

**65 FLRA No. 206**

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
VA MEDICAL CENTER  
DAYTON, OHIO  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2209  
(Union)

0-AR-4523

DECISION

June 30, 2011

Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This matter is before the Authority on exceptions to an award of Arbitrator James Abernathy filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.<sup>1</sup>

The Arbitrator found that the Agency refused to promote the grievant to the General Schedule (GS)-7/11 prosthetics representative position as a result of her union activity and that, but for the Agency's failure to rate her properly and to interview her, she would have been selected for the position. *See, e.g.*, Award at 15, 19, 26, 35-36, 37. Moreover, the Arbitrator determined that the Agency's actions

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1. The Union also filed an addendum to its opposition. As its submission was filed within the time limit for filing the opposition, we consider this submission as part of the opposition. *See IFPTE, Local 77, Prof'l & Scientists Org.*, 65 FLRA 185, 187 (2010) (characterizing the agency's supplemental submission as an addendum to the opposition because it was filed within the time limit for filing the opposition); *Fed. Emps. Metal Trades Council*, 39 FLRA 3, 3 n.\* (1991) (considering the union's addendum to its opposition because it was filed within the time limit for filing its opposition).

violated the parties' collective bargaining agreement (parties' agreement) and ordered the Agency to promote the grievant retroactively "to the position of [p]rosthetics [r]epresentative or a substantially equal position of GS-7/11." *Id.* at 37; *see also id.* at 18, 20, 21, 35-36. For the reasons set forth below, we dismiss the Agency's exceptions in part and deny them in part.

**II. Background and Arbitrator's Award**

When the grievant was hired by the Agency, she began working as a prosthetic clerk, but was promoted within a few months to the purchasing agent position in the prosthetics division. *Id.* at 5, 10. She worked as a purchasing agent for approximately four years. *Id.* During that time, the grievant was elected president of the Union.<sup>2</sup> *Id.* at 5. Subsequently, the grievant was assigned to the GS-6 health technician/purchasing agent position. *Id.* at 10. She has worked in that position for fourteen years. *Id.*

During her tenure as president, the grievant applied for a GS-7/11 prosthetics representative position. *Id.* Several weeks after the grievant applied for the position, she met with the head of prosthetics, who was also the selecting official, on Union business. *Id.* at 5-6. At their meeting, the selecting official asked the grievant whether she was on 100 percent official time as Union president. *Id.* She responded that she was on 100 percent official time. *Id.* at 6. A few weeks later, the grievant received a letter from an Agency human resources management specialist; the letter notified the grievant that, although she was qualified for the position at the GS-7 level, she had not been selected for the position. *Id.* Because the Agency rated the grievant as a GS-7, and the selecting official chose to interview only applicants rated at the GS-11 level, the grievant was neither interviewed nor selected for the position. *See, e.g., id.* After receiving the letter, the grievant discovered that the selecting official sent an email to a number of other employees indicating that the selectee accepted the position eight days after the grievant met with the selecting official and that the selectee planned to start working five days after accepting the position. *Id.* at 13.

The grievant presented a grievance requesting that the Agency promote her to the prosthetics

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2. The grievant served as Union president for fourteen years and was on 100 percent official time during her tenure as president. Award at 5.

representative GS-7/11 position or an equivalent position. *Id.* at 6-7. The matter was unresolved and was submitted to arbitration. *See id.* at 7. The issue at arbitration was “[w]hether the Agency violated the [parties’] [a]greement or any law, statute, or regulation when it failed to promote [the] [grievant] to the position of [p]rosthethics [r]epresentative? If so, what shall be the remedy for the violation?” *Id.* at 4.

