THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JOYCE L. UNDERWOOD,
Grievant,

v. **Docket No. 2012-0237-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILDREN AND FAMILIES,
Respondent.

DECISION

Grievant, Joyce L. Underwood, is employed by Respondent, Department of Health and Human Resources ("DHHR"), Bureau for Children and Families ("BCF"). On August 29, 2011, Grievant filed this grievance against Respondent for non-selection for a Community Services Manager ("CSM") position. For relief, Grievant seeks retroactive instatement into the position.

Following the June 22, 2012 level one hearing, a level one decision was rendered on July 3, 2012, denying the grievance. Grievant appealed to level two on July 5, 2012. Grievant perfected the appeal to level three of the grievance process on December 26, 2012. A level three hearing was held on June 12, 2013, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant was represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent was represented by counsel, B. Allen Campbell, Supervising Senior Assistant Attorney General. This matter became mature for decision on July 15, 2013, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was not selected for a Community Services Manager position, despite being more qualified by all objective criteria in every way than the successful candidate. There were multiple errors in the selection process and Respondent could not explain how the successful candidate was the best fit for the job. The selection decision was arbitrary and capricious. Grievant was also able to prove by a preponderance of the evidence that she was the most qualified applicant overall. Accordingly, the grievance is granted.

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

Findings of Fact

1. Grievant is employed by the DHHR, BCF as a Family Support Supervisor.

2. Five candidates, including Grievant, applied for a vacant Community Services Manager ("CSM") position. Grievant was not selected for the position.

3. The CSM position is described as:

> Under general direction, performs complex administrative and professional work at the advanced level by planning, implementing, directing and reviewing programs, activities, and operations within a small community services district. Has related program management responsibilities over a specified local service area of the state. Provides leadership in the development, implementation and administration of community-based, family-centered integrated services delivery system. Serves in a liaison role with state and local agencies, advocacy groups, educational institutions, clients and service providers. Performs related duties as required.[1]

[1] Level One Record, Grievant's Exhibit #4.

4. Selection of employees within the DHHR is governed by its Employee Selection Policy 2106, which states in part:

> When selecting one employee from among several applicants, demonstrated ability, work history, references, education and the interview should be considered. The ultimate selection decision should be based upon the interviewer's judgment as to which candidate would best do the job. Hiring decisions should be based on an individual's qualifications for the essential duties of the position.

5. The policy also requires that an interview team be formed to review candidates and provides suggested forms to use in the selection process.

6. Pursuant to the policy, an interview team was formed to make a selection, consisting of BCF Deputy Commissioner, Ron Anderson[2], BCF Regional Director, Tanny O'Connell, and CSM, Cree LeMasters. The team selected a list of questions for the candidates' interviews, asked all the candidates the same questions, and scored the candidates independently. The interview team used the recommended DHHR forms to score the interviews and compare the candidates, with the exception of Mr. Anderson who failed to use one of the three forms.

7. In interviewing the candidates, each team member took notes for each question and then assigned a numerical rating to each answer. In addition, each team member also completed the OPS-13, Applicant Interview Rating, which rated each candidate on seven factors: Oral Expression; Intelligence, Reasoning Process; Judgment, Objectivity; Tact, Sensitivity; Appearance; Poise, Confidence; and Leadership Potential. These two scores were combined for a total numerical score for the interview.

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[2] At the time of the level three hearing, Mr. Anderson had retired and neither party subpoenaed him to testify.

8. All three interviewers rated Grievant as either the least preferred or tied for the least preferred candidate based on the interview. There was some disagreement on the Applicant Interview Rating form as to Grievant's performance in the interview. Mr. Anderson rated her as below average in "Tact, Sensitivity," and average in everything else. Ms. O'Connell rated her as below average in "Tact, Sensitivity," "Oral Expression," and "Poise, Confidence." She explained her ratings by stating Grievant appeared angry, agitated and curt.[3] However, Ms. LeMasters rated Grievant as above average in "Tact, Sensitivity" and three other categories.

