KATHRYN B. LARSEN, .

Grievant, .

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v. .Docket Number: 94-HHR-222

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES and WEST VIRGINIA .

DIVISION OF PERSONNEL, .

Respondent(s). .

DECISION

Kathryn Larsen (hereinafter Grievant) filed this claim pursuant to the Grievance Procedure for State Employees, West Virginia Code §29-6A-1 et seq., on August 25, 1993, claiming that the Division of Personnel (hereinafter Personnel) misclassified her position under the classification title of Office Assistant II. Grievant contends that she should be classified as an Office Manager, a Secretary I, or as an Office Assistant III. Her claim was denied at the lower levels and her appeal was received by the Grievance Board on June 2, 1994. (See footnote 1) The Undersigned conducted an evidentiary hearing on two days at Grievant's place of employment,Colin Anderson Center, in St. Mary's, West Virginia. The case became mature for decision on August 23, 1994.

Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than that under which she is currently assigned. See

generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of the Work" section of a classification specification is its most critical section. See generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR / Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unlessclearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993). A grievant is neither prevented from presenting alternative arguments in support of a theory that he/she is misclassified nor is he/she prevented from asserting that more than one classification specification is a better fit for his/her position's job responsibilities than the one currently assigned. The same burden of proof attaches to any alternative argument.

Grievant presented a wealth of evidence in this case to establish that her position is incorrectly classified. She utilized the three classification specifications at issue in attempting to compare examples of her work to each and every clause contained in each section of the three specifications. Further, she utilized blank Personnel Position Description forms as a tool to organize, describe and explain the nature of the work expected of her position. (See footnote 2) Grievant also presented opinion testimony as to the complexity of the nature of her work. Neither Grievant's organizational ability nor diligence should ever be challenged. Grievant's contentions shall be addressed one at a time.

Grievant contends that she functions as an Office Manager because she runs the day-to-day operations of the Vocational Services Department at Colin Anderson Center. She contends that she supervises the fourteen vocational instructors in the Department in the absence of her supervisor, Vocational DirectorGloria Cox. Personnel maintains that Grievant does not function as an Office Manager because she does not "manage" the day-to-day operations of a "branch office." It bases its

opinion upon the interpretations of various clauses contained within the classification specification. The Department of Health and Human Resources (hereinafter HHR) also avers that Grievant should not be classified as an Office Manager but generally relies upon Personnel's interpretation of its own specifications. The relevant sections of the Office Manager classification specification is reproduced as follows:

OFFICE MANAGER

Nature of Work: Under general supervision, performs a full range of office support work at a full-performance level. Manages the day-to-day operations of a branch office of a state agency for an administrator or a field supervisor. Resolves operating problems, oversees maintenance of the building and orders supplies. Typically, performs personnel and/or payroll functions. Performs related work as required.

Distinguishing Characteristics: This class is intended for out-stationed branch offices with a sole employee responsible for office management of a mid-sized to large office. A mid-sized office will consist of a minimum of eight full-time state employees and a full- or part-time administrator/supervisor.

Examples of Work

Receives and independently prepares responses to routine correspondence and inquiries; answers inquires, complaints or requests from clients, personnel or the general public regarding the building, services rendered, or the staff.

Ensures that the office is maintained by staff; requests replacement of equipment, orders supplies and repairs; monitors the use of service contracts.

Updates lists of all equipment, supplies and items at the office; inventories office as requested.

Reviews incoming mail to route administrative mail to appropriate authorities and replies to such matters as directed.

Coordinates the work of the units, passes on work assignments and evaluates work completed; writes reports on unit efficiency, expenditures, contractual agreements or special studies as requested.

Types letters, reports, numerical reports, charts, forms or memoranda from verbal, written or voice-recorded dictation; may enter and manipulate data on a computer terminal or PC to produce reports for management analysis.

Performs or oversees the performance of personnel and/or payroll, and the bookkeeping for the office; for large entities with various fundings or collections, works with auditors or other fiscal control staff.

Participates on committees as requested by the supervising administrator or field supervisor.

May supervise the clerical support unit including signing and approving leave and completing performance evaluations.

Generally, in order for an individual to be classified as a manager, he/she must be in-charge of the operations of a business and have supervisory responsibility over the employees of that business. In order for Grievant to be classified as an Office Manager, she would have to

demonstrate that she manages the "day-to-day operations of a branch office" which consists of a minimum of eight full-time state employees and a full or part-time administrator/supervisor.