Among other things, the Arbitrator found that the Agency exhibited anti-union animus by improperly rating the grievant as a GS-7. *See, e.g., id.* at 17-18, 32, 36. The Arbitrator determined that, although the grievant’s personnel file contained evidence indicating that she had a master’s degree in legal and ethical studies, the Agency failed to consider the grievant’s master’s degree in rating her as a GS-7. *See, e.g., id.* at 17, 18, 28, 29. The Arbitrator noted that the Agency, as a matter of policy, did not consider the grievant’s fourteen years of union experience when giving her a rating for the position and “may not have considered [the] [g]rievant’s many years of prosthetics experience.” *Id.* at 18; *see also id.* at 17, 21, 28, 32, 33. Also, the Arbitrator found that, because of the grievant’s master’s degree and her union experience, she was entitled to a GS-11 rating. *See, e.g., id.* at 26, 29. To support his finding, the Arbitrator relied on an Agency witness’s testimony indicating that, if the Agency had considered the grievant’s master’s degree, it would have rated her at least at the GS-9 level. *See id.* at 19, 25, 26, 33. According to the Arbitrator, the witness testified that he would have graded the grievant “a GS-9 without taking into consideration [her] union experience[,]” that the grievant “should be a GS-9 or ‘minimally’ a GS-11[,]” and that he “got [the] [g]rievant to a GS-11 without considering her union experience.” *Id.* at 19, 26; *see also id.* at 25, 33. Moreover, the Arbitrator determined that, by failing to rate the grievant properly, the Agency did not apply “the established standards pertaining to promotion in an equitable, fair, and non-discriminatory way” and, therefore, violated Article 22 of the parties’ agreement.<sup>3</sup> *Id.* at 18.

Also, the Arbitrator found that the Agency exhibited anti-union animus by failing to interview the grievant. *See id.* at 24. According to the Arbitrator, the grievant was available to be interviewed, and the Agency “unfairly and unreasonably precluded [her] from participating in the interview process.” *Id.* at 24; *see also id.* at 21,

35. Moreover, the Arbitrator determined that Article 22, Section 11 of the parties’ agreement requires that, if the Agency uses interviews, it must interview all candidates who are reasonably available. *See, e.g., id.* at 21, 24, 31. The Arbitrator found that the Agency violated the parties’ agreement when the selecting official arbitrarily chose to interview only applicants who were rated at the GS-11 level. *See, e.g., id.*

Ultimately, the Arbitrator ordered the Agency to promote the grievant retroactively “to the position of [p]rosthethics [r]epresentative or a substantially equal position of GS-7/11.” *Id.* at 37; *see also id.* at 30. In so ordering the retroactive promotion, the Arbitrator found that the remedy did not violate management’s right to select under § 7106(a)(2)(C) of the Statute. *Id.* at 34-36. In this regard, the Arbitrator noted that, as Union president, the grievant was engaged in protected activity. *Id.* at 34. The Arbitrator determined that the Agency violated the parties’ agreement by rating the grievant improperly and by failing to interview her for the position. *Id.* at 35. Also, the Arbitrator found that the grievant was qualified to be promoted based on the Office of Personnel Management (OPM’s) qualification standards and the Agency’s Handbook (Handbook).<sup>4</sup> *See id.* at 21, 35. Finally, the Arbitrator determined that, but for the Agency’s actions, the “[g]rievant would have been interviewed[,]” and, had “the [g]rievant been interviewed, [she] would have been found to be more qualified than the [s]electee and therefore promoted.” *Id.* at 35.

### III. Positions of the Parties

#### A. Agency’s Exceptions

The Agency asserts that the Arbitrator’s finding that the Agency should have rated the grievant as a GS-11 is contrary to the Handbook. Exceptions at 10-11. According to the Agency, the Handbook requires that, for an employee to be eligible for a promotion at the GS-11 level, the employee must have: (1) “[a]t least [one] year of experience equivalent to the next lower level, and must fully meet the [knowledge, skills, and abilities (KSAs)] at that level[;]” or (2) must have education “equivalent to [three] full years of progressively higher level graduate education or a Ph.D. or equivalent doctoral degree from an accredited university or college in the field of business; a medical field . . . ; public

3. The relevant provisions of Article 22 are set forth in the appendix to this decision.

4. The relevant portion of the Handbook is set forth in the appendix to this decision.

administration; health administration, or those in related courses of study.” *Id.* at 10 (quoting Exceptions, Attach. 8 at 4) (internal quotation marks omitted) (emphasis removed). The Agency claims that the grievant is not entitled to a GS-11 rating because she does not have one year of experience at the lower level or three years of a higher level graduate education. *Id.* at 10-11.

