SHARON L. BEBO

v. Docket No. 95-HHR-232

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES/WEST VIRGINIA DIVISION OF PERSONNEL

D E C I S I O N

Grievant, employed by the West Virginia Department of Health and Human Resources (HHR), was reclassified from typist to Office Assistant I (OA1) in December 1992. She claims she should be classified as an Office Assistant II (OA2). Respondents HHR and the West Virginia Division of Personnel (DOP) counter that Grievant has been properly classified as an OA1 based on the nature and scope of her work. A level four hearing, conducted primarily to supplement the lower-level record, was held on August 15, 1995.1 The case became mature for decision on September 19, 1995, upon receipt of Grievant's written post-hearing argument.

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1In addition to the evidence adduced at the level four hearing, the record consists of the pleadings (the case was initiated at level one in 1993), adverse lower-level decisions, and the transcript and exhibits of the April 25, 1995, level three hearing.

Background

At the time of the level four hearing, Grievant had worked in HHR's Work and Training Unit (W&T) for over five years. The primary function of her job is to provide support services for W&T case workers in HHR's "Work Incentive System" (WIS), a multi-county project designed to help clients become economical

ly self-sufficient through job training and related services. Currently, Grievant must divide her work week among three separate county offices and/or sites where she performs a variety of clerical duties. Grievant is "self-directed" for the most part, preparing her own weekly schedule and working in each office without a designated, on-site supervisor.

The majority of Grievant's duties (75 to 80 percent) involves entering WIS data from six counties into the computer in several specified files, although she also produces reports and sometimes composes a letter after having been told the "essence" of the letter's content. Grievant has become compe tent with the computers and software in use; thus, she is often asked to assist the case workers in remedying computer problems or learning/accessing certain data screens or files. Two evaluations entered into the record, for 1991 and 1993, indicate that Grievant's work performance is in the "very good" range.

At issue in this case is whether Grievant is properly classified as an OA1 as opposed to OA2. Relevant portions of DOP's classification specifications for both OA1 and OA2 are as follows:

OFFICE ASSISTANT I

Nature of the Work

Under close supervision, performs entry level work in a variety of routine clerical tasks within prescribed procedures and guidelines. Performs related work as required.

Distinguishing Characteristics

Performs routine clerical tasks as a predominant portion of the job. Tasks may include sorting and filing documents, typing routine forms and labels, sorting and distributing mail. May enter data using a video display terminal and make inquiries

into the system; data work is limited to a few simple applica tions.

At this level, the predominant tasks are of a routine nature with well-structured directives for completing the work. Work is learned through repetition and requires ability to learn the steps in the series of related tasks, which are typically a part of a broader work function. Work is reviewed for complete ness and accuracy or provides an inherent system of checks. Contacts are typically informational; position is limited in authority for independent action.

Examples of Work

Sorts and files documents numerically, alphabetically or according to other predetermined classification criteria; pulls material from files upon request.

Types routine correspondence, forms, and labels.

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

Answers telephone; takes messages; routes calls; answers general information questions.

Receives, sorts and distributes incoming and outgoing mail and performs messenger work.

Inventories, stocks and distributes office supplies.

Counts, collates, codes, sorts, staples and inserts forms in envelopes.

Posts information to log or ledger for record-keeping purposes.

Collects, receipts, counts and deposits money.

May record and maintain time/attendance records for unit or section.

May enter data into a video display terminal; may make
inquiries into the system; may run a mailing list.
May microfilm documents for record maintenance.

OFFICE ASSISTANT II

Nature of the 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 under
standing 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 (addi

tion, subtraction, division or multiplication); corrects errors
if the answer is readily available or easily determined.
Maintains, processes, sorts and files documents numerical
ly, alphabetically, or according to other predetermined classi
fication criteria; reviews files for data and collects informa
tion or statistics such as materials used or attendance informa
tion.
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, calcula
tor, 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.

Gr. Exs. 1 and 2, 4/25/94.

