**ESTHER L. CRIM, .**

**.**

**Grievant, .**

**.**

**v. . Docket No. 95-HHR-138**

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**WEST VIRGINIA DEPARTMENT OF HEALTH .**

**AND HUMAN RESOURCES AND DEPARTMENT .**

**OF ADMINISTRATION, DIVISION OF .**

**PERSONNEL, .**

**.**

**Respondents .**

## D E C I S I O N

Esther L. Crim (Grievant) filed this grievance with her employer, the Department of Health and Human Resources (DHHR), on July 26, 1993, alleging she was improperly classified as an Office Assistant III by the Division of Personnel (DOP). Grievant contends her proper classification should be Supervisor I. After receiving an adverse decision at Level III, Grievant submitted an appeal to this Board on April 4, 1995. Pursuant to Rule 4.11 of the Procedural Rules of the West Virginia Education and State Employees Grievance Board, DOP was joined as an indispensable party under an Order dated April 19, 1995. A Level IV hearing was held in the Board's office in Charleston, West Virginia, on June 21, 1995. At the conclusion of the hearing, all parties waived the opportunity to make written submissions and this case became mature for decision at that time.

### Background

There is virtually no dispute regarding the facts in this case. Grievant is in charge of the Client Finance Unit in the Payroll and Accounts Receivable Section of DHHR's Office of Financial Services.

G Ex 3 at L III. That unit is responsible for issuing eight types of checks to clients, including public assistance checks, as well as issuing medical cards to eligible persons. Grievant's unit processes up to 70,000 checks and medical cards each month.

Prior to the statewide reclassification project, Grievant was classified as a "Supervisor III" under the prior classification plan. Grievant explained that she misunderstood the directions for completing her Position Description (PD) in 1990. G Ex 1 at L III. She completed a revised PD on March 3, 1994. G Ex 3 at L III. Although DOP based Grievant's classification on the 1990 PD, the 1994 PD may be considered at Level IV because it is verified by the signatures of Grievant's supervisors and there was no evidence that Grievant's duties have changed in any appreciable manner since reclassification. Thus, although the title of Grievant's unit changed from "Check Control" in 1990 to "Client Finance" in 1994, the essential functions of the unit have not changed.

Grievant has one Office Assistant I under her immediate supervision. She also supervises a contract employee provided by Manpower Temporary. Grievant explained that the high volume of work and limited availability of clerical support staff necessitateher performing as a "working supervisor." Otherwise, the work of the unit would not get accomplished in a timely manner.

Grievant acknowledged that she does not handle grievances for the employees assigned to her unit, but noted that this authority was delegated differently in different units within the Office of Financial Services. Grievant does approve annual and sick leave and performs the annual evaluation for the one permanent employee assigned to her unit. See G Ex 1 at L III.

Lowell Basford, DOP's Assistant Director for Classification and Compensation, testified on behalf of the Respondents at Level IV. Mr. Basford was the manager responsible for implementing the statewide reclassification project. He testified that in determining whether a particular position should be classified as a Supervisor I, DOP looks at both the number of people being supervised and the complexity of the work being performed by the employees assigned to the unit.

Mr. Basford noted that supervising three or more full-time employees was one of DOP's well-established standards to qualify for supervisory status. Mr. Basford further observed that Grievant's original detailed PD (G Ex 1 at L III) made no mention of daily supervisory activities. Instead, in the last of 26 separately listed duties, Grievant indicates that she performs certain supervisory duties "yearly or occasionally." G Ex 1 at L III. Because there was only one full-time clerical position assigned to the unit, Mr. Basford opined that the supervisory responsibilities of the position were not

significant.

