DOROTHY J. CHILDRESS,

Grievant,

v. DOCKET NO. 93-T-434

DEPARTMENT OF TAX AND REVENUE and
DEPARTMENT OF ADMINISTRATION,
DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

This is a grievance by Dorothy Childress (hereinafter "Grievant"), an employee of the Respondent Department of Tax and Revenue, challenging her classification as a "Data Entry Supervisor" by the Respondent Division of Personnel (hereinafter "DOP"). The Grievant contends she should be properly classified as a "Data Processing Supervisor." This grievance was initiated on September 21, 1993. As Grievant's superiors at Levels I and II were unable to grant the relief requested, the grievance was waived to Level III where an extensive evidentiary hearing was conducted on October 1, 1993. Thereafter, the Grievance Evaluator issued a thirteen-page ruling denying the grievance on October 12, 1993. The grievant elected to appeal to Level IV and a hearing was conductedin the Board's Charleston office on November 30 and December 6, 1993. (See footnote 1)

Background

The facts in this case are not in dispute. As an employee of the Department of Tax and Revenue, Grievant supervises the Data Entry Unit in the Information Processing Section of the Revenue Division. Grievant directly supervises twenty full-time employees, including one Data Entry Lead Operator, ten Data Entry Operator II's, and nine Data Entry Operator I's. G Ex 4 & 8. (See footnote 2) This permanent work force is augmented by three to ten temporary data entry operators for approximately six months per year, depending upon the workload. G Ex 4.

The Data Entry Unit is the largest unit within the Data Processing Section. The Data Processing

Section is "responsible for capturing data from various tax returns, updating computer files, maintaining the department's business data base computer file and computer addressing of documents for mailing to taxpayers. Each year 2.3 million tax returns are processed, accounting for over 275 million keystrokes." PT Ex 2. The Data Entry Unit is primarily responsible for maintaining the input/output log control book, capturing data from tax returns, creating computer tapes usedfor updating computer systems, and modifying and creating data entry input screens and output formats using the Motorola IV Phase mini-computer system. See PT Ex 2; G Ex 4.

According to her Position Description (hereinafter "PD"), Grievant spends approximately 17.5 percent of her time planning and directing the work assignments for her permanent and temporary data entry operators. G Ex 4. Grievant is assisted in this task by a Lead Data Entry Operator who, according to her classification, determines priorities for data entry jobs, makes assignments to operators, trains new employees, evaluates the daily and overall performance of operators and assists in the daily and weekly auditing of the unit workload. See G Ex 12.

Grievant spends an estimated 12.5 percent of her time monitoring employee performance using daily keystroke reports generated by the computer system. G Ex 4. Another 12.5 percent of her time is devoted to evaluating keystrokes and returns to be processed in order to develop work schedules. G Ex 4. Again, Grievant is assisted in performing these tasks by her Lead Data Entry Operator.

Grievant spends approximately 7.5 percent of her time preparing daily attendance and tardy reports, reviewing monthly time sheets, scheduling and approving annual leave, approving sick leave requests, monitoring leave usage and counseling employees on proper use of leave, and recommending disciplinary actions, as necessary. G Ex 4. Another 10 percent of Grievant's time is estimated to be devoted to preparing performance reports onsubordinate employees. G Ex 4. An additional 10 percent of Grievant's time is dedicated to planning and directing training of employees, to include temporaries, using a current procedures manual and instruction sheets which are specific to a particular application. G Ex 4. Grievant devotes approximately 5 percent of her time to interviewing and testing applicants for permanent and temporary positions.

Grievant further spends an estimated 2.5 percent of her time making recommendations on new equipment or updating current equipment. G Ex 4. Another 2.5 percent is consumed by filling in for her immediate supervisor as acting head of the Information Processing Section, or performing special projects as directed by her immediate supervisor. G Ex 4. Finally, Grievant dedicates approximately

20 percent of her time to 12 functions described as follows: (See footnote 3)

1. Contact Tax Unit Supervisors with Data Entry problems as they occur; make suggestions on how to resolve production problems.

