

SUPREME COURT OF APPEALS OF WEST VIRGINIA

James C. Weimer v. Public Service Commission of West Virginia and Robert Weiford

Weimer · No. No. 17-0668 · Decided June 29, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court order upholding the denial of James C. Weimer’s grievance concerning Robert Weiford’s appointment to an Engineer Senior position with the Public Service Commission of West Virginia. The court held that Weimer failed to prove by a preponderance of the evidence that he was the most qualified candidate or that the hiring process was improper. The court issued the decision as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Elizabeth D. Walker; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 29, 2018
DOCKET	No. 17-0668
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from the Circuit Court of Kanawha County's order affirming an administrative law judge's denial of his grievance challenging the Public Service Commission's appointment of Robert Weiford to an Engineer Senior position.
STANDARD OF REVIEW	A final order of a Grievance Board ALJ based on findings of fact should not be reversed unless clearly wrong. Factual and credibility determinations receive deference, while conclusions of law and applications of law to fact are reviewed de novo. The grievant bears the burden of proving a non-disciplinary grievance by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published memorandum decision; the court stated that it found no substantial question of law and no prejudicial error and issued the decision under Rule 21.

PARTIES

James C. Weimer v. Public Service Commission of West Virginia,
Robert Weiford

TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

employment law

PRACTICE AREAS

administrative law

employment law

appellate procedure

QUESTIONS PRESENTED

1. Whether the ALJ clearly erred in finding that Weimer failed to prove by a preponderance of the evidence that he was the most qualified candidate for the Engineer Senior position.
2. Whether the Engineer Senior position was improperly classified because the posting included substantial supervisory duties.
3. Whether the selection process was improperly biased or otherwise defective based on the alleged nondisclosure of Weiford's prior workplace discipline, Weimer's lack of prior employment with the West Virginia American Water Company, or age-related bias.

HOLDINGS

1. A reviewing court must defer to the ALJ's factual and credibility findings unless clearly wrong, while reviewing legal conclusions and the application of law to facts de novo.
2. Because Weimer's grievance was not disciplinary in nature, he bore the burden of proving his case by a preponderance of the evidence.
3. The ALJ did not clearly err in finding that Weimer failed to prove by a preponderance of the evidence that he was the most qualified candidate or that the selection process contained a substantial flaw; the circuit court therefore properly affirmed the denial of his grievance.

KEY QUOTATIONS

“Grievance rulings involve a combination of both deferential and plenary review. Since a reviewing court is obligated to give deference to factual findings rendered by an [ALJ], a circuit court is not permitted to substitute its judgment for that of the [ALJ] with regard to factual determinations. Credibility determinations made by an [ALJ] are similarly entitled to deference. Plenary review is conducted as to the conclusions of law and application of law to the facts, which are reviewed de novo.” (4)

“The [DOP] shall consider the class specification in allocating positions and shall interpret it as follows: (a) Class specifications are descriptive only and are not restrictive.” (5)

FACTUAL BACKGROUND

The Public Service Commission posted one opening under both the Engineer Senior and Technical Analyst Senior classifications and interviewed seven minimally qualified applicants. Weimer ranked sixth, while Robert Weiford ranked first; the PSC selected Weiford, and the Division of Personnel validated that he met the minimum qualifications for the Engineer Senior position. Weimer challenged the appointment, alleging defects in the classification and selection process, bias, and shortcomings in Weiford's employment history, but the ALJ found that Weimer failed to prove he was the most qualified candidate.

PROCEDURAL HISTORY

The Public Service Commission appointed Robert Weiford to the Engineer Senior position after a competitive interview process. Weimer filed a grievance seeking rescission of the appointment or an equivalent position, but the grievance was denied through the grievance process after an evidentiary hearing before an administrative law judge. The Circuit Court of Kanawha County affirmed the ALJ's decision, and the Supreme Court of Appeals of West Virginia affirmed the circuit court.

DISPOSITION

affirmed

CASES CITED

- *Armstrong v. W.Va. Div. of Culture and History*, 229 W.Va. 538, 729 S.E.2d 860 (2012)
- *Randolph County Board of Education v. Scalia*, 182 W.Va. 289, 387 S.E.2d 524 (1989)
- *Darby v. Kanawha County Board of Education*, 227 W.Va. 525, 711 S.E.2d 595 (2011)
- *Cahill v. Mercer County Board of Education*, 208 W.Va. 177, 539 S.E.2d 437 (2000)
- *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W.Va. 634, 640, 600 S.E.2d 346, 352 (2004)
- *Hovermale v. Berkeley Springs Moose Lodge No. 1483*, 165 W.Va. 689, 697 n.4, 271 S.E.2d 335, 341 n.4 (1980)
- *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996)
- *State v. Honaker*, 193 W.Va. 51, 56 n.4, 454 S.E.2d 96, 101 n.4 (1994)
- *Brickstreet Mutual Insurance Company v. Zurich American Insurance Company*, __ W.Va. __, __ and n.15, __ S.E.2d __, __ and n.15 (April 5, 2018)
- *Nelson v. West Virginia Public Employees Insurance Board*, 171 W. Va. 445, 300 S.E.2d 86 (1982)