9. The successful candidate was rated number one in the interview by both Ms. O'Connell and Ms. LeMasters. He was rated number three by Mr. Anderson. Ms. O'Connell's interview scoring is as follows: successful candidate ninety-three, candidate #2 ninety-one, candidate #3 eighty-eight, candidate #5 seventy-nine, and Grievant seventy-eight. Ms. LeMasters' interview scoring is as follows: successful candidate ninety-two, candidate #5 ninety-one, Grievant eighty-three, and candidate #2 and #3 seventy-nine. Mr. Anderson's interview scoring is as follows: candidate #5 seventy-three, candidate #3 sixty-five, successful candidate sixty-four, and candidate #2 and Grievant sixty-two.

10. Ms. O'Connell and Ms. LeMasters also completed an OPS-13A, Candidate Comparison Chart, and rated each candidate in three of six available categories: "Interview", "Education", and "Past Experience, Demonstrated Ability, Agency Tenure." The "Interview" rating was the total points received on the two interview forms for each candidate, with scores ranging between seventy-four and

[3] Level One Transcript.

ninety-three points. For “Education,” each candidate was scored between one and five points, with five a Masters in Social Work, four a Bachelor’s in Social Work or a related Masters, and three a related Bachelor of Arts. No candidate was scored less than a three. For “Past Experience, Demonstrated Ability, Agency Tenure,” each candidate received between five and two points. It appears that the points for this category were assigned solely on years of tenure with the agency. The final scores assigned to the candidates by Ms. O’Connell and Ms. LeMasters reflected the total points awarded in these three categories. The vast majority of the total points were in the “Interview” category, with only ten points available for the other two categories combined. Mr. Anderson did not complete the OPS-13A, so his scoring of the candidates appears to be based on the interview alone.

11. On the OPS-13A, Grievant was ranked as the preferred candidate with five points on “Past Experience, Demonstrated Ability, Agency Tenure,” and tied with Candidate #3 as the preferred candidate on “Education” with four points. The successful candidate tied for next preferred candidate in “Education” with Candidate #2 and #5 with three points and in “Past Experience, Demonstrated Ability, Agency Tenure,” with Candidate #2 with four points.

12. Grievant had worked for DHHR for twenty-six years. Grievant holds a Regent’s Bachelor of Arts and a Masters in Legal Studies. She had been a Family Support Supervisor for seven years. Prior to serving as a supervisor, she was a Family Support Specialist for five years. She also served as an Economic Service Worker for eleven years, and as a Clerk for several months. Prior to her employment with the DHHR she had nine years of supervisory experience as the owner/manager of a

trucking company and retail store. She had previously served as back-up to a previous CSM on a rotating basis for six years. The team Grievant supervised received state-wide recognition for performance.

13. The successful candidate had worked for DHHR for thirteen years. He holds a Bachelor of Science in Business Administration. He had been an Economic Service Supervisor for three years. Prior to serving as a supervisor, he was an Economic Service Worker for ten years. Prior to his employment with the DHHR, he had two and one half years of supervisory experience at a health club and an auto parts manufacturer. He had five years of part-time experience as a craftsworker with the Department of Highways. At the time of the interviews, he was serving as back-up to the interim CSM, Ms. LeMasters, and had served in that role for one and one half years. The team the successful candidate supervised had the highest error rate in the state for a good portion of his tenure as supervisor.[4]

14. Candidate #2 had worked for DHHR for thirteen years. He/she holds a Bachelor of Science in Psychology. Candidate #2 had been a Child Protective Services Supervisor for ten years, and prior to serving as a supervisor, was a Child Protective Services Worker for three years.[5]

15. Candidate #3 had worked for DHHR for nine years. He/she holds a Bachelor of Science in Education and a Masters in Counseling. He/she had been a

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[4] Grievant's level three testimony, which was not disputed by Respondent.

[5] Candidate #2's application in the record was missing the pages for his/her experience. The experience listed in this Finding of Fact was based on review of the Candidate Comparison Chart and the interviewers' notes from the interview. Given Candidate #2's birthdate of 1973, college attendance from 1993 to 1997, and commencement of employment with the DHHR in 1998, it is very unlikely he/she had any other relevant experience not listed in the Finding of Fact.

