JUDITH BROUGHTON

v. Docket No. 95-DOH-270

WEST VIRGINIA DIVISION OF HIGHWAYS and
WEST VIRGINIA DIVISION OF PERSONNEL

D E C I S I O N

Grievant Judith Broughton was classified as an Office Assistant II (OA2) with the West Virginia Division of Highways (DOH) following an agency-wide reclassification project conducted by the West Virginia Division of Personnel (DOP or Personnel) within DOH. Thereafter, she filed a grievance in which she claimed she should have been classified as an Office Assistant III (OA3). Following adverse decisions at the lower grievance levels, she appealed to level four in June 1995. Grievant, who had not initially indicated whether she wanted a hearing, eventually requested that the matter be decided on the record adduced below. The case became mature for decision on April 26, 1996, the designated final day for receipt of all written fact/law proposals and rebuttal. (See footnote 1) Grievant has been employed by DOH in its Bridge Maintenance unit for ten years. Her unit employs only two clerical support persons, neither assuming any supervisory responsibilities over the other. Grievant initially began her duties in the unit as a Clerk I and advanced to Clerk III over the years. At some unspecified time, she took a typing test and became a Typist III, her position at the time of the reclassifi cation. While serving as the unit's typist, Grievant declined to bid on clerk positions as they became available, because, according to her, "the money was not there." However, Grievant helped to train newly hired clerks in the unit. She also had filled in when the unit's secretary was absent in the past.

Of record is Grievant's Civil Service Position Description (PD) form, filled out and signed on November 23, 1993. Grievant summarized the general function and purpose of her job, and described the tasks she performed as follows:

As lead typist, under limited supervision, I type Bridge Inventory and Inspection Reports, letters, memorandums and various departmental forms for District-wide bridge safety inspection, renovation and replacement programs.

Proofread and draft inspection reports for grammar and punctuation. Check ADT and other relevant data by retrieving information from the route inventory, using a visual display terminal. Bring up the T-Master word processing menu and type inspection reports and format in compliance with the 1990 West Virginia Bridge Inspection Manual. Check work over for typing errors. Store inspection reports on archive disks.

Type stress analysis information, memorandums, and letters concerning traffic weight and/or spacing restrictions while using standard bridge forms, DS-25 and Commissioner's request.

Type letters to city, county and school board members to notify officials of bridge restrictions, renovation or replace ment plans and suggested detour routes.

Affix numerically, bridge inventory and condition photos in reports and submit to Inspectors and Engineering staff to review for accuracy, completeness and conformance toestablished guidelines. If required, retrieve report from archive disk and make necessary changes.

Utilize a RICOH Xerox machine [to] make photo-static copies of Bridge Inspection Reports and related documents for Structures Division and if required, City and County Boards or neighboring states.

File reports in numerical order. Maintain and update archives for District Scour Evaluation Program and Bridge Replacement/Renovation Program.

As required, edit and type letters involving public meet ings for the District Engineer concerning the status of bridge postings, renovation, replacement or relocation and possible impact on the Community. Answers telephone and screens calls. Records and enters daily personnel time, equipment and material usage in data base terminal.

DOP's classification specifications for the OA2 and OA3 positions are reproduced below, in pertinent part:

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 predominate portion of the job. Tasks may include posting information to logs or ledger, 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 predominate 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 ormultiplication); 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 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.

OFFICE ASSISTANT III

Nature of Work

Under general supervision, performs advanced level, responsible and complex tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. 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.

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 its most critical section. Atchinson v. W.Va. Dept. 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 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, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if 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 (W.Va. 1993).

Upon full consideration of the relevant law, the facts in this case and the parties' positions, 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, OA2 and OA3, are similar. Thus, even though Grievant's description of her duties on her PD are worded somewhat like those contained in the OA3 specification rather than those contained in the OA2 specification,

what is important here is a determination of the overall breadth, scope and nature of those duties.

Grievant did not address those matters. Instead, she related that, as a result of the reclassification, all of the various district bridge departments within DOH ended up with a secretary and at least one office assistant. According to Grievant, in each bridge department, the most senior clerical worker became the secretary. In her unit, Grievant maintains, although she was the most senior worker, she became the unit's OA2 while the former clerk became the unit's secretary. Grievant claims that, because secretaries formerly had to pass a typing test, but no longer have to under the reclassification, and because she had previously passed a typing test to become a Typist III, she was the most qualified person for her unit's secretary position. She claims she wastherefore subjected to a functional demotion as a result of the reclassification.

Grievant also claimed it was unfair for workers to be reclassified as secretaries without any position postings. Grievant's stance seems to be that, in fairness, her unit's present secretary (the former clerk) should not be displaced by her. Rather, Grievant claims the equitable solution to the problem would be her reclassification as an OA3, primarily because of her seniority and qualifications and because she performs the duties of an OA3.

One DOH official agreed that, in some districts the typist became the secretary and the clerk became the OA2, while in others the pattern was reversed. However, according to another DOH official, these allocations were not always based on the relative seniority of the parties. Jeff Black, a personnel administrator with DOH, stated that the reclassification was based on the nature of the duties the employee performed, and nothing else.

Grievant failed to establish by a preponderance of the evidence that the duties and responsibilities of her position are of a highly- complex nature required for the OA3 classification. Despite Grievant's seniority, it does not appear that her scheduled work

involves anything other than the performance of "full-performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations" in one of DOH's small, regional work units. The evidence shows that Grievant does not perform "advanced level, responsible and complex tasks of a complicated nature," rather, she primarily types pre-prepared technical documents and other routine correspondence. Moreover, Grievant does not routinely exercise a"latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public." In short, Grievant's duties and responsibilities fall short of the degree of complexity required of an OA3.

In addition to the foregoing, the following conclusions of law are made.

Conclusions of Law

1. Grievant has not proven by a preponderance of the evidence that the classification of Office Assistant III 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 is the most senior clerical worker in her work unit, and perhaps the most qualified "typist" because she successfully passed a typing test, these factors do not alter the underlying nature of her assigned duties and render her misclassified.

3. The Division of Personnel's interpretation of the classification specifications for the position of Office Assistant II and Office Assistant III, applied to the duties performed by Grievant, should be accorded great weight, as it is not clearly erroneous. See 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 preponderance of the evidence, best fit within the classification specification for Office Assistant II.

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 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 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: May 6, 1996

Footnote: 1

DOH, through counsel, stated it would rely on its level three decision in lieu of submitting fact/law proposals.