THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

STEPHANIE TERRY,

Grievant,

v. **Docket No. 2012-0641-MerED**

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Stephanie Terry, filed this grievance against her employer, Mercer County Board of Education, dated December 19, 2011, stating as follows: "Grievant applied for a position that was first posted as Secretary III, then reposted as Accountant III. Grievant contends that she is qualified for the Secretary III position already, but was denied the opportunity to take the Accountant competency test. Grievant contends the employment of an applicant from outside the system violated W. Va. Code 18A-4-8b, 18A-4-8e & 18A-4-8g." As relief sought, "Grievant seeks the opportunity to take the Accountant competency test and, if she passes it, to be instated in the Accountant III position with compensation for all lost wages and benefits retroactive to January 9, 2012."

A Level One hearing was held on December 27, 2011, and denied by decision dated January 13, 2012. A Level Two mediation was conducted on June 13, 2012. The Level Three appeal was perfected on June 26, 2012. In lieu of an evidentiary hearing, the parties agreed to submit this matter for a decision at Level Three based upon the record developed below. This matter became mature for consideration on December 10, 2012, upon the receipt of the last of the parties' proposed Findings of Fact and

Conclusions of Law. Grievant appeared by her representative, John Everett Roush, Esq., WVSSPA. Respondent appeared by its counsel, Howard E. Seufer, Jr., Bowles Rice, LLP.

Synopsis

Respondent posted an opening for an Accountant III position for its central office. In addition to passing the state Accountant competency test, Respondent added the requirement of "six hours of college courses in Principles of Accounting or job related experience" to the minimum qualifications for the position. Grievant, who was already employed by Respondent, applied for an Accountant III position. There were six applicants for the position. Someone in Respondent's personnel office reviewed the applications and determined that only four of the applicants met the minimum qualifications. Grievant was not one of them. Respondent interviewed only the four deemed qualified. None of the four were employed by Respondent at the time. From the four applicants interviewed, Respondent determined the person most qualified to fill the position. Respondent then gave only that one applicant the state Accountant competency test. That applicant passed the test and was awarded the position.

Grievant asserts that she was qualified for the position and should have been selected over the successful applicant. Respondent denies Grievant's claims and argues that its selection was proper. Grievant failed to meet her burden by proving her claims by a preponderance of the evidence. Therefore, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Stephanie Terry is employed as a Cook by Respondent Mercer County Board of Education.

2. On or about September 16, 2011, Respondent posted a position for a Secretary III at Respondent's central office, for which Grievant applied.[1]

3. Respondent rescinded the posting for the Secretary III posting.

4. Respondent reposted the vacant position as an Accountant III for the Central Office on October 21, 2011. In the posting, the minimum qualifications were listed as follows: "[a] high school diploma or G.E.D. and must successfully pass the state required test for Accountant. Successful applicant must have successful experience with Excel/Word and must demonstrate an understanding and knowledge of accounts payable activities. Successful applicant is to have had a minimum of six (6) hours of college courses in Principles of Accounting or job related experience."

5. Respondent expanded the job qualifications for the position of Accountant III as defined by the West Virginia Code by adding the requirement of six hours of college courses in Principles of Accounting or job related experience to the minimum.

6. The reason for Respondent expanding the job qualifications of the Accountant III position was because, in the past, when there had been no requirement of college courses in Principles of Accounting or job related experience, the person holding the position had made accounting mistakes that cost the Respondent money and caused others additional work to correct the mistakes. Further, this caused Treasurer Joy Hubbard to have to double-check the person's work in an effort to try to

[1] Grievant had already taken and passed the secretary competency test.

prevent more mistakes.

7. Six individuals, including Grievant, applied for the Accountant III position. Only two of the six were already employed by Respondent in other capacities.[2]

8. Despite the fact that none of the applicants had taken the Accountant competency test, someone from Respondent's personnel department reviewed the applications received and determined that only four of the applicants met the minimum job qualifications.

9. Grievant was not one of the four individuals deemed qualified for the position.[3] The four individuals deemed qualified were not employed by Respondent.

10. Treasurer Hubbard interviewed the four individuals deemed qualified for the position and selected one of them, Sara Boothe, as the top candidate for the Accountant III position.[4] After which, Ms. Boothe was given the opportunity to take the state Accountant competency test. Ms. Boothe took and passed the test. Thereafter, Ms. Boothe was hired for the Accountant III position.[5]

11. Sara Boothe was the only applicant for the position who was given the opportunity to take the state Accountant competency test.

12. Sara Boothe holds a Bachelor of Science Degree in Business Administration, with an Accounting Concentration. Ms. Booth also has job experience in the field, having served as Controller for the Flowers Baking Company and having

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[2] *See*, level one testimony of Joy Hubbard.

[3] *See*, level one testimony of Joy Hubbard.