Lowell D. Basford, Assistant Director of the Classification and Compensation Section of Personnel, testified on behalf of Personnel. Through his testimony, he attempted to interpret the terms and phrases used in the classification specifications at issue. He stated that the term "branch office" was meant to refer to those state offices which are a part of a larger organizational structure within a state agency but which have independent authority to run their day-to-day affairs in the areas ofpersonnel, payroll or equipment. He opined that the local county health departments are considered branch offices, for example, but that Colin Anderson Center is not such an entity.

The Undersigned accepts that Colin Anderson Center is not a branch office within the Department of Health and Human Resources. Grievant has not introduced any evidence upon which a ruling can be made that Personnel's interpretation of this term is clearly erroneous or inconsistent with the language of said specification. However, even if such was not the case, Grievant's position still would not merit the Office Manager class title as it is also determined that Grievant does not manage the day-to-day operations of the Vocational Department or supervise the fourteen Vocational Instructors.

The evidence indicates that Grievant's predominant duties involve such clerical tasks as record keeping, scheduling and typing and/or preparing various reports, memoranda or letters. Grievant does not have any authority to hire employees or recommend their hiring, discipline employees, or evaluate and train employees. Her job does not involve any of the many duties typically recognized as managerial in nature. Many of the individuals or clients who reside at Colin Anderson Center work either off the facility's grounds or at the facility for nominal wages as a part of their treatment. Grievant places much emphasis on the fact that she is in control of payroll for this program. It is clear that this is not the type of payroll function that was intended to be encompassed by the language of this classificationspecification; Grievant's reliance upon this duty in support of her contention that she is misclassified is misplaced. Therefore, it is determined that Grievant's duties do not warrant the Office Manager class title.

Next, Grievant contends that she should be classified as a Secretary I as opposed to an Office Assistant II because she performs support duties for Ms. Cox who oversees the Vocational Department. Personnel maintains that the Secretary classification does not present the best fit for Grievant's position because she is not responsible for relieving her supervisor of both "clerical and minor administrative duties, [while] exercising discretion and independent judgment" as a predominant part of her job. The Secretary classification specification is reproduced below:

SECRETARY I

Nature of Work: Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.

Distinguishing Characteristics: This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.

At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks aredefined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non-routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Examples of Work

Responds to inquiries where knowledge of unit policy, procedure, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Signs, as directed, supervisor's name to routine correspondence, requisitions, and other documents.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports.

Types reports, manuscripts, and correspondence using standard typewriter or word processing equipment; proofreads and corrects to finished form.

Gathers, requests, and/or provides factual information, requiring reference to variety of sources.

May delegate routine typing, filing, and posting duties to subordinate clerical personnel.

May maintain basic bookkeeping records for grants, contract or state appropriated funds.

May prepare payrolls, keep sick and annual leave records, act as receptionist and perform other clerical duties as needed.

May attend meetings take notes and relay information; typically would not interpret information or speak on behalf of supervisor.

Under the Distinguishing Characteristics section, the secretary class is distinguished from the Office Assistant class by the following key aspects: "the assignment of support duties to a specific individual overseeing a section, or a division," and "the position has limited authority to speak for the supervisor." Personnel puts much emphasis on the latter distinguishing characteristic in determining whether employees should beclassified as secretaries. Along with this job attribute, Personnel contends that the incumbent must be able to exercise independent judgment and discretion in making various office policy and procedure decisions for the supervisor. Further, Mr. Basford stated that not all supervisory positions have secretaries assigned to them because the program or function they supervise is not of a sufficient size or complexity to warrant such personalized assistance. It was stated that Ms. Cox's position is such a position which does not have a need for a secretary.

It is accepted that Grievant performs the majority of the duties detailed in the Examples of Work section of this class spec. Further, she established that she utilizes computers, composes routine correspondence for Ms. Cox, screens calls, responds to inquiries, and attends meetings on behalf of Ms. Cox in order to communicate on her behalf or to relate information gathered from the meetings back to her. The key in determining whether Grievant's position should be classified as a Secretary I is to ascertain whether she spends a predominant part of her time relieving her supervisor of clerical and minor administrative duties which she (Ms. Cox) would have to perform, while exercising discretion and independent judgment in doing so.

