ELIAS MAJDALANI,

Grievant,

v. Docket No. 93-HHR-235

DEPARTMENT OF HEALTH AND HUMAN
RESOURCES at HUNTINGTON STATE HOSPITAL
and DIVISION OF PERSONNEL,

Employer.

D E C I S I O N

Dr. Elias Majdalani (hereinafter Grievant) filed this complaint on January 15, 1993, against his employer, the Department of Health and Human Resources, wherein he claimed that "[T]he nature of work, the job duty and qualifications defined for my new classification are far behind the spectrum of the job performed." Grievant is currently classified by the Division of Personnel (hereinafter Personnel) as an Office Automation Coordinator I (hereinafter OAC). He contends that the classification of Data Processing Manager I (hereinafter DPM) constitutes the "best fit" for his duties and responsibilities. Personnel was joined as an indispensable party at level four by Order of July 29, 1993.

The classification specifications at issue are reproduced herein as follows: (See footnote 1)

OFFICE AUTOMATION COORDINATOR I

Nature of Work

Under general supervision, performs basic full-performance technical work in the office automation of a state agency. Works with management, users, and information systems staff in purchasing, installing, and maintaining a statewide computer network. May specialize in telecommunications, data processing, or other area without accountability for the operation of the total network. Reviews literature and recommends purchase of hardware and software. May develop

proposals and specifications. Performs related work as required.

Distinguishing Characteristics

This classification is intended for use by positions in an agency's central office with a large system of terminals/personal computers/LANs distributed throughout the central office and at offices throughout the state. The employee troubleshoots basic software and hardware problems, pulls cable, and installs hardware.

Examples of Work

Discusses installation assignments with supervisor; determines best method of set-up of microcomputers or terminals, faxes, printers, or other peripherals.

Pulls cable, makes arrangements to upgrading of power outlet, and inspects and tests systems after set-up.

Trains new users in the basics of equipment operations, typically in a one-on-one situation.

Installs equipment and software in central and outlying offices.

Attends conferences, vendor demonstrations, and workshops to learn the implementation of new products, procedures, and programs.

Receives equipment and software packages; logs inventory; completes licensure and warranty information, and maintains record of inventory and its location.

May perform additional duties such as data job coordination, programming or other data related function.

DATA PROCESSING MANAGER I

Nature of Work

Under general supervision, performs full-performance level administrative and supervisory duties directing the data processing operations of a smaller agency system or as a first level or specialty function administrator in a large, comprehensive data processing program. Specific unit activities may include systems or applications programming, or computer operations in addition to distribution, job coordination and/or data entry. Directly or through lower level supervisors, schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Provides advice and

assistance to management. Performs related work as required.

Distinguishing Characteristics

The Data Processing Manager I is distinguished from the Data Processing Manager II by the specific unit activities in the states's central data facility; work is in an area of comprehensive operations with a limited scope of duties and a discrete function. In a state agency, the Data Processing Manager I is responsible for the overseeing work of a staff involved in programming and operations; the staff is small in number. The employees have a broad scope of duties in the daily operations for the agency. The incumbent may also supervise data entry, clerical support, and job coordination.

Examples of Work

Organizes, assigns, directs and reviews the work of a small group of professional, technical and or clerical personnel in the operation of an agency data processing function; supervises programming, computer operations, job coordination, clerical and/or data entry activities.

Plans work schedules and sets priorities to make the most efficient use of available personnel and equipment.

Analyzes agency operations and determines feasibility and/or cost of conversion from manual to electronic records management and data analysis; mayassist management in special studies requiring computer data collection or analysis.

Analyzes and establishes data processing unit procedures and work standards; sets standards for equipment maintenance and troubleshooting.

Advises staff and coordinates the resolution of hardware and software problems.

Directs the design, development and implementation of new systems and new applications; reviews system expansion proposals and recommends approval and disapproval; recommends the purchase of new equipment; may develop equipment specification proposals or new system standards; may coordinate the installation of new equipment.

Confers with vendors and repair personnel on system features, new technology and on equipment usage problems; confers with software experts and system programmers on new applications and the correction of software problems.

Recommends agency data management, data retention, and data security.

Instructs staff in system operation, may instruct staff in programming or program execution; may direct start-up and system recovery operations.

Provides technical assistance to agency operating personnel on a broad range of data management problems; may write computer programs or prepare JCL job stream code, and operate a wide variety of electronic data processing equipment; may instruct agency personnel outside unit in system operation, program execution and problem resolution.

Prepares a variety of management reports on equipment utilization, production, down-time, and problems; may order supplies and direct the maintenance of equipment and supply inventory records.

May prepare and/or review documentation and procedures for manuals for data entry, program execution, or long-range data processing plans.