Child Protective Services Supervisor for six years. Prior to serving as a supervisor, he/she was a Child Protective Services Worker for three years. Prior to his/her employment with the DHHR, he/she had been employed as a behavioral therapist for several years, and had been employed in various roles in the public school system in Ohio for thirty-one years. Although his/her application listed that he/she did supervise employees in the public school system, the application lumps all that experience in one entry and does not specify in what role or for how long he/she had supervisory experience.

16. Candidate #5 had worked for DHHR for eleven years. He/she holds a Bachelor of Science in Public Service Administration. He/she had been employed as a Health and Human Resources Specialist, Senior for the central office of the DHHR for three years. She had also served as a Social Service Worker II for four years and as a Child Protective Service Worker for four years. As a Child Protective Service Worker he/she had served as a back-up to the Child Protective Service Supervisor for one year. Prior to employment with the DHHR, he/she had one and one half years of supervisory experience as the Social Service Director for a long term care facility and as a Crew Supervisor for the Division of Highways.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

In a selection case, the grievance procedure is not intended to be a "super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.,* Docket No. 93-RS-489 (July 29, 1994). The Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Skeens-Mihaliak v. Div. of Rehab. Serv*., Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault v. Div. of Rehab. Serv.,* Docket No. 93-RS-489 (July 29, 1994).

The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.,* 210 W. Va. 105, 556 S.E.2d 72 (2001) (*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Resources*, Docket No. 93-HHR-322

(June 27, 1997); *Blake v. Kanawha County Bd. of Educ*., Docket No. 01-20-470 (Oct. 29, 2001).

Grievant argues Respondent's selection was arbitrary and capricious in that the interview committee ignored verifiable factors and placed inordinate weight on a subjective interview process in violation of the Respondent's policy. The section Grievant relies upon within DHHR Policy Memorandum 2106 is:

> The chart in the OPS-13, Applicant Interview Rating . . . should be utilized as a tool in the process of selecting a candidate; but it is not necessarily the deciding factor. Where appropriate, different factors can be weighed on the needs the job entails. Such facts and weights must be determined prior to the interview and applied consistently to all applicants. An applicant's demonstrated skills and abilities might make them the best candidate for the job, despite the fact that they did not have the best interview or the most education. **Significant factors in the employment decision should be documented**. (*emphasis in original*).
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> When selecting one employee from among several applicants, demonstrated ability, work history, references, education and the interview should be considered. The ultimate selection decision should be based upon the interviewer's judgment as to which candidate would best do the job. Hiring decisions should be based on an individual's qualification for the essential duties of the position.

Respondent asserts that the selection process was not arbitrary and capricious, that Grievant was simply not the "best fit" for the position, and that the "best fit" is not necessarily the most qualified applicant.

The record clearly shows that Grievant was more qualified than the successful applicant in every area to be considered under Respondent's policy, with the exception of the interview. Grievant held a master's degree compared to the successful candidate's bachelor's degree. Grievant had been employed with the agency for

twenty-six years compared to the successful candidate's thirteen years. Grievant had sixteen years of total supervisory experience, with seven of those years in the agency, compared to the successful candidate's five and one half total years of supervisory experience, with only three of those years in the agency. The team Grievant supervised had been recognized for its performance by the state, while the successful candidate's team had the highest error rate in the state. Grievant had served as a back-up to the previous CSM for six years, while the successful candidate had served as back-up for only a year and a half. Grievant had served in two of the relevant sections within the BCF, while the successful candidate had served in only one.

The record in this case reveals that there were multiple irregularities in the selection process. First, the scoring of the Candidate Comparison Chart gave inordinate weight to the interview. There were one hundred twenty points available in the interview category and only ten points available for the "Education" and "Past Experience, Demonstrated Ability, Agency Tenure" categories combined. Two other relevant categories, "Leadership or Growth Potential, Supervisory Time" and "Concerns w/or Limitations of Candidate" were not scored at all. Therefore, over ninety-two percent of the score determining hiring was dependent on the interview alone.

Second, Mr. Anderson did not complete the recommended comparison form that gave points for considerations other than the interview. His ranking was based only on the two forms relating to the interview. He, therefore, very clearly made his decision based solely on the interviews and ignored those other factors that by policy were required to be considered. If Mr. Anderson had completed the Candidate Comparison

Chart, Grievant would actually have been in a tie for second in his rankings, although Candidate #5 would still have been his significantly-preferred candidate.

