

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**JOYCE E. SMITH,
Grievant,**

v.

DOCKET NO. 2015-0730-JefED

**JEFFERSON COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Joyce E. Smith, filed a grievance against her employer, the Jefferson County Board of Education, on January 5, 2015. The statement of grievance filed at level one reads: "Failure of Coordinator of Human Resources to respond in writing decision of my request to evaluate reclassification of my current position. See attached. Also question if all Secretary III positions in Human Resources were posted." A one page document was attached to the grievance form offering a short explanation of the grievance, as well as other supporting documentation. As relief Grievant sought, "[t]horough investigation of the above grievances and correction."

A conference was held at level one on February 3, 2015, and a decision granting the grievance in part was issued on February 24, 2015. Grievant's position of Secretary III was multi-classified as a Secretary III/Accountant I, retroactive to the beginning of the 2014-15 contract term, and she was awarded seniority in the Accountant I classification for that period of time. Respondent, however, did not award any backpay to Grievant because Grievant's previous classification of Secretary III was in a higher pay grade than Accountant I. The remainder of the relief requested was denied as unavailable through the

grievance procedure. Grievant appealed to level two on March 4, 2015, seeking classification as a Secretary III/Accountant III, a retroactive stipend to 2005, and “treble damages for the total stipend calculation.”¹ A mediation session was held at level two on July 31, 2015. Grievant appealed to level three on August 10, 2015. The statement of grievance filed at level three reads: “Grievant asserts that Respondent has violated W. Va. Code 1[8]A-4-8 by improperly classifying her as a Secretary III and then as a Secretary III/Accountant I. Grievant contends that her proper classification is Secretary III/Accountant III.” As relief Grievant sought “compensation for the difference between her salary as a Secretary III/Accountant I and the salary of a Secretary III/Accountant III, including any supplement, with interest retroactive to the maximum extent permiss[i]ble by law.” A level three hearing was held before the undersigned Administrative Law Judge on December 9, 2015, at the Grievance Board’s Westover, West Virginia, office. Grievant was represented by John Everett Roush, Esquire, West Virginia School Service Personnel Association, and Respondent was represented by Denise M. Spatafore, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on January 14, 2016, on receipt of the last of the parties’ Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Secretary III/Accountant I, but believes she should be classified as a Secretary III/Accountant III. Grievant’s primary duties are to make sure substitute employees have been called out to fill all vacancies each day, and

¹ Treble damages are not available through the grievance procedure, as the Grievance Board does not award tort-like or punitive damages. *Miker v. W. Va. Univ.*, Docket No. 06-HE-133 (July 18, 2006).

to make sure the data on these vacancies and substitutes is accurately recorded in the computerized substitute employee management system which flows into the payroll system. Grievant does not manage or supervise payroll procedures, nor does she have any role in payroll except to make sure the data on substitute positions is accurately reported to payroll. Grievant's duties do not closely match those of an Accountant III.

The following Findings of Fact are properly made from the record developed at level three.

Findings of Fact

1. Grievant has been employed by the Jefferson County Board of Education ("JBOE") since August 2005. Grievant was classified as a Secretary III until the level one decision in this matter was issued, changing her classification to Secretary III/Accountant I.

2. Grievant is employed in the Human Resources Office. The Human Resources Office is considered to be part of the Central Office at the JBOE.

3. Grievant's primary area of responsibility has always been related to the Substitute Employee Management System ("SEMS"). SEMS is a computerized system that tracks and records substitute employee assignments. Employees use an automated system to call off work, and substitute employees are then automatically called. This information is automatically recorded in SEMS. SEMS is not a payroll system, rather it is an employee management system, as its name implies. The information in SEMS is used by the payroll system to determine how much pay every substitute employee is owed. As this system has evolved, so have Grievant's duties related to SEMS.

4. When Grievant begins work at 5:30 a.m., she spends about two and a half hours making sure all vacancies for the day are filled with a substitute, verifying that the automated call-out system is functioning properly, making sure WVEIS is “up and running,” making sure there are enough substitutes to fill the vacancies, and placing calls herself if a vacancy has not been filled with a substitute by the automated system. After she makes sure all vacancies have been filled, Grievant runs a report listing absent employees who work in the Central Office and has the substitutes for those employees sign the report verifying that they worked in the position that day. She also takes telephone calls from schools answering questions related to substitutes and SEMS. She goes into SEMS and corrects data and makes notes related to substitute situations that are not the usual situation. She spends an hour to an hour and a half a day verifying pay rates for substitute employees on normal working days. When there is a “weather day,” she must go into SEMS and cancel all jobs and reenter them. At the end of the year, Grievant would reset all time and end all jobs, make all substitutes inactive, and then reenter the vacancies. Grievant also trains all school secretaries on how to verify that substitutes worked, and how to report substitute hours and what the codes are in SEMS.