In addition, the record contains a Position Description
form (PD) which Grievant completed on June 15, 1995. In it

Grievant described her duties as follows:

1. 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. This also includes using Word Perfect 5.1, Word Perfect 6.0 and Lotus 123 for windows [sic] to compile reports and complete dictations. I do this for six counties

2. Compile records and reports for supervisor.

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

4. Answers telephone, screens calls, takes messages and complaints; gives general information to callers regarding the services and procedures of the unit.

5. Checks work of case managers to make sure information is correct on the log before entering it in computer and using my knowledge of policy make corrections to same time.

6. Train new employees on the computer system. If a problem arises with the computer, workers call me in whatever office I am in and I solve the problem.

7. Train new employees in proper work methods and procedures.

8. Orders materials and calendars for return, may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction, division or multipli cation) corrects errors if the answer is readily available or easily determined, this is on a constant basis for my work function.

9. Maintains, processes, sorts and files documents numerical ly, alphabetically, or according to other predetermined classification criteria; reviews files for data and col

lects information or statistics such as materials used or attendance information.

10. Operates office equipment such as adding machine, calcula tor, copying machine, computers-Main Frame-5.1 & 6.0 Windows Word Perfect-Lotus 123-Windows.

11. Receives, sorts and distributes incoming and outgoing mail.

12. I also act as a conciliator on an as-needed basis, giving information on non-compliance with program policy.

13. Posts records of transactions, attendance, etc., and writes reports. Travel 136 miles each week, meeting all deadlines throughout the month for each county.

14. Calculates benefits, etc., using basic mathematics and percentages. On an as needed basis, but I must be able to do this function.

HHR Ex. 1, 8/15/95.

Discussion

In order to prevail on this misclassification claim, Grievant must prove by a preponderance of the evidence that her duties more closely match DOP's classification specification for OA2 than that of her current classification, OA1, during the relevant period. 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 Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-HHR-444 (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 (Aug. 31, 1990). Finally, DOP'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). "Blankenship presents employees challenging their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified." Crim v. W. Va. Div. of Natural Resources, Docket No. 95-DNR-146 (Aug. 31, 1995).

Upon full consideration of the relevant law, the facts in this case and the parties' arguments, it is determined that Grievant has not met the burden of proving she is currently misclassified. It is readily seen that, despite differences in wording, the duties described in both classification specifications, OA1 and OA2, are similar. Thus, even though Grievant's descriptions of her duties on her PD are worded somewhat like those contained in the OA2 rather than those contained in the OA1 specification, what is important here is a determination of the overall breadth, scope and nature of those duties. According to Grievant, instead of performing the highly-supervised, entry level work of an OA1, she is working under general supervision and performing all of the more complex tasks of an OA2, such as traveling to more than one work site, performing multiple-step

tasks and "manipulating" the data she works with.

DOP Assistant Director of Classification and Compensation Lowell Basford has a different view of Grievant's work. During his level four testimony, Mr. Basford discussed the "Operational Definitions," used by the DOP's Classification and Compensation Section for development and application of class specifications, and explained at length how assessments and determinations are made as to whether a position's work is routine or complex. The "Operational Definitions" define "entry level" and "full-per formance level" as follows:

Entry Level - This level can be both in a training capacity or work of limited complexity, relative to the work in the class series, with little or no latitude to vary methods or procedures. Work is usually performed under close supervision. Work is frequently of a basic and recurring nature.

Full-Performance Level - This level can be character ized by the performance of a full range of duties relative to the work in the class series. Incumbent has some latitude for independent judgment and may vary work methods and procedures, but usually within prescribed parameters. Work is usually performed under general supervision. Work is frequently of some variety and incumbent may set priorities.