Third, while Grievant was ranked as least preferred, or tied as least preferred in the interview, the interview rankings were not consistent. The candidate Mr. Anderson ranked as the best interview, Ms. O'Connell ranked last. Similarly, Mr. Anderson rated the successful candidate's interview as average, ranking him third, in contrast to the well-above-average performance on the interview indicated by Ms. O'Connell and Ms. LeMasters. This indicates that there may not have been a meeting of the minds of the interview committee as to what qualities or answers they were looking for in the interview. A particularly important example is Grievant's score on "tact and sensitivity." Both Ms. O'Connell and Mr. Anderson rated Grievant a two out of five for that category. Ms. O'Connell then testified that was part of why she rated Grievant so poorly on the interview. However, Ms. LeMasters rated Grievant a four out of five for tact and sensitivity. While it is reasonable for selection committee members to disagree, such diametrical opposition indicates a flaw in the process or an elevation of mere personal preference over a true evaluation of each candidate's qualification for the essential duties of the position.

Indeed, in testimony and argument, Respondent repeatedly stated that hiring decisions are to be based on the interviewer's judgment as to who would be the best fit. This posture ignores the rest of the paragraph of Respondent's policy. While the policy does state that "[t]he ultimate selection decision should be based upon the interviewer's judgment as to which candidate would best do the job," it also states that in making that determination the committee must consider "demonstrated ability, work history,

references, education and the interview," and that "[h]iring decisions should be based on an individual's qualification for the essential duties of the position." Respondent appears to have relied on only one of the three prongs of the policy in making this selection decision almost solely on the interview. Respondent asserts that "demonstrated ability, work history, references, education and the interview" were all considered, but neither the testimony nor the documentation fully supports that assertion. There is no indication that demonstrated ability or work history were considered at all based on the scoring mechanism and the limited explanations offered in testimony. It does appear that Grievant's performance in the interview was somewhat lacking, however, Respondent's policy specifically states "[a]n applicant's demonstrated skills and abilities might make them the best candidate for the job, despite the fact that they did not have the best interview or the most education."

Last, neither Ms. O'Connell nor Ms. LeMasters could clearly articulate why the successful candidate was the best fit for the CSM position, and Mr. Anderson did not believe the successful candidate was the best fit at all. "There is no doubt that it is permissible to base a selection decision on a determination that a particular applicant would be the 'best fit' for the position in question. However, the individuals making such a determination should be able to explain how they came to the conclusion that the successful applicant was, indeed, the best fit." *Spears v. Dep't of Health & Human Res.,* Docket No. 04-HHR-284 (July 27, 2005). Ms. LeMasters' testimony, particularly, articulated no real answer as to why the successful candidate was the best fit. Her answers were completely circular in that she simply repeated that the successful candidate scored higher on the interview without explaining in any way why he scored

higher, or how he would better perform the essential duties of the position. Ms. O'Connell testified that the successful candidate was chosen because the interview weighed heavily and he scored best. Ms. O'Connell's testimony did not explain how the successful candidate was a better fit or more qualified for the essential duties of the position than Grievant given her greater level of education, more years of supervisory experience and experience with the BCF, and her service in more areas relevant to the position. In fact, there was very little discussion of the essential elements of the position at all. Mr. Anderson, meanwhile, did not agree that the successful candidate was the best fit at all, as he had expressed a preference for another candidate altogether.

"An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977); *Bailey v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-389 (Dec. 20, 1994). However, failure to adhere to established procedures does not always mandate that the action taken must be considered null and void. Whether the grievant suffered significant harm as a result of the procedural error must also be considered. *McFadden v. W. Va. Dept of Health and Human Resources*, Docket No. 94-HHR-428 (Feb. 17, 1995). The selection decision in this case did not comply with Respondent's policy, and Grievant undoubtedly suffered harm. These errors effectively allowed the selection committee to make the selection decision based on the interview alone, for all practical purposes, as Grievant was more qualified for the position than the successful candidate in every other way. In addition to the policy failures, Respondent could not provide reasonable explanation for how the successful candidate was the best fit for the position or how his qualifications related to the essential duties of the position. If the interview

process had truly revealed the successful candidate was the best fit, despite Grievant's greater qualifications in every other way, the interview committee should have been able to easily explain in what ways the successful candidate was more qualified for the essential duties of the position than Grievant. They could not, which indicates the committee improperly based their decision on the interview alone and who they liked the best, not who would best do the job. Given the above factors, it cannot be said that the selection decision was supported by substantial evidence or a rational basis, or that the process was legally sufficient. Therefore, the selection decision in this case was arbitrary and capricious.