2. Work with Tax Unit Supervisors to plan procedures for new applications or modify procedures for current applications.

3. Work with Programmer Analysts to resolve problems with Data Entry layouts and to develop Data Entry layouts for new applications.

4. Work with Users to set job priorities based on standard deadlines or special user requests.

5. Work with Programmer Analyst to resolve internal cabling problems.

6. Work with Motorola Field Engineer to resolve equipment problems. This may involve checking equipment for error lights and messages, switching circuit boards, etc.

7. Work with Motorola Software Support to resolve software problems as they occur.

8. Develop Motorola IV Phase Data Entry applications using Vision Program language.

9. Develop reformatting programs to convert data from disk to magnetic tape for main frame processing or to generate printed reports on one of two system printers.

10. Maintain program documentation, containing data entry layouts, special instructions, and hardcopy of IV Phase programs.

11. Perform TODOS and FRODOS (IV Phase Disk Operating System) transfers of programs and data between the disk storage areas of each system so that it may be accessed from either system or moved completely from one system to the other.

12. Run routine maintenance and clean programs on IV Phase system, in order to avoid potential system and disk storage problems. Routine maintenance programs check for software errors; clean programs check disk drive for errors and compact data stored on the disk. (G Ex 4.) (See footnote 4)

Several witnesses testified as to the technical nature and complexity of Grievant's job based upon several of the 12 functions listed above. Mr. Terry Tallman, Manager of Planning and Control in the Department of Administration, Division of Information Services and Communication, an Electronic Data Processing Manager II, testified that he had previously supervised a data processing function that included the Data Entry Unit in the Revenue Division. At that time (approximately 1976 to 1979) the unit was supervised by Ms. Blanche Lynch, who was then classified as a Data Processing Supervisor.

As a result of a reorganization in 1979, data processing activities involving taxation were taken out of the Division of Information Services and Communication and assigned to theDepartment of Tax and Revenue. Ms. Lynch's duties were subsequently expanded and she was ultimately reclassified as a Data Processing Manager I in 1988. Grievant gradually assumed the responsibilities and duties of Ms. Lynch's former position as supervisor of the Data Entry Unit with a "working title" of "Data Processing Supervisor." (See footnote 5)

Grievant also presented evidence regarding other state employees who are classified as Data Processing Supervisors. None of these employees exclusively supervise personnel performing data entry functions. For example, one Data Processing Supervisor (Marta Dean) is involved with network services. Another (Constance Helinski) supervises personnel in such classifications as Data Job Coordinator, Office Automation Coordinator, Office Assistant, and Office Automation Assistant.

Mr. Lowell D. Basford, Assistant Director, Division of Personnel, testified that he supervises the unit responsible for the development and maintenance of the classification plan for the classified service, and that he was responsible for development of the class specifications in the Reclassification Project. In particular, Mr. Basford testified that the Data Entry Supervisor

classification was developed to properly classify positions havingresponsibility for supervising a group of Data Entry Operators. He also indicated that the Distinguishing Characteristics section of the Data Processing Supervisor class specification was intended to distinguish Data Processing Supervisors from Data Processing Managers. Finally, Mr. Basford testified that, after hearing all of the testimony and evidence at the Level IV hearing, he still believed that the Grievant's position was properly classified as a Data Entry Supervisor.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Data Processing Supervisor and Data Entry Supervisor positions at issue in this case are reproduced herein as follows:

DATA PROCESSING SUPERVISOR

Nature of Work

Under general supervision, performs full-performance technical and supervisory level in a major operational data processing unit such as computer operations, distribution, data entry, or teleprocessing, in the central data processing facility or a major agency, or serves as data processing coordinator for a small agency where programming and operational functions are performed by the central data processing facility; responsible for supervising computer operations, scheduling user jobs submission and distribution work, evaluating user data entry and distribution requests, and planning initial and continuation training. In a small agency, supervises a small data entry unit and coordinates the data processing work of the agency by submitting production jobs to operations for processing and assisting programmers in the development and modification of user programs; serves as a liaison between user personnel and data processing personnel in meeting the programming and operational needs of the agency; irregular work hours are required. Performs related work as required.

