position was awarded to a substitute employee.

10. While Grievant was not seen as untruthful, her testimony was confusing and inconsistent.

11. No one saw Grievant place her bid in the locked box.

Discussion

___As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party

bearing the burden has not met its burden. Id.

The issue here is straightforward: Grievant asserts she submitted a bid sheet for the position, and CCBOE asserts she did not because it did not receive one. This is an issue that has been addressed in the past by the Grievance Board. The Grievance Board hasdealt with the problem of employees not being considered for positions for which they claim they applied on several different occasions, most recently in Sickles v. Monongalia County Board of Education, Docket No. 96-30-207 (October 30, 1996). See Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992); Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990); Delaney v. Harrison County Bd. of Educ., Docket No. 89-17-352 (Sept. 25, 1989). Both Merritt and Mills involved cases in which the application or bid sheet was mailed, and these decisions relied upon Delaney, supra, the first Grievance Board case to discuss this issue.

In Delaney, the school board awarded a principal position to the grievant, and then decided to repost the position because another "applicant," Mr. Guido, contended that he hand-delivered a bid sheet to the board's central office for multiple positions. Harrison County's certification coordinator testified she recalled receiving the envelope and placing it in a file for principalship bids, but did not later find a bid for the position at issue. Mr. Guido did not appear at the hearing to give testimony or be cross-examined. The information on his actions was offered by other witnesses and exhibits. The Administrative Law Judge, in granting the grievance and precluding the reposting of the position, made the following finding:

> **Ben L. Guido, also on administrative transfer, claimed to have submitted a bid sheet for the Lumberport post. Respondent at no time has been in possession of Mr. Guido's alleged application for this job.**

Id. at 4.

In Mills, the grievant complained she had filed a letter of application for the position of Home Economics Teacher with the board, and then was never considered for the position. Her grievance stated, "I have been informed and allege that the letter in question,mailed on July 26, 1990 may have been lost or misplaced in the office of the Doddridge County Board of Education." In Mills, the grievant testified she sent the application by regular United States Mail, but did not certify or register it. The Administrative Law Judge, quoting Delaney, held:

> **Generally speaking, it is the responsibility of a job applicant "to ensure that his**

> interest in a given position is clearly made known and his application therefore adequately completed."

Mills at 9.

In Merritt, the grievant claimed her application for an extended summer secretarial position was never considered, and was either lost or misplaced by the board. She had mailed the application via the school's intraschool mail system. In denying the grievance, the Administrative Law Judge held:

> It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application but also to ensure that the application is submitted to the proper personnel in charge of reviewing the application. See, Delaney v. Harrison County Board of Education, Docket No. 89-17-352 (Sept. 25, 1989).

Merritt at 8.

In Sickles, supra, the grievant testified she placed her bid sheets into a wall file holder the Monongalia County Board of Education maintained in its board office for that purpose. Even though the grievant saw personnel in the office, she testified that no one saw her deposit the bid sheet. The grievant also failed to have her bid sheets "stamped in" by office personnel. No corroborative evidence was offered. The administrative law judge found the grievant did not offer sufficient evidence to prove her case by a preponderance of the evidence, and did not demonstrate the respondent acted improperly,or arbitrarily or capriciously. He noted there were no allegations of favoritism or preferential treatment toward the successful applicant. Accordingly, the grievance was denied.

This case is similar to Sickles. Grievant asserts she submitted an application; Respondent maintains it was never received. No one saw Grievant submit her bid, and although she submitted a copy of her bid sheet at Level II, this sheet was not submitted earlier in the informal grievance process or at Level I. Grievant did not check to see if her application had been received, did not present any evidence to support her applying for the position, and did not present any evidence that there was any preferential treatment of the successful applicant or animosity toward her. Additionally, Grievant's testimony was confusing, inconsistent, and difficult to follow. It may simply be Grievant thought she turned in a bid sheet when she said she did, but did not.

In keeping with the previous rulings of this Grievance Board, the undersigned

Administrative Law Judge finds Grievant has not met her burden of proof, and has not demonstrated she adequately finalized her application for employment with the CCBOE, nor did she prove by a preponderance of the evidence that Respondent acted in any manner inconsistent with her rights to apply for the vacant summer employment position. Delaney, supra; Mills, supra; Merritt, supra; Sickles, supra.

As for Grievant's claim she is entitled to the position because she substituted briefly in the position the prior summer, this claim is without merit. Pursuant to W. Va. Code § 18- 5-39(f), only the worker who was employed in the position the prior summer is entitled to return to the position if it is posted in subsequent years.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. 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 § 4.21 (2000); Toney v. Lincoln County Bd. of Educ., Docket No. 99-22-046 (Apr. 23, 1999); Bowen v. Kanawha County Bd. of Educ., Docket No. 99-20-039 (Mar. 30, 1999); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application but also to ensure that the application is submitted to the proper person in charge of reviewing the application. See, Sickles v. Monongalia County Bd. of Educ., Docket No. 96-30-207 (Oct. 30, 1996); Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992); Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990); Delaney v. Harrison County Bd. of Educ., Docket No. 89-17-352 (Sept. 25, 1989).

3. Grievant failed to offer sufficient evidence to prove by a preponderance of the evidence that she should prevail in this grievance.

4. Grievant did not adequately finalize her application for employment with CCBOE, nor did she prove by a preponderance of the evidence Respondent acted in anymanner inconsistent with her rights to apply for the vacant summer employment position. Delaney, supra.

5. Grievant's brief substitution in the position the prior summer did not entitle her placement into the position the following summer. W. Va. Code § 18-5-39.

Accordingly, the grievance is DENIED.

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

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: January 25, 2002

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

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: January 25 , 2002

Footnote: 1

Because Grievant worked during the summer, she was able to mitigate her possible damages and seeks no monetary compensation.

Footnote: 2

Grievant was represented by Attorney John Roush from the West Virginia School Service Personnel Association, and Respondent was represented by Attorney Howard Seufer from Bowles Rice McDavid Graff & Love.

Footnote: 3

Grievant noted there were other positions listed on her bid sheet, but those do not appear to be at issue as they were not raised during the lower level proceedings.

Footnote: 4

Grievant testified she had been a regular employee for four years, but this information is incorrect based on the seniority records submitted by Grievant.