BRENDA HINKLE AND DREMA PACK, .

Grievants, .

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v. . Docket Number: 94-VA-1071

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WEST VIRGINIA DIVISION OF VETERANS .

AFFAIRS and WEST VIRGINIA DIVISION .

OF PERSONNEL, .

Respondents. .

D E C I S I O N

Brenda Hinkle and Drema Pack (hereinafter Grievants) filed this complaint against their employer pursuant to the provisions of West Virginia Code §§29-6A-1, et seq., on August 24, 1994, claiming that their positions have been misclassified as Office Assistant IIs. Their claim proceeded through the lower three levels of the grievance procedure and an appeal was made to level four on November 21, 1994. An evidentiary hearing was held at the Grievance Board's Beckley office on January 16, 1995, and the case became mature for decision at the conclusion of that hearing. The following discussion is based upon the evidence and arguments presented at levels three and four of the grievance process.

Discussion

Grievants contend that their positions should be classified as Office Assistant IIIs as opposed to Office Assistant IIs. They base their claim on the argument that the nature of the work associated with the position of Office Assistant III is a better fit for their duties and responsibilities than the classification currently assigned to their positions. Both Respondents contend that Grievants' positions are correctly classified given a comparison of the language of the two classification's specifications. The Division of Personnel (hereinafter Personnel) maintains that it neither abused its discretion nor interpreted the classification specifications at issue in a clearly erroneous manner when it allocated Grievants' positions to the second classification in a series of three based, upon the complexity of the duties expected of said positions. Upon a thorough review of the evidence, it is determined that Grievants' claim cannot be sustained.

The West Virginia State Personnel Board, a part of Personnel, was created in 1989 to replace the former Civil Service Commission. W. Va. Code §29-6-6 (1989). The duties and responsibilities of the former Director of the Civil Service System were also transferred to the Director of Personnel. Code §29-6-9 (1989). Pursuant to Code §29-6-10(1), the State Personnel Board has been delegated the discretionary authority to promulgate, amend or appeal legislative rules governing the

> preparation, maintenance and review of a position classification plan for all positions within theclassified service . . . based upon a similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class.

The Personnel Board has the same authority and responsibility to establish a pay plan for all positions within the classified service, guided by the principle of equal pay for equal work. Code §29-6-10(2).

The Personnel Board has wide discretion in performing its duties although it cannot exercise its discretion in an arbitrary or capricious manner. Also, the rules promulgated by the Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. See, Callaghan v. West Virginia Civil Service Comm'n, 273 S.E.2d 72 (W.Va. 1980). Finally, and in general, a governmental agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community Hospital v. St. Health Planning, 328 S.E.2d 164 (W.Va. 1985). This standard applies when one attempts to review Personnel's interpretation of its own regulations and classification specifications, if ambiguous as

written, in order to determine if the administrative decision at issue was the product of an exercise of abuse of discretion.

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited Personnel classification specification thanthat under which they are 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. 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 Grievants' current classification constitutes the "best fit" for their 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, when determining the weight to be given to the evidence adduced, Personnel's interpretation and explanation of the classification specifications at issue, if said language 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).

The ultimate issue in this case is whether Personnel properly assigned Grievants' positions to the classification of Office Assistant II or whether it abused its discretion in taking said action. The answer to this question must be derived from a reviewof the testimony and the language of the classification specifications at issue, in connection with the administrative regulations promulgated by Personnel. The relevant sections of the specification's text are reproduced herein as follows:

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 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 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 or multiplication); 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 callerswhen possible, and specific information 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 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 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.

Section 4.04 of Personnel's Administrative Regulations, describing how class specifications are to be interpreted, contains the following relevant subsections:

(a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes

shall not be held to exclude others not mentioned.

(b) 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.

(c) A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied power of the appointing authority now orhereafter vested with the right to prescribe or alter the duties of any position.

(d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

These legislative rules are both helpful and instructive as to how classification specifications should be interpreted in order to determine the nature of the positions in question.