Also, the Agency asserts that the award excessively interferes with management’s right to select. *Id.* at 11-14. In this regard, the Agency claims that it did not act arbitrarily in violation of Article 22 when it opted only to interview applicants ranked and certified at the GS-11 level because, under 5 U.S.C. § 7106(a)(2)(C), it has “the statutory authority to interview, and select, from any group of ‘ranked and certified candidates . . . .’” *Id.* at 13; *see also id.* at 12. The Agency asserts that the Arbitrator’s interpretation of Article 22, Section 11 interferes with its right to select because, as interpreted by the Arbitrator, the provision provides that, if it “uses interviews, then all applicants must be interviewed, even if [the] position is posted at more than one grade level and [it] opts to fill the position at the highest grade level.” *Id.* at 13. According to the Agency, “even with the ‘hindsight review’ conducted during the proceedings, [the] [grievant] was only qualified at the GS-9 level and therefore was not a candidate entitled to an interview or selection.” *Id.* at 14; *see also id.* at 13. Moreover, the Agency claims that, because the grievant does not qualify as a GS-11 under the Handbook’s qualification standards, the Arbitrator’s remedy “is not a reconstruction of what would have been done ‘but for’ the alleged contractual violation.” *Id.* at 14.

The Agency asserts that the award is based on a nonfact and that the Arbitrator committed “harmful due process error.” *Id.* at 3-9. According to the Agency, the Arbitrator incorrectly recorded and reported an Agency witness’s “hindsight evaluation” of the grievant’s rating and then relied heavily on that testimony in determining that the grievant should have been rated as a GS-11. *Id.* In this regard, the Agency claims that the witness only testified that the grievant should have been qualified at the GS-9 level and that, based on the selectee’s personnel folder, it was the selectee and not the grievant who qualified at the GS-11 level. *Id.* Moreover, the Agency asserts that the Arbitrator failed to consider evidence indicating that the selectee had prosthetics experience. *Id.* at 9.

Finally, the Agency claims that the Arbitrator exceeded his authority by finding that the grievant should have been rated as a GS-11. *Id.* at 14-15. The Agency notes that, based on the Handbook, the grievant does not qualify at the GS-11 level. *Id.* The Agency asserts that, by finding that the grievant would have been qualified at the GS-11 level if the Agency had considered her union experience, the Arbitrator, by default, determined “that [the] [g]rievant’s ‘union experience’ qualified at the GS-9/GS-10 level.” *Id.* at 15. According to the Agency, OPM, rather than the Arbitrator, has the authority to classify and/or grade positions. *Id.* Additionally, the Agency claims that the Arbitrator lacked authority to substitute his own standards for the qualification standards contained in the Handbook. *Id.*

#### B. Union’s Opposition

The Union argues that the Agency’s claims that the award is contrary to management’s right to select and that the award is contrary to the Handbook should be dismissed because the Agency failed to raise these claims at arbitration. Opp’n at 9 & n.3, 10-11. Moreover, the Union contends that, even if the Authority decides to consider the Agency’s claims, the Agency has failed to demonstrate that the award is contrary to law, rule, or regulation. *See id.* at 9-14.

Also, the Union argues that the award is not based on a nonfact. *Id.* at 15-20. According to the Union, all “of the supposed [nonfacts] raised by the Agency in its exceptions were in actuality disputed facts at arbitration . . . .” *Id.* at 15. The Union contends that, even if the Arbitrator misstated testimony, the award is not based on a nonfact because the Arbitrator independently found that the grievant was qualified at the GS-11 level by relying on the grievant’s master’s degree and union experience. *See id.* at 16-19. Moreover, the Union argues that, even if the Arbitrator improperly determined that the selectee had no prosthetics experience, the Arbitrator would not have reached a different result because he found that the grievant had more experience in prosthetics than the selectee. *Id.* at 19.

The Union contends that the Arbitrator did not deprive the Agency of a fair hearing. *Id.* at 20. According to the Union, the Agency has failed to demonstrate that it was prejudiced by the Arbitrator’s “faulty memory” because the Arbitrator independently found that the Agency should have

rated the grievant as a GS-11 and that the Agency should have interviewed the grievant. *Id.*

Finally, the Union argues that the Arbitrator did not exceed his authority in ordering a retroactive promotion because, in its grievance, the Union requested that the grievant “be promoted to the position of [p]rosthethics [r]epresentative, GS-7/11, or an equivalent position[,]” and the “Agency agreed to submit the issue to [a]rbitration.” *Id.* at 15.

#### IV. Preliminary Issues

- A. Section 2429.5 of the Authority’s Regulations bars the Agency’s exception regarding the Handbook.