May coordinate data processing activities performed by central information systems agency; confers with central computing agency staff on system features, program execution schedules, report generation, and improved applications.

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than that under which he is currently assigned. See generally, Hayes v. W.Va. Dept. of NaturalResources, 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. 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 his 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 Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if the language of such is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993).

Grievant maintains that his job is both technical and administrative in nature. He contends that

even though the OAC position description references duties he performs, said job description is not broad enough to cover all of his duties and responsibilities. He argues that the DPM class specification more completely encompasses the duties and responsibilities of his position because he is responsible for the total operation of thecomputer system at Huntington State Hospital (hereinafter Hospital).

Personnel contends that Grievant is correctly classified because he does not perform any "managerial" functions as contemplated by the DPM specification and as that term is generally defined by Personnel. It avers that Grievant's responsibilities are predominantly technical in nature rather than administrative or supervisory. Lowell D. Basford, Director of the Classification and Compensation Section within Personnel, testified on behalf of the agency. He opined that Grievant could not be classified as a DPM because he is not responsible for the operations of a computer system of a stand-alone entity or agency. Personnel also presented the testimony of Homer Sweeney, a Data Processing Manager II within the Bureau of Administration and Finance for the Department of Health and Human Resources (HHR), to support its contention that Grievant is not solely responsible for the computer network at the Hospital. Mr. Sweeney testified that his office is ultimately responsible for supporting all of the computer systems' needs within HHR. (See footnote 2) Finally, Mr. Basford contended that Grievant does not function as a supervisor because he does not supervise three or more employees.

The computer system at the Hospital is called an AS400. This system was described as a multi-user, multi-tasking machine which has approximately 75 personal computers connected to it and servesapproximately 175 users. The AS400 computer is responsible for the total computing needs of the Hospital. Grievant's in-house title is Systems Administrator, and he supervises one co-worker also classified as an OAC. Grievant and this other employee comprise the computer department at the Hospital. Grievant's supervisor, the Hospital's Director of Fiscal Services, has no direct responsibility for the AS400 system.

According to the evidence provided at both hearings in this matter, Grievant has primary responsibility for the Hospital's utilization of the AS400. Grievant is generally responsible for the following: organization and application of the system; managing or developing the system; training employees on the system; providing for system security; and establishing system service regulations and policies. Grievant determines what software is to be run by the AS400 and troubleshoots

problems with the system's hardware and software. He develops programs for use on the AS400 which enable the many departments within the Hospital to utilize the system effectively and efficiently. He makes decisions about what computer equipment and software needs to be purchased within the Hospital's budget. Finally, Grievant is on-call twenty-four hours a day.

Personnel contends that it is Mr. Sweeney and not Grievant who has responsibility for overseeing the AS400 system at the Hospital because it is his office which approved the implementation of the system and continues to approve all purchasing of goods for the system through the state's mandatory bidding process if they costover $5000.00. Mr. Sweeney testified that it was his office's initial responsibility to introduce the AS400 systems into the state hospitals, and each hospital has generally the same type of software and hardware packages. Further, he stated that his office researches and reviews new products before the hospitals are given approval to use such products. Based upon this relationship, Personnel contends that Grievant should not be classified as a DPM because he does not have total operational responsibility for the AS400. It contends that Mr. Sweeney's office has the managerial responsibility of planning, developing and overseeing the purchasing and application of computer hardware and software which, in turn, enables Grievant to function as the technical administrator of the AS400 system at the Hospital.

The testimony does not conclusively establish that Mr. Sweeney's office exerts much control over what hardware or software Grievant may be allowed to purchase and use. Grievant stated that he normally notifies Mr. Sweeney's office of the existence of new products and whether or not such products would be cost-effective to utilize. He stated that he maintains contact with various vendors of computer products which are of interest to the Hospital. Regardless of this fact, it must be determined that Mr. Sweeney's office does possess the control over the Hospital's system which was said to exist, even if such control is not often exerted. The existence of this organizational control over Grievant's authority to purchase material, however, cannot alone defeat his claim that he is misclassified.

From a review of the DPM classification specification, a classified employee who holds said title must predominantly "perform[s] full-performance level **administrative** and **supervisory duties directing** the data processing operations of a smaller agency system or as a first level or specialty function administrator in a large, comprehensive data processing program." (Emphasis added). Grievant contends that his current position is not solely technical as described by the following

language of the nature of work section of the OAC specification: "performs basic full-performance technical work assisting in the office automation of a state agency." He contends that he does perform administrative functions because he works closely with the management of the Hospital in implementing and organizing the AS400 system and also by making purchasing decisions based upon budgetary constraints. He avers that his job is not simply technical in nature because he works closely with the users of the system in training, troubleshooting, etc. Finally, he contends that he has supervisory responsibility over his co-worker.