5. Teresa Feagans, Senior Accountant for Payroll and Employee Services for JBOE, is in charge of payroll processing. She works closely with Grievant when she is running reports. After Ms. Feagans runs the preliminary payroll report and the error report, she contacts Grievant with questions regarding substitute employment. If Grievant does not know the answer to her question, Grievant researches the issue and finds the answer. Ms. Feagans and Grievant work together to make sure the codes in SEMS are correct for the substitute employees. Ms. Feagans has contact with Grievant everyday, and for the

two days preceding the running of payroll, she may spend three or four hours a day talking to Grievant to obtain the information needed to process payroll. Ms. Feagans described Grievant's role as providing the correct information so that payroll can be processed.

6. Robin Smith is a Secretary III/Accountant III in JBOE's Finance Department. Her primary duties are related to payroll. When information about a substitute shows up on a payroll report that she needs to verify, she contacts Grievant, who verifies that the information is correct, or Grievant provides her with the corrected information. She would normally contact Grievant about three times a week, but at the end of the school year, they would communicate more frequently.

7. Grievant does not have any role in verifying that substitute employees are paid the correct amount.

8. Grievant is the contact person for information on unemployment claims, and is responsible for calculating the amount that has been paid to employees on unemployment claims for any particular period of time.

9. Grievant has never been responsible for processing payroll information or generating paychecks, nor is she involved in any way in payroll procedures.

10. Grievant has no involvement with accounts payable or accounts receivable.

11. The Human Resources Office was reorganized in the Spring of 2015, resulting in one additional professional position, and one less service personnel position. As part of this reorganization, in the Spring of 2015, Grievant was notified that she was being placed on the transfer list. By letter dated June 25, 2015, Grievant was notified that JBOE had approved her transfer and reassignment, and that effective July 1, 2015, Grievant's work hours would change to 8:00 a.m. to 4:00 p.m., and that she would no

longer be responsible for any duties related to SEMS. Those duties were reassigned to the new professional position.

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). "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).

Typically, "[i]n order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996); *Savilla v. Putnam County Bd. of Educ.*, Docket No. 89-40-546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995); *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991); *Holliday v. Marshall County Bd. of Educ.*, Docket No. 89-25-376 (Nov. 30, 1989); *Scarberry v. Logan County*

Bd. of Educ., Docket No. 89-23-63 (Oct. 30, 1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified *per se*. *Hatfield, supra.*" *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.*, Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994)." *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

W. VA. CODE § 18A-4-8 establishes an employment term and class titles for service personnel. It defines each listed class title. The definitions of the class titles at issue are as follows:

"Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "Secretary II" or "Secretary III".

"Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both.

"County boards of education may expand upon the W. VA. CODE § 18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992)." *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992).

Grievant did not demonstrate that she manages and supervises payroll procedures. The evidence established that Grievant has no involvement in payroll procedures. Her duties are related to making sure vacancies are filled by substitute employees, and that all the information on these substitute situations is correctly reported in SEMS. Her duties are better described as maintaining "reports and perform[ing] one or more operations relating to a phase of the total payroll," as is stated in the Accountant I definition.

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 his 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). "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. Typically, "[i]n order to prevail in a misclassification grievance, an employee must establish that [his] duties more closely match those of another classification than that under which her position is categorized. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996); *Savilla v. Putnam County Bd. of Educ.*, Docket No. 89-40- 546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995); *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991); *Holliday v. Marshall County Bd. of Educ.*, Docket No. 89-25-376 (Nov. 30, 1989); *Scarberry v. Logan County Bd. of Educ.*, Docket No. 89-23-63 (Oct. 30, 1989).

3. Simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified *per se*. *Hatfield, supra.*" *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.*, Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994)." *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

4. Grievant did not demonstrate that her duties more closely matched those of the Accountant III classification.

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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

Date: February 3, 2016

BRENDA L. GOULD
Administrative Law Judge