The Agency asserts that the Arbitrator’s determination that the Agency should have rated the grievant as a GS-11 is contrary to the Handbook. Exceptions at 10-11. According to the Agency, the grievant does not have one year of experience at the lower level or three years of a higher-level graduate education. *Id.*

Under § 2429.5 of the Authority’s Regulations, the Authority will not consider issues that could have been, but were not, presented to the arbitrator. *See, e.g., U.S. Dep’t of Homeland Sec., U.S. Customs & Border Prot., JFK Airport, Queens, N.Y.*, 64 FLRA 841, 843 (2010) (*JFK Airport*). However, where an issue arises from the issuance of the award and could not have been presented to the arbitrator, it is not precluded by § 2429.5. *See, e.g., U.S. Dep’t of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Oakdale, La.*, 65 FLRA 35, 38 (2010) (*Fed. Corr. Complex Oakdale*); *U.S. Dep’t of Agric., Animal & Plant Health Inspection Serv., Plant Prot. & Quarantine*, 57 FLRA 4, 5 (2001) (citing *Prof’l Airways Sys. Specialists, Dist. No. 1, MEBA/NMU (AFL-CIO)*, 48 FLRA 764, 768 n.\* (1993)).

The record establishes that the Agency was on notice that the Union argued that the grievant qualified at the GS-11 level. *See* Award at 19 (indicating that the Union argued below that the grievant was qualified at the GS-11 level); Exceptions at 5 (conceding that the issue of whether the grievant qualified as a GS-11 was crucial to the Union’s case at arbitration). The Union clearly contended below that the grievant was rated improperly at the GS-7 level and that she should have been rated as a GS-11 and promoted based on OPM’s qualification requirements and the Handbook. *See*

Award at 8; Exceptions, Attach. 5 at 13-14; Exceptions, Attach. 6 at 5. Despite this notice, the record contains no indication that the Agency ever argued to the Arbitrator that, based on the qualification requirements in the Handbook, the grievant was not qualified at the GS-11 level. *See* Exceptions, Attach. 4 at 8 (arguing only that, even if an Agency witness testified that the grievant should have been rated as a GS-9, the Agency would not have interviewed the grievant and, thus, would not have selected her for the position). Because the Agency could have presented this argument to the Arbitrator but did not do so, it may not present this argument to the Authority on exceptions. *See Fed. Corr. Complex Oakdale*, 65 FLRA at 38 (concluding that, because agency did not present to the arbitrator its argument regarding the lack of a nondiscretionary agency policy requiring compensation for the temporary performance of higher-graded duties, its argument was barred by § 2429.5); *U.S. Dep’t of Def., Def. Commissary Agency, Fort Lee, Va.*, 56 FLRA 855, 858 (2000) (*Def. Commissary Agency*) (finding that contentions made in an agency memorandum indicating that the grievant did not satisfy the minimum qualifications for the position were barred by § 2429.5 because the agency could have and should have presented these contentions to the arbitrator).

Accordingly, we dismiss the Agency’s exception.

- B. Section 2429.5 of the Authority’s Regulations bars the Agency’s exception regarding management’s right to select under § 7106(a)(2)(C) of the Statute.

The Agency also claims that the award excessively interferes with management’s right to select. Exceptions at 11-14.

As noted above, § 2429.5 bars the Agency from raising issues in its exceptions that could have been, but were not, presented to the arbitrator. *See, e.g., JFK Airport*, 64 FLRA at 843. Before the Arbitrator, the Union contended that, as a candidate, the grievant was entitled to be interviewed in accordance with Article 22 of the parties’ agreement. *See* Award at 7, 21, 24 (noting that the Union argued that the grievant was readily available to be interviewed and should have been interviewed); Exceptions, Attach. 5 at 14 (arguing that the grievant was affected by the Agency’s improper action when it failed to interview her for the position in accordance with Article 22 of the agreement). The Union argued that, under