Mr. Basford began his testimony by refering to Section 4.04 of Personnel's Administrative Regulations (1993) which concern classification plans. Section 4.04(b) states as follows:

> In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.

Mr. Basford focused upon the language "and relationships to other classes" in order to opine that Grievant cannot be classified as a data processing **manager** because his position does not require him to perform the types of duties and tasks that are performed by employees who hold other managerial class titles within the classified plan. Mr. Basford went on to list the hierarchy of positions within the classified plan as supervisory, professional, technical, labor intensive and support. He opined that Grievant is not a "manager" because he is a hands-on type of employee whereas managers predominately do not perform hands-on work because they have a staff which are directed to perform such work. He stated that the data processing managers are located at the central office of HHR and that these employees have the ultimate responsibility for the operations of the computer systems within the state hospitals; therefore, Grievant's job is easier and his duties are diluted.

Personnel also relies upon the Supreme Court's pronouncements in Blankenship, supra, in this case. In Blankenship, Personnel appealed a decision of the McDowell County Circuit Court which upheld this Grievance Board's decision concluding that the Respondent (grievant) was improperly classified as a Computer Operator II and should be classified as a Data Processing Manager I. (See footnote 3) The Court reversed the circuit court and held that Ms.Blankenship was not performing the duties of a data processing manager as that specification was interpreted by Personnel. (See footnote 4)

In the instant case, Personnel asserts that Grievant's duties are akin to those performed by Ms. Blankenship; therefore, the Court's holding is controlling. However, the Court's ruling in Blankenship, while helpful, is not controlling in this case as the issue herein is one of material fact and not a question of law. In classification-related complaints, if a grievant factually establishes that he/she performs duties consistent with the duties contemplated by the classification specification at issue, there is no legal impediment to that employee being entitled to that classification. Grievant has tried to demonstrate factually that his duties and responsibilities entitle him to the DPM classification. He has not based his contentions upon a comparison of the job duties of other classified employees such as Ms. Blankenship. Further, upon a reading of the Blankenship decision, it is not clear that Grievant performs duties similar to those then performed by Ms. Blankenship.

Grievant's role as supervisor over his co-worker was not challenged. Further, a part of his overall responsibility arguably resembles those duties normally associated with "administrative" functions such as budgeting and training; however, the record as a whole cannot support a finding that he acts as a "manager" by **directing** a staff which is responsible for the computer system of a small agency system. Further, Grievant has not persuasively established that he is a "first level or specialty function administrator in a large, comprehensive data processing program." It is accepted that Grievant's predominant duties are hands-on and technical in nature. Therefore, he does not have the responsibility of directing a staff of workers to achieve the automation of a state agency. Grievant manages the AS400 computer system but he does not manage a staff of employees. This interpretation of the DPM specification is consistent with the following language contained within its distinguishing characteristics section: "[t]he Data Processing Manager I is responsible for overseeing the work of a staff involved in programming and operations; the staff is small in number. The employees have a broad scope of duties in the daily operations for the agency." Obviously, a data processing **manager** is responsible not only for system management but also personnel management.

The DPM class specification further provides that such an individual "[D]irectly or through lower level supervisors, schedules work and sets unit priorities for the most efficient utilization of equipment and **personnel**." (Emphasis added). Manyof the examples of work contemplated by that specification are concerned with the management of personnel. Grievant does set system goals and priorities to enable the Hospital to utilize the AS400 more effectively; however, there is no evidence that he

directs the performance of any personnel other than with respect to their utilization of the system. These employees perform their normal job functions assigned by their own superiors, in a manner which is simply aided by Grievant and the computer system. Grievant does not directly "manage" these other workers at the Hospital in the manner with which that the term is defined by Personnel.

Grievant's supervision of the other employee classified as an OAC is not the type of supervision contemplated by the DPM class specification as interpreted by Personnel. Mr. Basford stated that within state government, employees classified as supervisors must supervise three or more people. Grievant is correct that the phrase "the staff is small in number" as used in the distinguishing characteristics section of the DPM classification does not limit supervision to a set number of employees. However, Mr. Basford's interpretation of this language, when considered in conjunction with the complete language of the DPM I specification, does not appear to be clearly wrong or even unreasonable. More importantly however, it has not been established that Grievant's predominant duty is to supervise this single employee. In fact, just the opposite can be inferred from the record.

