

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**Brett Childress, Petitioner Below,  
Petitioner**

vs) **No. 11-0329** (Kanawha County 09-AA-201)

**West Virginia State Police and  
West Virginia Division of Personnel,  
Respondents Below, Respondents**

**FILED**

**March 9, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**MEMORANDUM DECISION**

Petitioner Brett Childress appeals the circuit court’s order denying his appeal of the denial of his grievance against the respondents. This appeal was timely perfected by counsel, Robert B. Kuenzel, with petitioner’s appendix accompanying the petition. The respondents, the West Virginia State Police and the West Virginia Division of Personnel have filed a joint response by their respective counsel, Virginia Grottendieck Lanham and Karen Thornton.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner, a civilian employee of the Respondent West Virginia State Police, appeals the circuit court’s order that denied petitioner’s appeal of the denial of his grievance by the West Virginia Public Employees Grievance Board (“Grievance Board”). The crux of his grievance is that he was not being paid in a commensurate manner with a co-worker who was in a different job classification but who he argued had similar job duties. Petitioner sought back pay to redress the situation. Following a Level III hearing, the Grievance Board’s ALJ found that the co-worker’s duties were different from those performed by petitioner, as was her classification, and denied the grievance. The circuit court agreed and concluded that the grievance was properly denied as both petitioner and the co-worker were properly paid within the pay range of their respective classifications.

This Court reviews decisions of the circuit court under the same standard as that by which the circuit court reviews the ALJ’s decision. Syl. Pt. 1, *Martin v. Barbour County Bd. of Educ.*, —

W.Va. — , 719 S.E.2d 406 (2011). “‘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 administrative law judge, a circuit court is not permitted to substitute its judgment for that of the hearing examiner with regard to factual determinations. Credibility determinations made by an administrative law judge 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.’ Syl. pt. 1, *Cahill v. Mercer Cnty. Bd. of Educ.*, 208 W.Va. 177, 539 S.E.2d 437 (2000).” Syl. Pt. 2, *Martin*, — W.Va. — , 719 S.E.2d 406. “‘A final order of the hearing examiner for the West Virginia [Public] Employees Grievance Board, made pursuant to W.Va. Code, [6C-2-1], et seq. [ ], and based upon findings of fact, should not be reversed unless clearly wrong.’ Syl. Pt. 1, *Randolph Cnty. Bd. of Educ. v. Scalia*, 182 W.Va. 289, 387 S.E.2d 524 (1989).” Syl. Pt. 3, *Martin*, — W.Va. — , 719 S.E.2d 406.

Petitioner argues that the decisions of the circuit court and the ALJ were clearly wrong and arbitrary and capricious. Petitioner also argues that he was denied a property right in violation of Article III, § 10 of the Constitution of West Virginia as he has not been paid equally for equal work. Finally, he argues that he was classified disparately from his co-worker “even though he was performing the same job functions as [co-worker], excepting a few additional duties that both performed.”

The State Police and Division of Personnel argue that there was no violation of the statutory “equal pay for equal work” requirement found at West Virginia Code §29-6-10(2) which provides: “[t]he principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.” It must be noted that this provision is different from “[t]he West Virginia Equal Pay Act, W.Va. Code 21-5B-1 [1965], [which] does not apply to the State or any municipal corporation so long as a valid civil service system based on merit is in effect.” Syl. Pt. 2, *Largent v. W.Va. Div. of Health*, 192 W.Va. 239, 452 S.E.2d 42 (1994).

In the present case, petitioner acknowledges in his petition for appeal that while he and his co-worker shared some duties, they each performed other duties which were different. Specifically, his co-worker had additional duties and responsibilities relating to two federal programs that she administered. Petitioner did not have any duties relating to the administration of these programs.

Respondents contend that petitioner’s and the co-worker’s respective positions, while somewhat similar, remained distinctly different and were correctly classified in a different manner. Respondents argue that in order to be paid within the same pay grade, one must be classified in the same classification or in a classification that is assigned the same pay grade as another classification. Petitioner and his co-worker have never been in the same classification. In the present case, where the petitioner and his co-worker were properly classified in different classifications, there is no requirement that the co-worker and petitioner should be paid the same salary. Based upon the foregoing, this Court concludes that the decision of the circuit court affirming the Grievance Board’s denial of this grievance was not clearly wrong or arbitrary and capricious.

Next, petitioner argues that he was denied a property right in violation of Article III, §10 of the Constitution of West Virginia based upon his assertion that he was denied equal pay for what he argues is equal work. That section states that “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” Petitioner relies upon the following syllabus point: “‘A ‘property interest’ includes not only the traditional notions of real and personal property, but also extends to those benefits to which an individual may be deemed to have a legitimate claim of entitlement under existing rules or understandings.’ Syllabus Point 3, *Waite v. Civil Service Commission*, 161 W.Va. 154, 241 S.E.2d 164 (1977).” Syl. Pt. 6, *Wampler Foods, Inc. v. Workers’ Comp. Div.*, 216 W.Va. 129, 602 S.E.2d 805 (2004) (per curiam). “‘To have a property interest, an individual must demonstrate more than an abstract need or desire for it. He must instead have a legitimate claim of entitlement to it under state or federal law. Additionally, the protected property interest is present only when the individual has a *reasonable* expectation of entitlement deriving from the independent source.’ Syllabus Point 6, *State ex rel. Anstey v. Davis*, 203 W.Va. 538, 509 S.E.2d 579 (1998).” Syl. Pt. 3, *Collins v. City of Bridgeport*, 206 W.Va. 467, 525 S.E.2d 658 (1999)

Petitioner’s argument centers on his assertion that the proof at the Level III hearing demonstrated that his duties were comparable to those of his co-worker. Therefore, he argues that his constitutional right to due process in the deprivation of a property interest was violated. In reviewing his argument, the Court notes that the Division of Personnel determined that petitioner was properly classified and was paid properly within his classification. This Court has recognized that “[i]nterpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.” Syl. Pt. 2, in part, *W.Va. Dep’t of Health v. Blankenship*, 189 W.Va. 342, 431 S.E.2d 681 (1993) (per curiam). An agency’s determination of matters within its expertise is entitled to substantial weight. Petitioner does not elucidate how his due process rights were abridged other than by asserting that the wrong result was reached below. We conclude that there was no violation of petitioner’s due process rights

Finally, petitioner argues that he was classified disparately from his co-worker “even though he was performing the same job functions as [his co-worker], excepting a few additional duties that both performed.” The ALJ specifically noted in his decision that “grievant is no longer seeking to be reclassified.” The ALJ also found that petitioner did not challenge the Division of Personnel’s decision that he was properly classified when it was issued in 2004. Finally, the ALJ concluded that “[g]rievant did not establish that [Division of Personnel]’s determination of the relevant best fit classification was erroneous.” Given all the facts and circumstances in the present case, the Court finds that petitioner’s arguments as to improper classification must fail.

After reviewing the arguments of the parties and the record, this Court concludes that the circuit court did not err in denying petitioner’s appeal of the Grievance Board’s denial of his grievance.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** March 9, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Thomas E. McHugh

**DISQUALIFIED:**

Justice Margaret L. Workman