Distinguishing Characteristics

Supervises a discrete unit of data processing personnel. Authority to commit the agency to action is very limited and the assignment of duties is reactive to the solution of data problems and needs rather than proactive in planning and projecting the future data processing capabilities of the agency's centralized facility.

Examples of Work

Supervises a computer operations unit of a major agency or coordinates data processing functions for a small agency; schedules jobs, runs reports, trains users in day-to-day operations; trouble-shoots operational problems.

Schedules distribution jobs; allocates personnel and equipment resources to meet peak demands; determines job priorities.

Supervises small user data entry staff and coordinates other user data processing needs with Support Services.

Performs output audits to evaluate individual and group performance; evaluates equipment utilization data.

Evaluates and resolves personnel and equipment problems; makes recommendations on acquisition of new equipment.

Recommends personnel changes; counsels employees; directs initial and continuation training; instructs supervisors in operation of new equipment and implementation of new procedures.

DATA ENTRY SUPERVISOR

Nature of Work

Under general supervision, at the full-performance level, serves as a unit or shift supervisor in a high volume data entry unit involved in the rapid and accurate transcription of data using card punch or electronic data recording machines; responsible for directing and scheduling the work of assigned operators to assure the timely completion of data entry jobs, determining job priorities, and maintaining accuracy standards. Supervision is normally received from a Data Processing Supervisor. Performs related work as required.

Examples of Work

Supervises subordinate data entry operators involved in entering and verifying data using either card punch machines, teleprocessing terminals, key-to-disk, key-to-diskette, or key-to-tape equipment to ensure the smooth flow of work and the rapid and accurate processing of data.

Analyzes operators' stroke sheets to determine group and individual performance averages.

Logs in job requests, jobs completed and returned, batch data; maintains logs on save tapes,

diskette and data entry card files, source document file, and instruction books.

Trains new employees, evaluates the daily performance of new employees and the overall performance of all operators, plans and assigns work, and determines priorities.

Performs warm and cold starts on key-to-disk equipment.

Develops and maintains low and high level format programs for new jobs.

Contacts users to discuss data entry questions and problems and to inform them that the data is ready to be picked up.

Assists operators on keying instructions and records the operators' data entry statistics.

Maintains group attendance and leave records and authorizes leave requests.

Discussion

In order for the 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 the one 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 Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991); 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 the Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR/Div. 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 No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weightunless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Grievant argues that she should be classified as a Data Processing Supervisor because she

works under general supervision, and performs at the full-performance technical and supervisory level in the Data Entry Unit of the Department of Tax and Revenue, a major operational data processing unit in a major agency. Thus, Grievant fits within the Nature of Work portion of the Data Processing Supervisor classification specification. Moreover, Grievant established that she performs most of the duties listed under the Examples of Work portion of the classification specification for Data Processing Supervisor.

If Grievant's duties were being compared with any classification specification other than Data Entry Supervisor, she would undoubtedly prevail. However, it is readily apparent that the job specification for Data Entry Supervisor represents a conscious effort to carve out a category of positions that might otherwise be included under the more general category of Data Processing Supervisor. Data entry represents a specific activity that falls under the more general heading of data processing. (See footnote 6) Given all the evidence of record, it is more difficult to fit the Grievant into the classification of Data Processing Supervisor than the more specific classification of Data Entry Supervisor. Thus, the "best fit" for Grievant's duties is the Data Entry Supervisor classification. See Simmons v. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991).