OPM's requirements and the Handbook, the grievant qualified at the GS-11 level. *See* Exceptions, Attach. 5 at 13-14. Additionally, the Union contended that the Arbitrator should award the grievant a retroactive promotion and that the Arbitrator would not violate management's right to select by awarding the grievant a retroactive promotion. *See id.* at 11-12. However, there is no evidence in the record that the Agency argued below that interpreting Article 22, Section 11 as requiring it to interview all applicants would be contrary to management's right to select or that the grievant was not entitled to an interview because she was not a candidate for promotion. *See* Award at 9 (noting that the Agency stated that its selecting official had the right to interview arbitrarily from any grade level applicant); Exceptions, Attach. 4 at 7 (arguing only that it had "the option of interviewing applicants from just one certificate"). Similarly, the record does not indicate that the Agency argued below that, based on the qualification standards set forth in the Handbook, the proposed remedy would be contrary to management's right to select. *See* Exceptions, Attach. 4. at 1-10 (failing to counter the union's argument that ordering a retroactive promotion would not violate management's right to select). Consequently, because the Agency could have presented, but did not present, these arguments to the Arbitrator, it may not do so now. *See, e.g., U.S. Dep't of the Interior, Bureau of Indian Affairs, Fort Totten Agency, Fort Totten, N.D.*, 65 FLRA 843, 845 (2011); *Soc. Sec. Admin., Newark, N.J.*, 64 FLRA 259, 260 (2009) (finding that, in accordance with § 2429.5, agency's management rights exception was barred because the agency had notice that the arbitrator might award a retroactive promotion but failed to argue below that such a remedy would violate management's right to select); *U.S. Dep't of the Treasury, Internal Revenue Serv.*, 61 FLRA 304, 305 (2005) (barring agency's argument that the union's interpretation of a particular article would violate management's right to assign work because there was no indication in the record that the agency made that argument below, and the arbitrator ultimately accepted the union's interpretation of the article).

Accordingly, we dismiss the Agency's exception.

## V. Analysis and Conclusions

### A. The award is not based on a nonfact.

The Agency claims that the award is based on a nonfact because the Arbitrator incorrectly recorded and reported an Agency witness's "hindsight evaluation" of the grievant's rating and then relied heavily on that testimony in determining that the grievant was qualified as a GS-11. Exceptions at 3-9. In this regard, the Agency asserts that the witness only testified that the grievant should have been rated as a GS-9 and that, based on the selectee's personnel folder, it was the selectee rather than the grievant who qualified at the GS-11 level. *Id.* Moreover, the Agency claims that the award is based on a nonfact because the Arbitrator failed to consider evidence indicating that the selectee had prosthetics experience. *Id.* at 9.

To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. *See, e.g., Soc. Sec. Admin., Se. Program Serv. Ctr., Birmingham, Ala.*, 64 FLRA 322, 323 (2009); *NFFE, Local 1984*, 56 FLRA 38, 41 (2000). However, the Authority will not find an award deficient on the basis of an arbitrator's determination of any factual matter that the parties disputed at arbitration. *See, e.g., NFFE, Local 1984*, 56 FLRA at 41.

The Agency's assertion that the award is based on a nonfact because the Arbitrator incorrectly reported and recorded testimony is without merit. Although the Agency discusses several instances where the Arbitrator allegedly misstated testimony, it has not established that the Arbitrator's findings were central facts underlying the award. *See* Exceptions at 3-9. In this regard, even if the Arbitrator incorrectly recorded and reported testimony, the Agency has not demonstrated that, but for the Arbitrator's mistake, he would have reached a different result; the witness only considered the grievant's master's degree in his hindsight evaluation, and the Arbitrator independently found that, because of the grievant's master's degree and union experience, she qualified at the GS-11 level. *See, e.g., AFGE, Local 2142*, 52 FLRA 739, 744 (1996) (finding that union failed to demonstrate that the arbitrator's determination that the grievant's ten-month detail was education and not training was a central fact underlying the award); *AFGE, Local 3947*, 47 FLRA 1364, 1372 (1993) (denying union's

nonfact exception because, even if the arbitrator made an incorrect finding, the union did not demonstrate that, but for this finding, the arbitrator would have reached a different result).

Moreover, the issue of whether the selectee had prosthetics experience was disputed at arbitration. *See, e.g.*, Award at 20, 38 (addressing the issue of whether the grievant or the selectee had more prosthetics experience). The Authority will not find that an award relies on a nonfact based simply on the Arbitrator's allegedly erroneous determination of any factual matter that the parties disputed at arbitration. *See, e.g., Nat'l Ass'n of Gov't Emps., Serv. Emps. Int'l Union, Local R4-45*, 64 FLRA 245, 246 (2009); *U.S. Gov't Printing Office, Wash., D.C.*, 62 FLRA 419, 426 (2008); *NFFE, Local 1658*, 55 FLRA 668, 671 (1999) (finding that, because the parties contested below whether a particular candidate failed to apply for the position or did not apply in a timely fashion, the union's nonfact exception did not provide a basis for finding the award deficient); *NFFE, Local 186*, 55 FLRA 59, 60 (1999) (determining that union's contention that the arbitrator erroneously evaluated the evidence concerning the grievant's qualifications for other positions failed to demonstrate that the award was deficient as based on a nonfact because the issue was contested at arbitration). Consequently, the Agency's argument does not provide a basis for finding the award deficient.