[4] The record is unclear as to whether anyone other than Ms. Hubbard conducted, or participated, in the interviews with the applicants.

[5] See, level one testimony of Joy Hubbard.

worked in Accounts Payable for Local Parts Distributor.

13. Grievant attended college, but does not have a degree. Further, Grievant did not take any accounting classes in college. Grievant has experience using Word and Excel.

14. Grievant's prior work history includes working at Wal-Mart where she operated a cash register and worked at the service desk. While employed there, Grievant gained experience counting cash from registers to identify overages and shortages, receiving receipts from vendors, performing hourly audits of the safe, made bank deposits, dealt with returned checks received, and issued money orders and money grams. Grievant did not work with accounts payable, payroll, or employee benefits.

15. Grievant also worked at Applebee's restaurant operating a cash register, waiting tables, and working as a prep cook. While employed there, Grievant also used Excel for inventory purposes.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "A preponderance of the evidence is evidence 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." *Petry v. Kanawha County Bd. of Educ.,* Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that she should have been selected for the position of Accountant III as she was qualified for the position, and was already an employee of the Respondent Board. She further argues that although she does not have the required six college hours of Principles of Accounting, her prior work experience satisfies the minimum qualifications. Respondent disagrees, arguing that Grievant did not meet the minimum qualifications of the Accountant III position. Respondent asserts that Grievant's past work experience does not satisfy the job-related experience requirement as Grievant has no experience in accounting or accounts payable.

"County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.,* 177 W. Va. 145, 351 S.E.2d 58 (1986). "In the exercise of their discretion, school boards may consider job-related factors in addition to the specific statutory qualifications in selecting an applicant to fill a posted vacancy." *Randolph County Bd. of Educ. v. Scott,* 217 W. Va. 128, 617 S.E.2d 478 (2005). Further, county boards of education may expand the statutorily-required qualifications for educational positions that are set forth in West Virginia Code § 18A-4-8. *See Id. See also Hancock County*

Bd. of Educ. v. Hawken, 209 W. Va. 259, 546 S.E.2d 258 (1999); *Ohio County Bd. of Educ. v. Hopkins,* 193 W.Va. 600, 457 S.E.2d 537 (1995).

The West Virginia Code defines "Accountant III" as "a person employed in the county board office to manage and supervise accounts payable, payroll procedures or both. . . ." W. VA. CODE § 18A-4-8(i)(6). Respondent expanded the qualifications for this position beyond passing the competency test by requiring six hours of college courses in Principles of Accounting or job-related experience. Respondent expanded the minimum qualifications for the position because when the job was previously posted and filled as a secretarial position, without the requirement of any accounting job qualifications, the person holding the job made mistakes that cost the Respondent money, and caused other employees extra work to correct those mistakes. Therefore, Respondent's decision to require the additional job qualifications was not arbitrary or capricious, and those additional qualifications did not conflict with the position description set forth in the Code.

It is undisputed that Grievant has not taken six hours of college courses in Accounting. In fact, Grievant has taken no accounting courses. The dispute lies in whether Grievant's past work experience meets the qualification of "job-related experience" in accounting. Upon review of the evidence presented, the undersigned finds that it does not. Grievant has no experience in dealing with accounts payable or payroll which is listed in the definition of "Accountant III." Further, Grievant has no experience dealing with employee benefits, financial statements, or writing/working with checks. Grievant has had experience in dealing with cash, checking cash register drawers for overages and shortages, and she received invoices at times while working

at the Wal-Mart service desk. However, such is not accounting experience.

Lastly, the Respondent erred by failing to give Grievant the opportunity to take the state Accountant competency test as provided for in West Virginia Code § 18A-4-8e. However, in this situation, as Grievant did not meet the expanded minimum qualifications for the Accountant III position, such is harmless error. Accordingly, the same will not be addressed further herein.

The following Conclusions of Law support the decision reached:

Conclusions of Law

1. 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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990).

2. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.,* 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. "In the exercise of their discretion, school boards may consider job-related factors in addition to the specific statutory qualifications in selecting an applicant to fill a posted vacancy." *Randolph County Bd. of Educ. v. Scott,* 217 W. Va. 128, 617 S.E.2d 478 (2005).

4. County boards of education may expand the statutorily-required qualifications for educational positions that are set forth in West Virginia Code § 18A-4-

8. *Randolph County Bd. of Educ. v. Scott,* 217 W. Va. 128, 617 S.E.2d 478 (2005); *Hancock County Bd. of Educ. v. Hawken,* 209 W. Va. 259, 546 S.E.2d 258 (1999); *Ohio County Bd. of Educ. v. Hopkins,* 193 W.Va. 600, 457 S.E.2d 537 (1995).

5. Grievant has failed to meet her burden of proving her claims by a preponderance of the evidence.

Accordingly, this Grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

DATE: June 25, 2013.

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Carrie H. LeFevre
Administrative Law Judge