According to Mr. Basford, the duties and responsibilities of Grievant's position are of a highly-structured, repetitive nature compared to other HHR jobs in the office assistant series.2

Mr. Basford further explained that an OA3 within HHR works as a quasi-manager and lead worker, while the OA2 is involved

with a very large social services program, such as income maintenance, a program with serious consequences and complex issues. In comparison, Grievant's work as an OA1 in Work and Training involves only a small program, WIS, and her duties and responsibilities fall short of the degree of complexity required

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2Mr. Basford did not submit an actual copy of DOP's "Operational Definitions" until after the level four hearing. In her post-hearing fact/law proposals, Grievant complained that the document should be made available to employees at the time they fill out a PD, especially when a classification has been challenged. The document contains no additional information than that which Mr. Basford has testified to on numerous occasions.

of an OA2. Mr. Basford also explained that a particular work structure helps shape and dictate the level of supervision the employee may need. Because the WIS program has the "dos" and "don'ts" built into the schedule, little direct supervision is needed after the worker has been trained to properly enter the relevant data into the computer. Despite the excellent manner in which Grievant divides her time between offices, her travel to different work sites does not raise the complexity level of her tasks.

Grievant also questions the significance of Blankenship in misclassification cases and seeks to undermine DOP's reliance on the case in such matters. She agrees that DOP is entitled to the "substantial deference" mentioned in Blankenship, but only when interpreting its own specifications and for establishing the classification "system." According to Grievant, when a

dispute involves the classification of a specific employee, Parsons v. W.Va. Bureau of Emp. Programs, 428 S.E.2d 523, 531 (W.Va. 1993), instructs that DOP may not control an employer's determinations about what services its workers actually perform in the agency. Grievant summarizes that her testimony and that of her co-workers must be "given great weight [regarding] the types of duties she performs."

It is true that an employee's perceptions regarding his or her job must be considered before a decision is made as to the proper classification. However, Grievant overlooks the fact that, unlike the worker in Parsons, neither her employer nor her direct supervisors provided compelling evidence that she should be classified any differently than that recommended by DOP. Moreover, while reasonable minds may differ on the subject, Mr. Basford's explanation why Grievant's job did not entail the close supervision normally needed for OA1 work and why her duties were not of such a complex nature as to rise to the level of OA2 work was not shown to be clearly wrong.

In addition to the forgoing, the following findings of fact and conclusions of law are appropriate.

Findings of Fact

1. Grievant's work as an OA1 requires her to visit three separate county HHR offices on a weekly basis, primarily to enter job incentive program data into a computer.

2. Because Grievant has thoroughly learned her duties and has responsibly set and managed her own office visitation schedule, she requires no specific day-to-day supervision.

3. Knowledge about the various offices' computers and software has placed Grievant in the position of computer "trou ble-shooter" and software trainer for other staff at various

offices.

4. Despite ample evidence of Grievant's proficiency at her job, it does not appear that her scheduled work involves anything other than the performance of "routine clerical tasks within prescribed procedures and guidelines," relative to one of HHR's smaller, but important, social services.

5. The evidence does not demonstrate that Grievant performs complex, related and multiple-step tasks relative to one or more of HHR's large and complex social services, or that she decides and/or resolves unusual program-related problems, such as would be required of an OA2.

Conclusions of Law

1. Grievant has not proven by a preponderance of the evidence that the classification of OA2 constitutes the "best fit" for the duties she performs. See Shahan v. W. Va. Bureau Commerce, Docket No. 95-DNR-146 (Aug. 31, 1995); Simmons v. W.Va. Div. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievant travels to several work sites on a weekly basis, enters program data into a computer using several screens and voluntarily assumes duties as a computer/software "trouble-shooter," these factors do not alter the underlying nature of her highly-structured and repetitive assigned duties and render her misclassified.

3. The Division of Personnel's interpretation of the classification specifications for the position of OA1 and OA2, applied to the duties performed by Grievant, should be accorded great weight, as it is not clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W.Va. 1993).

4. Grievant's job duties, as demonstrated by a preponder

ance of the evidence, best fit within the classification speci fication for Office Assistant I.

Accordingly, the grievance is 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 Employ ees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appeal ing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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NEDRA KOVAL

Administrative Law Judge

Date: December 14, 1995