Accordingly, we deny the Agency's exception.

B. The Arbitrator did not fail to provide a fair hearing.

The Agency asserts that the Arbitrator committed "harmful due process error" by incorrectly reporting and recording an Agency witness's "hindsight evaluation" of the grievant's rating and then relying heavily on that testimony in determining that the grievant was qualified as a GS-11. Exceptions at 3-9. Moreover, the Agency asserts that the Arbitrator committed "harmful due process error" when he failed to consider evidence demonstrating that the selectee had prosthetics experience. *Id.* at 9. The Authority has addressed similar arguments using a fair hearing analysis.<sup>5</sup> *See AFGE, Local 3627*, 64 FLRA 547, 550 (2010) (considering union's contention that award conflicted with the evidence

and testimony as a fair hearing exception); *AFGE, Local 900*, 63 FLRA 536, 540 (2009) (considering union's claims that arbitrator misinterpreted testimony of a management official and failed to consider evidence and objections presented at the hearing as claims that the arbitrator failed to provide a fair hearing).

The Authority will find an award deficient on the ground that an arbitrator failed to conduct a fair hearing when it is demonstrated that the arbitrator refused to hear or consider pertinent and material evidence or that other actions in conducting the proceeding prejudiced a party so as to affect the fairness of the proceeding as a whole. *See, e.g., AFGE, Local 900*, 63 FLRA at 540; *AFGE, Local 1668*, 50 FLRA 124, 126 (1995). However, an arbitrator has considerable latitude in the conduct of a hearing; the fact that an arbitrator conducted a hearing in a manner that one party finds objectionable does not in and of itself provide a basis for finding an award deficient. *See, e.g., AFGE, Local 900*, 63 FLRA at 540; *AFGE, Local 22*, 51 FLRA 1496, 1497-98 (1996).

The Agency's assertions challenge the Arbitrator's evaluation of the evidence and testimony and the weight to accord them. The Authority has long held that disagreement with an arbitrator's findings of fact and evaluation of the evidence and testimony, including the credibility of witnesses and the weight given their testimony, provides no basis for finding an award deficient. *See, e.g., AFGE, Local 3627*, 64 FLRA at 551; *AFGE, Local 900*, 63 FLRA at 540. Consequently, the Agency's assertions do not establish that the Arbitrator denied it a fair hearing. *See AFGE, Local 900*, 63 FLRA at 540 (denying union's fair hearing exception, claiming, among other things, that the arbitrator misinterpreted testimony of a management official and failed to consider evidence presented at the hearing, because it merely challenged the arbitrator's evaluation of the evidence and testimony and the weight to accord them); *U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs.*, 60 FLRA 437, 440, 443 (2004) (finding that agency's fair hearing exception, claiming that the arbitrator inappropriately relied on the rating panel's determination despite evidence that the panel process did not take place until after the priority consideration process was complete, did not demonstrate that the award was deficient).

Accordingly, we deny the Agency's exception.

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5. We note that the exceptions were filed prior to the October 1, 2010 effective date of the Authority's revised arbitration Regulations.

C. The Arbitrator did not exceed his authority.

According to the Agency, the Arbitrator exceeded his authority by finding that the grievant should have been rated as a GS-11. Exceptions at 14-15. In this regard, the Agency asserts that, by default, the Arbitrator determined “that [the] [g]rievant’s ‘union experience’ qualified at the GS-9/GS-10 level.” *Id.* at 15. The Agency claims that OPM, rather than the Arbitrator, has the authority to classify and/or grade positions. *Id.* Moreover, the Agency asserts that the Arbitrator lacked authority to substitute his own standards for the qualification standards contained in the Handbook.<sup>6</sup> *Id.*

Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996).