Mr. Basford also observed that, while the work performed in Grievant's unit is important and significant, it is also a highly automated and structured function that is only one part of a total process. Thus, in Mr. Basford's opinion, the largely repetitive nature of the work performed further decreased the supervisory aspects of her position. Indeed, he could not find any significant supervisory aspects in the primary duties of Grievant's position. Mr. Basford reviewed the duties listed in the Office Assistant III classification specification, noting how well Grievant's duties fit into that classification. Further, although Grievant may be constantly aware of what her subordinate clerk is doing in the office, that does not equate to the kind of active intervention and decision making DOP contemplated being done by a supervisor, in Mr. Basford's opinion.

Reviewing the duties contained in the Supervisor I classification specification, Mr. Basford observed that, although a "working supervisor" might perform the same duties as his or her subordinates, the examples of work in that specification were focused upon supervisory activities, rather than the work of the functional unit. Mr. Basford indicated that other "working supervisors" classified as a Supervisor I have more full-time employees under their supervision, necessitating that they spend a greater portion of their time performing supervisory functions. For example, one Supervisor I whose PD was offered into evidence by Grievant (G Ex D) supervised five Food Service Supervisors who, in turn, supervised other employees. In Mr. Basford's opinion, that PD typifies the duties DOP contemplated for the Supervisor I classification.

Mr. Basford was questioned regarding another employee in Financial Services who had been classified as a Supervisor I although her PD (G Ex B) indicated that she only supervised two full-time employees. In response, he observed that the duties in that person's PD appeared more complex than Grievant's, and he suggested that, based upon the practices followed during the reclassification project, DHHR may have advised DOP that additional employees had been assigned to that unit prior to reclassification. In such cases, DOP would classify the position based on such representations from DHHR without correcting or revising the PD originally submitted by the employee.

Grievant also complained in her grievance that she was not given a longevity increase as authorized by § 6.10 of DOP's Administrative Regulations. (See footnote 1) That regulation states:

> Longevity Increases - An employee with seven years of total service who has attained the maximum in the range for the class without a salary increase in the immediately preceding twelve months shall be eligible for a longevity increase as prescribed in the adoption of the new pay plan.

Mr. Basford explained that § 6.10 was established to permit pay increases for employees who are at or above the maximum pay permitted by the pay plan for their classification. Without sucha provision in the pay plan, such employees would have no opportunity for salary growth, regardless of how well they performed their assigned duties. However, these longevity increases are discretionary on the part of the employer. To Mr. Basford's knowledge, no employees in DHHR received either a longevity increase or a merit raise in the time frame covered by this grievance.

## Classification Specifications at Issue

The relevant portions of the classification specifications for the Supervisor I and Office Assistant III positions at issue in this case are reproduced herein as follows:

### SUPERVISOR I

**Nature of Work**

Under general supervision, performs full-performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.

**Distinguishing Characteristics**

Supervisor I is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

**Examples of Work**

Performs duties that are similar or related to the work performed by subordinates.

Makes work assignments to employees; reviews the work of subordinates to ensure accuracy.

Trains employees in proper work methods.

Ensures that equipment, supplies, and materials are available to complete work.

Inspects work areas to ensure that tasks are completed in a timely manner.

Evaluates employees' performance; counsels employees and recommends corrective action.

Answers inquiries from employees; relays information from management.

Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

G Ex 1.

**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 numeri cally, 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 proce dures.**

**Answers telephone, screens calls, takes messages and com plaints and gives information to the caller regard ing the services and procedures of the organization al 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 perfor mance of a variety of clerical duties; may run reports from the database and analyze data for management.**

**G Ex 1.**

**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 Work" section of a classification specification is generally 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 Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of Health & Human Resources, 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 should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).**

**Grievant argues that although she spends a substantial part of her time performing duties that are essentially clerical in nature, she should be recognized as a "working supervisor" as**

**permitted by the "Distinguishing Characteristics" provision of the Supervisor I classification specification. Moreover, Grievant notes that she performs classic supervisory duties in regard to those employees assigned to her unit, including preparing their annual evaluations.**