Not only must Grievant prove that the selection was arbitrary and capricious, but also that she was, in fact, the most qualified candidate. *Jones v. Dep't of Transp./Div. of Highways*, Docket No. 07-DOH-340 (July 18, 2008). Grievant, with twenty-six years, had many years more experience with the DHHR than any other candidate. Her sixteen years of total supervisory experience was also much greater than any other candidate, and only Candidate #2 had more years of DHHR specific supervisory experience, having ten years to Grievant's seven years. Only Grievant and Candidate #5 had direct experience in more than one relevant section relating to the CSM's area of responsibility. Grievant also had more experience serving as a back-up to the CSM. Finally, only Grievant and Candidate # 3 held Masters degrees. No other candidate had the combination of education and experience to match Grievant. Grievant proved by a preponderance of the evidence that she was the most qualified candidate.

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. W. VA. CODE ST. R. § 156-1-3 (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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. In a selection case, the grievance procedure is not intended to be a "super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.,* Docket No. 93-RS-489 (July 29, 1994). The Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Skeens-Mihaliak v. Div. of Rehab. Serv*., Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault v. Div. of Rehab. Serv.,* Docket No. 93-RS-489 (July 29, 1994).

3. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va.*

Dep't of Educ., 210 W. Va. 105, 556 S.E.2d 72 (2001) (*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Resources*, Docket No. 93-HHR-322 (June 27, 1997); *Blake v. Kanawha County Bd. of Educ*., Docket No. 01-20-470 (Oct. 29, 2001).

4. "There is no doubt that it is permissible to base a selection decision on a determination that a particular applicant would be the 'best fit' for the position in question. However, the individuals making such a determination should be able to explain how they came to the conclusion that the successful applicant was, indeed, the best fit." *Spears v. Dep't of Health & Human Res.,* Docket No. 04-HHR-284 (July 27, 2005).

5. "An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977); *Bailey v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-389 (Dec. 20, 1994). However, failure to adhere to established procedures does not always mandate that the action taken must be considered null and void. Whether the grievant suffered significant harm as a result of the procedural error must also be considered. *McFadden v. W. Va. Dept of Health and Human Resources*, Docket No. 94-HHR-428 (Feb. 17, 1995).

6. Grievant was harmed by Respondent's failure to adhere to its policy. By all objective factors, she was clearly more qualified than the successful candidate. The

interview committee's errors allowed them to discount those objective qualifications and make a decision almost solely on the flawed interview process.

7. In addition to the policy failures, Respondent could not provide reasonable explanation for how the successful candidate was the best fit for the position. It cannot be said that the selection decision was supported by substantial evidence or a rational basis or that the process was legally sufficient. Therefore, the selection decision in this case was arbitrary and capricious.

8. Not only must Grievant prove that the selection was arbitrary and capricious, but also that she was, in fact, the most qualified candidate. *Jones v. Dep't of Transp./Div. of Highways*, Docket No. 07-DOH-340 (July 18, 2008).

9. Grievant proved by a preponderance of the evidence that she was the most qualified candidate by virtue of her unmatched combination of education and experience.

Accordingly, the grievance is **GRANTED.** Respondent is **ORDERED** to place Grievant in the Community Services Manager position for Calhoun, Gilmer, and Wirt counties within thirty days of receipt of this decision, unless proper motion for stay be made pending appeal. Respondent is **FURTHER ORDERED** to pay Grievant all back pay to which she would have been entitled, plus interest, from the date the previously-successful candidate was instated in the position, and to adjust her benefits which would have been affected by this promotion retroactively to this date.

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* W. VA. CODE ST. R. § 156-1-6.20 (2008).

DATE: December 6, 2013

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Billie Thacker Catlett
Administrative Law Judge