The Agency’s contention that the Arbitrator exceeded his authority is without merit. The issue before the Arbitrator was “[w]hether the Agency violated the [parties’] [a]greement or any law, statute, or regulation when it failed to promote [the] [grievant] to the position of [p]rosthesis [r]epresentative? If so, what shall be the remedy for the violation?” Award at 4. The Arbitrator’s finding that the grievant should have been rated at the GS-11 level was responsive to the issues before him. *See U.S. Dep’t of Veterans Affairs, Ralph H. Johnson Med. Ctr., Charleston, S.C.*, 57 FLRA 72, 76 (2001) (*VAMC Charleston*) (determining that the arbitrator’s finding that the grievant possessed the necessary specialized experience to qualify for a temporary promotion to the GS-12 level was responsive to the issue before him); *Laborers’ Int’l Union of N. Am., Local 28*, 56 FLRA 324, 327 (2000) (noting that, in order for the arbitrator to decide the stipulated issue, it was necessary for her to consider the grade level of the traffic control duties performed by the grievant). Also, the Authority has found that a disputed failure to promote a grievant under a competitive procedure does not concern classification matters; thus, the Arbitrator did not disregard specific limitations on his authority by finding that the grievant should have been rated as a GS-11. *See U.S. Dep’t of Hous. &*

*Urban Dev.*, 65 FLRA 433, 435-36 (2011); *VAMC Charleston*, 57 FLRA at 76 (finding that, because the arbitrator was charged with determining whether the grievant possessed specialized experience equivalent to one year at the next lowest grade to a GS-12, the arbitrator did not exceed his authority by considering whether the grievant had performed the duties of that position); *U.S. Dep’t of the Air Force, Air Educ. & Training Command, Randolph Air Force Base, San Antonio, Tex.*, 49 FLRA 1387, 1389 (1994) (noting that, where an arbitrator determines that a grievant is entitled to a competitive promotion, the award does not concern classification matters). Moreover, the Arbitrator did not substitute his own standards for the qualification standards contained in the Handbook. Rather, he determined that the grievant was qualified for the promotion under both OPM’s and the Agency’s qualification standards. *See Award* at 21, 35. Consequently, the Agency has failed to demonstrate that the Arbitrator exceeded his authority by disregarding specific limitations on his authority.

Accordingly, we deny the Agency’s exception.

## VI. Decision

The Agency’s exceptions are dismissed in part and denied in part.

6. For the reasons stated above, the Agency’s assertion that the Arbitrator exceeded his authority by finding that the grievant qualified as a GS-11 is barred by § 2429.5 of the Authority’s Regulations. *See Fed. Corr. Complex Oakdale*, 65 FLRA at 38; *Def. Commissary Agency*, 56 FLRA at 858.

APPENDIX

Article 22 states, in pertinent part:

*Section 1 – Purpose and Policy*

The parties agree that the purpose and intent of the provisions contained herein are to ensure that promotions are made equitably and in a consistent manner. Promotions shall be based solely on job-related criteria, and without regard to political, religious, labor organization affiliation or nonaffiliation, marital status, race, color, sex, sexual orientation, national origin, nondisqualifying disabling condition, or age.  
...

....

*Section 10 – Panel for Competitive Action*

....

*D. Multiple Grade Levels or Locations*

If an announcement pertains to more than one grade level or geographic location, a separate list of eligible persons will be developed for each grade level and location.  
....

*Section 11 – Sources of Information on Candidates*

....

D. Interviews – If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, all candidates must be interviewed if reasonably available, in person or by telephone where circumstances warrant. If more than one management official is conducting the interview, a union representative may be present upon the employee’s request.  
....

Opp’n, Attach. 2 at 71, 80, 82, 83.

The Handbook states, in pertinent part:

*3. GRADE REQUIREMENTS*

....

b. *Grade Determination.* In addition to the basic requirements for employment, the following criteria must be met when determining the grade of candidates:

....

*(4) GS-11*

*(a) Experience.* At least 1 year of experience equivalent to the next lower level . . . .

*OR,*

*(b) Education.* Education equivalent to [three] full years of progressively higher level graduate education or a Ph.D. or equivalent doctoral degree from an accredited university or college in the field of business; a medical field, e.g., kinesiotherapy, occupational therapy, physical therapy, nursing, etc.; public administration; health administration; or those in related courses of study.

Exceptions, Attach. 8 at 2-4.