**Unfortunately for Grievant, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees challenging their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. In this case, a preponderance of the evidence indicates that Grievant's predominant duties are more consistent with the Office Assistant III classification than Supervisor I. Although Grievant supervises the one full-time subordinate assigned to her unit, and therefore performs some of the duties contained in the Nature of Work portion of the Supervisor I classification specification, the record is clear that these duties do notpredominate Grievant's normal working day. By her own admission, if she devoted more time "supervising," her unit would fall behind in accomplishing its assigned work.**

**Grievant provided evidence that another employee in Financial Services performed similar duties and only supervised two full-time employees, is classified as a Supervisor I, according to their official PD. (G Ex B) In the absence of Mr. Basford's stated rationale to explain these differences, Grievant might have prevailed. See Evans v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-511 (June 30, 1994). However, extending deference to DOP's decisions in these matters, as required under Blankenship, the undersigned is unable to conclude that Mr. Basford's explanation for the different classifications assigned is so illogical or irrational as to be "clearly wrong." See Kyte v. W. Va. Dept. of Health & Human Resources, Docket No. 94-HHR-030 (Sept. 21, 1994).**

**As for Grievant's complaint that she has not received a longevity increase in accordance with § 6.10 of DOP's Administrative Regulations, the undersigned agrees that this provision merely provides limited discretion to employing agencies. Grievant has not presented any evidence that DHHR has applied this provision in an arbitrary or discriminatory manner. Indeed, according to Mr. Basford, DHHR has not exercised this discretion due to financial constraints. Under these circumstances, Grievant has not established that DHHR's failure to award her a longevity increase is contrary to any law, rule or regulation. See Waugh v. Div. ofEnvironmental Protection, Docket No. 94-EP-390 (Dec. 30, 1994); Roberts v. W. Va. Div. of**

**Highways, Docket No. 92-DOH-148 (July 28, 1992).**

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

**Findings of Fact**

**1. Grievant is employed by Respondent Department of Health and Human Resources in the Payroll and Accounts Receivable Section of its Office of Financial Services where she is in charge of the Client Finance Unit.**

**2. The Client Finance Unit is responsible for issuing medical cards and eight kinds of checks, including public assistance checks, to eligible clients statewide.**

**3. Grievant's unit processes up to 70,000 checks and medical cards each month, while handling numerous inquiries regarding mis-routed, lost, or stolen checks, stop payment requests and related questions regarding transactions processed by the unit.**

**4. In addition to Grievant, only one full-time state employee, an Office Assistant I, is assigned to the Client Finance Unit. A Manpower Temporary employee is also assigned to the unit. 5. Grievant is the immediate supervisor for the one state employee, approving sick and annual leave, conducting annual performance evaluations, and related supervisory duties, although she has not been delegated authority to handle grievances at the first step of the state grievance procedure.**

**6. Grievant is presently classified by the Division of Personnel as an Office Assistant III.**

**7. Grievant is at the maximum rate of pay for her current classification as Office Assistant III and has not been awarded a longevity pay increase.**

**Conclusions of Law**

**1. Grievant has not proven by a preponderance of the evidence that the classification of Supervisor I 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 an Office Assistant III, 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 Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).**

**3. Personnel's interpretations of the classification specifications for the positions of Office Assistant III and Supervisor I, 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. Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit within the classification specification for Office Assistant III.**

**5. Grievant did not demonstrate that her employer violated any law, rule or regulation by failing to award her a longevity pay increase. See Waugh v. Div. of Environmental Protection, Docket No. 94-EP-390 (Dec. 30, 1994); Roberts v. W. Va. Div. of Highways, Docket No. 92-DOH-148 (July 28, 1992).**

**Accordingly, the grievance is DENIED.**

**Any party 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.**

**LEWIS G. BREWER**

**Administrative Law Judge**

**Dated: September 29, 1995**

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***Footnote: 1****Because Grievant filed this grievance in July 1993, the 1991 version of DOP's Administrative Regulations (G Ex 2 at L III) governs this matter. The same language is contained in § 5.09 of DOP's Administrative Rule, 143 C.S.R. 1, issued in August 1993.*