The issue of whether a classified employee has met his/her burden of proof to establish that he/she is misclassified must be based on a case-by-case basis given the facts therein. A determination is made as to the nature of the duties of the grievant's position from an evaluation of the facts presented which describe said position's duties and responsibilities. The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievants are employed by the West Virginia Division of Veterans Affairs (hereinafter DVA) as Office Assistant IIs.

2. Within the DVA, there exist sixteen field offices. These field offices are typically staffed with only a supervisor classified as a Veterans Affairs Officer (hereinafter VAO) and

one or more Office Assistants. Each Grievant is assigned to a different field office.

3. Generally, these field offices are responsible for accepting, filing, updating and handing out claim forms, for and to U.S. military service veterans for various State and Federal benefits available to them. The claims taken at the field offices are sent to the DVA's main office in Charleston, West Virginia for further processing.

4. Grievants' positions were created to offer clerical support services to the VAOs. The VAOs legally act as advocates for the veterans when requesting various State and/or Federal benefits. By federal law, the VAOs are required to exercise legal power of attorney over the affairs of the veterans when requesting benefits under the existing laws and regulations of this substantive area of entitlement.

5. Grievants are responsible for various clerical functions, including but not limited to the following: meeting and interviewing veterans, their widows and dependants, answering questions concerning veterans' benefits, completing various forms, answering the telephone, keeping monthly records of contacts and monetary awards, preparing requisitions, composing and typing letters and memoranda, and creating files.

6. Because of the size of most of the field offices, the clerical staff often perform services for veterans when the VAOs are out of the office that the VAOs would normally perform; This often includes filling out information on various forms and providing information or advice.

7. Grievants are responsible for performing clerical tasks which call for the interpretation, application and adaptation of various State and Federal laws and regulations dealing with veterans' benefits.

8. Grievants' supervising VAOs are responsible for reviewing their work for accuracy and completeness before it is forwarded to the DVA's main office.

Evaluation of Evidence

Grievants contend that the nature of their work is more complex than that contemplated by the Office Assistant II classification specification. They rely heavily on the fact that they "file" veterans benefit claims when their respective VAOs are not in the office, a duty more complex and advanced that the duties normally reserved for those incumbents classified as Office

Assistant IIs. They also contend that the statutory provisions and regulations they are required to deal with are sufficiently complex to justify the classification they seek.

Personnel offered the testimony of Lowell D. Basford, Assistant Director of Classification and Compensation, to support its claim that Grievants are correctly classified given the nature of the duties they perform, in relation to the nature of the duties performed by other similarly situated employees throughout the State. The substance of Mr. Basford's testimony was that Grievants' predominant duties are not as complex, unstructured or technical as those ofemployees working for other State agencies who are classified as Office Assistant IIIs. Given the facts presented, it must be determined that Mr. Basford's opinions, within his area of expertise, are hereby given weight so as to defeat Grievants' claims. It is not necessary to reconstruct Mr. Basford's testimony as to the nature of the duties of various other classified employees referred to in support of Personnel's argument that Grievants are correctly classified given the classified plan it has developed.

Grievants' duties are recognized as being multiple-step, clerical tasks. Their duties, while obviously important, are neither complex nor of a nature calling for the interpretation or application of complex policies or practices. There is no evidence that Grievants are responsible for the "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." (Emphasis added). Further, the fact that they may perform some of the functions normally performed by their supervising VAOs during their absence does not mandate that they receive a higher classification. See, Hall v. BEP/Div. of Personnel, Docket No. 92-BEP-452 (Aug, 17, 1993). As noted, the nature of the predominant duties of a position, in general, is class-controlling. Further, the classification specifications are to be viewed as a whole in relation to the general duties assigned to a position. It is hereby determined thatGrievants do not exhibit the type of decision-making or latitude of action necessary for the classification of Office Assistant III, given Personnel's regulations and its interpretation of the classification specifications at issue.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusion of Law

Grievants have failed to prove by a preponderance of the evidence that Personnel abused it discretion in classifying their positions as Office Assistant IIs or that their positions should be reallocated to the classification of Office Assistant III given a review of the nature of their respective positions' predominant duties. See generally, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993); Simmons v. W. Va. Dept. of HHR/Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991); Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

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

March 6, 1995