Grievant demonstrated that certain technical duties which she performs are not included in the classification specification for Data Entry Supervisor. In particular, making recommendations on new equipment or updating current equipment and acting as the chief of the Information Processing Section in the absence of her immediate supervisor go beyond the Data Entry Supervisor class specification. In addition, a majority of the 12 specific functions as listed in Grievant's PD and set forth in the "Background" section of this opinion are not included under the Data Entry Supervisor class specification. However, these duties that fall outside her current classification require no more than 25 percent of Grievant's time, at best. The predominant duties Grievant performs are included in the Data Entry Supervisor class specification and these duties provide a controlling basis for classifying her position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant is employed as the supervisor of the Data Entry Unit of the Information Processing Section in the Department of Tax and Revenue's Revenue Division in Charleston. G Ex 4 & 8.

2. Grievant is presently classified by the Division of Personnel as a Data Entry Supervisor.

3. The Data Entry Unit captures data from over two million tax returns annually using the Motorola IV Phase mini-computer system. The unit is also responsible for maintaining the input/output log control book, creating computer tapes and updating computer systems, as well as modifying data entry input screens and output formats.

4. Grievant spends up to twenty-five percent of her time performing technical duties that are outside the Data Entry Supervisor classification. These duties are included in the classification specification for Data Processing Supervisor.

5. Grievant devotes the predominant portion of her time to performing supervisory duties relating to operation of the Data Entry Unit and overseeing personnel assigned to that unit.

6. Employees in the Data Entry Unit supervised by Grievant are classified as Data Entry Operators I and II and Lead Data Entry Operator.

CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Data Processing Supervisor constitutes the "best fit" for the duties she performs. See Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievant is performing some duties that are outside her current classification as a Data Entry Supervisor, this does not render her misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See Div. of Personnel Administrative Rules, Series I (Amended), §4.04(d) (1993); Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. Personnel's interpretations of the classification specifications for the positions of Data Processing Supervisor and Data Entry Supervisor, as they apply to the duties being performed by Grievant, are not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

4. The Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit with the classification specification for Data Entry Supervisor.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County 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.

Dated: January 31, 1994 LEWIS G. BREWER

Administrative Law Judge

Footnote: 1*Upon receipt of timely post-hearing submissions from all parties, this case became mature for decision on December 23, 1993.*

Footnote: 2*Exhibits at the Level IV hearing will be referenced as "G Ex " for Grievant's exhibits. Exhibits at the Level III hearing will be referenced as "PT Ex " for Petitioner's (Grievant's) exhibits. References to the Level III transcript will be cited as "T at ."*

Footnote: 3*These functions are performed on an irregular "as required" basis, making it impractical to assign a realistic time estimate to each activity.*

Footnote: 4*These activities, described in the "Description of Work" section of Grievant's PD, have been renumbered to avoid confusion that might result from maintaining the numbers used in the original document.*

Footnote: 5*Ms. Lynch testified at the Level III hearing that she was classified as a Data Processing Supervisor from approximately 1980 to 1986 while performing essentially the same duties Grievant currently performs. As Grievant's current immediate supervisor, she opined that Grievant did not fit the Data Entry Supervisor classification because she performed certain duties that went beyond that class specification. She indicated her opinion that the Data Processing Supervisor classification was the best fit for Grievant's current duties. T at 14-15, 22-23; PT Ex 8.*

Footnote: 6*For whatever reason, there has been a conscious value judgment that the Data Entry Supervisor classification warrants a substantially lower pay grade than the Data Processing Supervisor. Data Entry Supervisors are at pay grade 6 while Data Processing Supervisors are at pay grade 14. According to Mr. Tallman, Grievant's data entry unit is presently*

the only one of its kind in state government. Establishing a separate classification that applies to only one employee appears inconsistent with the spirit and intent of the Statewide Reclassification Project. Accordingly, the Division of Personnel is encouraged to consider abolishing theData Entry Supervisor classification, thereby allowing Grievant to fall under the remaining classification that constitutes the "best fit" for her duties.