

Voluntary Labor Arbitration Proceeding

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In the matter of the Arbitration between:

Ohio Rehabilitation Services Commission (Bureau of Disability)

-And-

Ohio Civil Service Employees Association, Local 11, AFSCME

Grievant: Donna Carter

Grievance No: 29-04-20090319-996-01-14

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Arbitrator's Opinion and Award

Arbitrator: David M. Pincus

Date: December 2, 2010

Appearances

For the Employer

Mark Spradlin  
Elaine Stewart  
Shane Black  
David Long  
Bobby Johnson

Disability Claims Manager  
Labor Relations Officer  
Intern  
Labor Relations Specialist  
Advocate

For the Union

Donna Carter  
Karen Ryther  
Neil Preston  
Chris Smith  
Sharon Ralph

Grievant  
President  
Steward  
Witness  
Advocate

This is a proceeding under Sections 25.03 and 25.05 entitled Arbitration Procedures and Arbitration/Mediation Panels between the State of Ohio, Ohio Rehabilitative Service Commission, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, hereinafter referred to as the Union, for the period March 1, 2006 to February 28, 2009 (Joint Exhibit 1).

At the arbitration hearing, the parties were given the opportunity to present their respective positions on the grievance, to present witnesses, and to cross-examine witnesses. At the conclusion of the Arbitration hearing, the parties were asked by the

Arbitrator if they planned to submit post-hearing written closings. The parties submitted written closings in accordance with the guidelines established at the hearings.

#### Disputed Issue

Was the Grievant's written portion of the Disability Claims Adjudicator III promotional test scored correctly? If not what shall the remedy be?

#### Joint Stipulations

1. Hired February 12, 1996 with RSC. Held various positions promoted to a DCA 1 on January 5, 2003 reassigned as a DCAII on December 23, 2003.
2. Grievant has no active discipline.
3. Grievant participated in the DCAIII test preparation for this test.
4. Grievant has not taken DCAIII test since March 2009. The test has been offered two other times i.e. November 23, 2009 and April 26, 2010.
5. Anghoff and item analysis process completed in 2006 that established the past point of seventy-two percent or higher and that the number of questions on multiple choice set at fifty-nine. Written pass points were set at 12.
6. DCAIII test administered leading up to and including this test, applicants name(s) not redacted.
7. This test was the first time grievant was eligible to sit for the test.
8. That the multiple choice and written exercise are scored separately.
9. The DCAIII test was content valid.
10. The established pass point was determined properly.

#### Case History

Donna Carter, the Grievant; has worked for the Employer since February 12, 1996. During her tenure, she had held a number of positions with the most recent being a Disability Claims Adjudicator 2 (DCA2).

In July of 2004, the parties settled a Section 36,05 grievance by establishing a career ladder for those seeking promotions from a DCA2 position to a DCA3 position. The settlement contained specific criteria as well as promotion assessment processes. It should be noted the settlement, including its protocols and testing requirements, were eventually codified in an agency specific section contained in subsequent collective bargaining agreements.

On February 18, 2009, a DCA3 position was posted. The Grievant decided to seek this promotion opportunity by taking a required test. This test itself had two parts: a multiple choice test and a written short-answer exercise.

The employer, moreover, established seventy-two percent (72%) as the pass point for the test. All applicants that exceeded this test score were automatically promoted to a DCA3 position. The Grievant, however, was not promoted. She realized a test score of seventy point five nine percent (70.59%).

On March 19, 2009, the Union filed a grievance challenging the promotion decision. It states in pertinent part:

XXX

The Grievant's written portion of the DCA3 promotional test was scored improperly. The testing was subjective, inconsistent and not done anonymously. The Grievant has been harmed by being denied the promotion

XXX

(Joint Exhibit 2)

The grievance was denied during subsequent portions of the grievance procedure neither party raised procedural nor substantive arbitrability concerns. As such, the grievance is properly before the arbitrator.

### The Merits of the Case

#### The Union's Position

The Union maintains the written portion of the promotional exam was not scored correctly. As such, the contested position should be awarded to the Grievant with full back pay.

The Grievant was denied the promotion because the "test rater" erred when computing the Grievant's score on the written portion of the exam. Chris Smith, the Chief Steward, reviewed the Grievant's submitted document. He found no misspelled words, and was surprised when told the rated determined the words were misspelled.

The Grievant provided corroborating testimony. She noted the testing environment did not represent her actual work environment. As an adjudicator, her hand-writing never impeded her actual performance of work-related duties. In fact, she drafted letters and personal denial notices on the computer which has a spell check function.

#### The Employer's Position

The Employer maintains the Grievant's written portion of the Disability Claims Adjudicator III promotional test was scored correctly. As such, she was properly denied this promotional opportunity.

The established pass point was seventy-two percent (72%) with the written short-answer exercise scored by using six criteria. One of these criterion was spelling, which

was communicated to all participants. With a total test score of seventy point five nine percent (70.59%), the Grievant failed to attain the required outcome.

The spelling criterion was properly applied by Mark Sparadlin, a veteran disability manager. He applied the criteria consistently with applicants receiving: two points for no misspelled words; one point for one misspelled word; and zero points for two or more misspelled words.

The Grievant received zero points for the section in question. She was evaluated as having three misspelled words. No misspelled words would have caused a score in excess of the passing requirement. Even if the Grievant was credited with two correct spellings, she still would have misspelled the word “evidence.” As such, her score would have fallen short of the pass point.

Using a paper and pencil test rather than a computer does not minimize the validity of the chosen option. Smith testified the new testing approach does use a computer format. Yet testing takes place with the spell check function disengaged. So, under either approach the applicant would be responsible to spell correctly.

Spalding did expand the scoring key (Joint 3) by adding a scoring option. He gave applicants one point for one misspelled word. Spalding’s interpretation was reasonable and applied consistently.

#### The Arbitrator’s Opinion and Award

From the evidence introduced at the hearing, a complete and impartial review of the record, it is the Arbitrator’s position that the Grievant’s written portion of the promotional test was scored properly. As such, the Employer’s decision to deny the disputed promotion was proper.

Many of the Union's arguments were laced with contract validity claims. Yet it was stipulated by the parties that validity issues were not before the Arbitrator. Matters dealing with testing approaches, including computer versus pencil and paper simulations, fall outside the Arbitrator's purview when parties stipulated that the test itself is content valid.

The Grievant was clearly notified that spelling would be evaluated by the scorer. She was, therefore, obligated to provide clear and accurate spellings in her responses. Any vagaries must be counted against the Grievant for it would require a determination of intent, which would burden the evaluation with an excessive amount of subjectivity. This would, therefore, lead to potential inconsistent rating variance and jeopardize the reliability of the testing instrument.

The Arbitrator views Spalding's adaptation of the scoring key (Joint Exhibit 3) as reasonable. By expanding the scoring option, he provided all applicants with greater opportunity to realize additional points, making it easier to exceed the established pass point and gain promotion. The adjusted scoring format was consistently applied to all evaluated tests. The Grievant was, therefore, not harmed but in fact was aided by the adjusted format.

Providing the Grievant with a most liberal review of her written test, she still misspelled "evidence." The Union never challenged this portion of the evaluation. Spalding's testing format gave her one point for this testing outcome still, it failed to raise her score beyond the pass point.

#### Award

The grievance is denied.

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Chagrin Falls, Ohio

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Dr. David M. Pincus  
Arbitrator