Assuming arguendo, Grievant does perform administrative and supervisory duties, he is still not responsible for "directing the data processing operations of a **smaller agency system** . . .." Notice is taken that the Department of Health and Human Resources is not a small agency. Secondly, Grievant does not have responsibility over an HHR system, instead, he has responsibility for a single system within a unit of HHR. Relatedly, Grievant has not established that he is a "specialty function administrator in a large, comprehensive data processing program." He is responsible for all of the technical aspects of the AS400 system which has not been established to be a part of a large data processing program.

The OAC classification specification's nature of work section states, in pertinent part, "[W]orks with management, users, and information systems staff in purchasing, installing, and maintaining a statewide computer network." The distinguishing characteristics section also states, "[T]his classification is intended for use by positions in an agency's central office with a large system of terminals/personal computers/LANs distributed throughout the central office and at offices throughout the state." Grievant does **maintain** the hospital's AS400 system. Personnel's argument that Grievant cannot be a DPM because he does not manage a staff in the operations of a stand-alone agency system could also be applied to support a finding that he should not be an OAC because he is not in charge of a "statewide computer network" in an "agency's central office." However, Grievant cannot

support hisclaim to the DPM classification simply by showing that he is not properly classified as an OAC.

Given Grievant's extensive background and credentials, it would be safe to say that he performs some duties which are not contemplated by the OAC classification or which other similarly classified employees are not capable of performing; however, the examples of work within the OAC specification are sufficiently broad enough to cover the types of responsibilities Grievant maintains. It must also be remembered that these examples are not meant to be all-inclusive. See, Section 4.04(d) of Personnel's Administrative Regulations. Finally, Personnel's interpretation of the OAC class specification, when taken as a whole, supports the conclusion that that specification is a "better fit" for Grievant's duties than is the DPM classification. Therefore, Grievant's complaint must be denied.

Findings of Fact

1. Grievant is classified as an Office Automation Coordinator I at Huntington State Hospital.
2. Grievant's in-house title is Systems Administrator. He supervises one co-worker who is also classified as an Office Automation Coordinator I.
3. Grievant is responsible for the organization and application of an AS400 computer system. His duties include, but are not limited to: managing the system; training employees on the system; providing for system security; and establishing system service regulations and policies.
4. Grievant has the authority to determine what software is to be run by the AS400 and troubleshoots problems with the system's hardware and software. He makes decisions about what computer equipment and software needs to be purchased under normal budgetary constraints. Pursuant to the State's mandatory bidding requirements, any purchase of goods over $5000.00 must be approved prior to purchase by the Bureau of Administration and Finance for the Department of Health and Human Resources
5. Grievant is on-call twenty-four hours a day.
6. Grievant does not supervise a staff of three or more employees.
7. Grievant does not manage the data processing operations of the Department of Health and Human Resources.
8. Grievant is not a specialty function administrator within a very large, comprehensive data

processing program.

9. Grievant's predominant duties and responsibilities are technical in nature.

The foregoing discussion of the facts of the case and of the applicable law to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant has not proven by a preponderance of the evidence that he is performing the duties contemplated by the classification of Data Processing Manager I. The Data Processing Manager I classification does not constitute the "best fit" for his duties.

2. The Division of Personnel's interpretation of the language contained within the classification specification for Data Processing Manager I is not clearly wrong in this case. See, Blankenship, supra.

Therefore, this grievance is hereby **DENIED**.

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

January 21, 1994

Footnote: 1During the level four hearing, Grievant introduced into evidence copies of these classification specifications as Grievant's exhibits 1 and 2 respectively; however, the undersigned discovered during an initial review of the file that these exhibits were not included in the file. A phone call was made to both parties apprising them of this fact. On January 3, 1993, Grievant's attorney mailed copies of these exhibits to the Grievance Board's office and to opposing counsel. These copies were marked as exhibits by the undersigned after their receipt. Also, the transcript of the level three hearing does

not contain any exhibits.

Footnote: 2The other eight state hospitals each have their own AS400 systems which are not connected in any way to the system at Huntington State Hospital.

Footnote: 3When Ms. Blankenship filed her grievance, she was classified as a Section Chief II. The level two hearing examiner determined that she should have been classified as a Supervisor I. Ms. Blankenship then appealed to level three where the hearing examiner agreed with Personnel and found that she should be classified as aComputer Operator II. Personnel so reclassified Ms. Blankenship during the grievance process. Upon appeal to level four, the administrative law judge ruled that Ms. Blankenship was correct and that she should be classified as Data Processing Manager I. Personnel appealed that decision to the McDowell County Circuit Court.

Footnote: 4It should be noted that a portion of the language of the specification of Data Processing Manager I has been changed since the specification was addressed in Blankenship. However, this change did not make any substantive changes to the language of the specification. Personnel's reliance in this case upon its interpretation of the Data Processing Manager I class specification in effect at the time of the Blankenship Decision is not inconsistent with the language of the current specification.