While this question is a close one, Grievant has not met her burden of proof in establishing that the predominant portion of her position's normal duties involves duties of the nature contemplated by the Secretary I classification specification. This decision is based, in large part, on Grievant's own designation as to the timeshe spends performing various functions. According to Grievant's own testimony, she spends almost all of her morning scheduling and assigning the staff in the Vocational Department to the various clients and areas within her Department. She reviews leave requests and other records in order to make appropriate fill-in assignments if necessary. Her staff-client assignments are generally based upon the clients' needs and the previously determined training of the staff. The majority of the rest of her day is spent maintaining, updating and filing various reports both for the clients and for the facility. The clients normally have individual plans which must be monitored to assure compliance therewith and the facility must keep records on everything from equipment and supplies to projects performed by the clients and travel. Finally, Grievant makes arrangements for overtime work if she is notified by the staff teachers and area supervisors that such is needed.

The record does not support a finding that Grievant spends a predominant part of her time engaged in either clerical or administrative duties which are the responsibility of Ms. Cox but which have been delegated to Grievant. In other words, Grievant's duties have not been delegated by Ms. Cox to relieve her (Ms. Cox) of duties she would otherwise perform. It is clear that Grievant is very efficient in performing the abundance of work which she is responsible for and also that the work is vital to the effective operations of the Center. However, she has not shown that herposition's predominant duties fall within the nature of

work contemplated by the Secretary I classification specification.

Grievant's final contention is that if she should not be classified under the Office Manager classification or the Secretary series, she should at least be classified as an Office Assistant III based upon the complexity of the nature of the duties she performs. The Office Assistant II and III classification specifications are presented below:

OFFICE ASSISTANT III

Nature of Work: Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics: Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

OFFICE ASSISTANT II

Nature of Work: Under general supervision, performs full-performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics: Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the understanding of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

Examples of Work

Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction,division or multiplication); corrects errors if the answer is readily available or easily determined.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; reviews files for data and collects information or statistics such as materials used or attendance information.

Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as adding machine, calculator, copying machine or other machines requiring no special previous training.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Collects, receipts, counts and deposits money.

Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.

Posts records of transactions, attendance, etc., and writes reports.

May compile records and reports for supervisor.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database.

The Undersigned need not go throught the same analysis of comparing and contrasting the two classification specifications as Ms. Basford opined at the level four hearing that Grievant's duties did justify the Office Assistant III classification. This opinion was based upon the evidence presented by Grievant and the discussions had relating to the processing of this claim through the lower levels. Mr. Basford testified that Personnel was not as familiar with the nature of the duties performed by Grievant at the time it classified her as an Office Assistant II as now. It is herebydetermined, based upon Personnel's admission, that Grievant's position is misclassified. Finally, HHR defers to the opinion of Personnel. Therefore, it is held that this grievance must be granted to the extent that Grievant's position should be reallocated to the classification of Office Assistant III.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is employed by the Department of Health and Human Resources at its Colin Anderson Center in that facility's Vocational Department.

2. Grievant is currently classified as an Office Assistant II.

3. The predominant duties of Grievant's position are clerical in nature. She is responsible for the following: scheduling staff for everyday work assignments, travel assignments and inservices; record keeping; preparing various reports, memoranda and letters; payroll for the Center's residents; maintaining personnel files; answering questions from staff at the Center and from the Public; and ordering and maintaining supplies.

4. Grievant does not manage a branch office for the Department of Health and Human Resources.

5. Grievant does not supervise any staff.

6. Grievant does not relieve her supervisor of administrative and/or clerical functions which require the exercise of independent judgment and discretion.

7. Grievant does "perform advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices." She also "interprets office procedures, rules and regulations."

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant has not proven by a preponderance of the evidence that the nature of her position's duties are better described by the classification specifications of Office Manager or Secretary I.

2. The Division of Personnel has admitted that the nature of the duties required of Grievant's position better fit within the classification specification of Office Assistant III than that of Office Assistant II. Therefore, Grievant's burden of proof has been met on this issue.

Therefore, this Grievance is hereby DENIED IN PART and GRANTED IN PART. The Division of Personnel is hereby ORDERED to reallocate Grievant's position to that of Office Assistant III. Further, Grievant's position's is to be assigned to the pay grade established for the Office Assistant III position. As a result, Grievant is to be awarded the difference, if any, between the salary she would have made had she been classified as an Office Assistant III on August 1, 1989, the date when she was assigned the classification of Office Assistant II, and the salary she has since received, plus interest.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must

advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

December 22, 1994

Footnote: 1*The inordinate delay occurred at level three. Grievant appealed the level two decision issued July 20, 1993; however, the level three decision was not issued until May 26, 1994.*

Footnote: 2*Grievant presented well over one-hundred pages of text which was treated as testimonial at the level four hearing. Grievant was asked to affirm that the statements contained in this material were accurate and the Respondents were allowed to cross-examine Grievant upon the substance of the statements made therein.*