FARRUKH HAMEED

v. **DOCKET NO. 94-MBOT-928**

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievant Farrukh Hameed alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief creation of the new Job Title of Facilities Director, Pay Grade 23, or as Associate Director - Technical, Pay Grade 22; classification in one of these newly created Job Titles, rather than his current classification as a HELP Coordinator, (See footnote 2) Pay Grade 17, effective January 1, 1994; and backpay from January 1, 1994, through April 30, 1996. (See footnote 3) Two days of hearing were held at Level IV on May 1 and July 25, 1996. This matter became mature for decisionon August 28, 1996, with the admission of Respondent's Rebuttal Exhibit Number One.

The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Grievant has been employed in the HELP Department at Marshall University ("MU") since 1991.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991; however, his duties changed in 1993, and he completed a new PIQ dated February 4, 1994, with the assistance of his supervisor, to reflect these changes.

3. Grievant was classified as a HELP Coordinator, Pay Grade 17, effective January 1, 1994.

4. The HELP Department provides services to MU students who have learning and physical

disabilities, in an effort to see that they are successful students. These services include diagnosis of learning disabilities, tutoring, obtaining extensions of time to complete exams, and other approved assistance within MU's rules and regulations. It also provides services to children, and to student doctors with learning disabilities from all over the country who are having trouble passing their medical boards. The Department is funded by student fees, and receives donations made to the MarshallUniversity Foundation, which is not a part of MU.

5. Grievant's primary job duties (with the percentage of time he performs these duties in parenthesis) are configuring, monitoring, and trouble-shooting a Novell based Local Area Network (25%); teaching HELP students business, math and computer writing skills (13%); preparing budget and overseeing financial records (12%); evaluating software applications (10%); developing computer programs used for student management, financial management and to improve students' scholastic abilities (10%); making and implementing policies related to operation of the HELP computer lab and advising the Director on certain financial policies (10%); preparing requests for proposals for computer hardware and services, and evaluating vendor proposals (5%); researching computer industry trends and products (5%); training employees on computer network and software (5%); and, planning computer hardware acquisitions, installing hardware and cables, and making hardware repairs (5%).

6. Grievant holds a Bachelor's Degree in Finance and a Masters of Business Administration.

7. Grievant has contact quarterly with the Vice-President of Institutional Advancement, regarding "[p]lanning and updates on projects funded by MU Foundation"; monthly with department chairs and faculty regarding "[s]tudent exams and activities"; and once a semester with Personnel at the Byrd Research Institute regarding "[p]lanning and transformation of technologies, and procurement of grants[,] etc." Most of Grievant's MU contacts are with staff andpersons in his department.

8. In performing his job duties, Grievant has contact with students, vendors, sales engineers and product representatives.

9. Grievant is not required to solicit contributions to the HELP Program.

10. Grievant instructs an Accountant on how to enter data into the computer, checks her work for accuracy and guides her if she encounters a problem, but he does not know whether he has the authority to fire her. She is an exempt employee. Grievant's supervisor completes the Accountant's

performance appraisal.

11. Grievant has not been formally assigned the duty of supervising the Accountant. Grievant supervises only Graduate Assistants.

12. Grievant uses a keyboard and hand instruments when diagnosing and correcting computer problems.

13. The temperature in Grievant's office is 66 degrees in order to keep computer equipment cool.

14. The HELP Coordinator Job Title received 2366 total points from the following degree levels in each of the thirteen point factors (See footnote 4) : 7.0 in Knowledge; 3.0 in Experience; 4.0 in Complexity and Problem Solving; 4.0 in Freedom of Action; 6.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level ofContact; 3.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 2.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit 8.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the

point factors thegrievant is challenging. (See footnote 5) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Res., 195 W.Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 6)

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievant's Job Title in the point factors he challenged, and the degree levels he argued were appropriate.

	IC	EC	DSE	DSE	ISE	ISE						
	KN	EX	CPS	LVL	LVL	NUM	LVL	NUM	LVL	PC	WC	PD
HELP Coord.	7	3	4	3	3	2	2	1	1	1	1	1
Hameed Argument	8	5	6	5	5	3	5	5	2	4	2	2

(See footnote 7)

Joint Exhibit 8. Each of the point factors challenged by Grievant will be addressed separately below.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence onthe job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant's Job Title received a degree level of 7.0, which is defined in the Plan as:

> Job requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is characteristic of this level.

Grievant argued he should have received a degree level of 8.0, which is defined in the Plan as:

> Job requires substantial professional and administrative knowledge in a singular advanced professional discipline as would normally be acquired through a doctoral education program, or requires broad knowledge within multiple fields such as would be attained from education programs covering several specialized disciplines. Knowledge at this level would typically qualify the incumbent as an expert or authoritative source of knowledge and enable the incumbent to develop and recommend policies and programs which impact a large and complex organization.

Grievant argued that broad knowledge was required within the specialized disciplines of finance, computers and learning disabilities, which could not be obtained through a Master's degree. Grievant stated he has degrees in finance and management, work experience and courses in computers, and has attended many workshops and conferences in learning disabilities.

A degree level of 8.0 was marked on Grievant's PIQ, and it stated:

> A minimum of a Masters Degree (MBA), with significant experience [in] instructional, financial and administrative computing in higher education. . . . It is critical that this position has absolute currentknowledge in the following disciplines:
>
> 1. Information Technology, Networks, Programming, support software applications and hardware repairs.
>
> 2. Finance and Accounting 3. Course work

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems, and Chairman of the JEC, testified that many persons who work in the computer field do not have a Master's Degree, and that if Grievant were not tutoring students, a Master's Degree would not be required for his other duties.

Grievant failed to prove he should have received a degree level of 8.0. Grievant's testimony indicates he must be knowledgeable of computers, learning disabilities and finance, but his job duties do not require him to be "an expert or authoritative source of knowledge" in any of these fields, such that he would need to complete a doctorate, or even educational programs in several specialized

disciplines.

2. Experience

The Plan defines Experience as follows:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievant's Job Title received a degree level of 3.0, which is defined in the Plan as "[o]ver one year and up to two years of experience." Grievant argued he should have received a degree level of 5.0, which is defined in the Plan as "[o]ver three years and up to four years of experience."

Grievant based his argument upon his supervisor's statementthat if she were filling this position, she would like the person hired to have three to four years of experience. His PIQ states three years of experience is needed in "[n]etwork design and operation. Computer operations, Programming, Program Analysis, Hardware Analysis", and in teaching learning disabilities; and that two years of experience is needed in finance and accounting, and in management. Grievant also appeared to argue that it took some experience to be able to convince people to donate money to MU.

Mrs. Buttrick noted that this point factor looks at entry level performance, and that, if this position did not require a Master's Degree, additional experience would be appropriate.

While Grievant presented the conclusory opinions of himself and his supervisor, he failed to indicate what it was about his job that would require more than two years of experience, coupled with a Master's Degree. His supervisor's opinion is suspect, because the evidence is that this is the experience level desired, not what is required. If indeed he is required to solicit donations, he presented no evidence that more than two years of experience was required in this area.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's Job Title received a degree level of 4.0 in this point factor. Grievant argued he should have received a degreelevel of 6.0.

A degree level of 4.0 is defined in the Plan as:

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

A degree level of 5.0 is defined in the Plan as:

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

A degree level of 6.0 is defined in the Plan as:

> Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies, and researching trends.

Grievant argued each problem with a computer is different. He stated the computer is the primary tool he uses to accomplish his duties. He testified the computers in his department are linked to a network, and he is the network supervisor for all the machines which are used by the HELP students and staff. Financial, staffand student records are kept on the computers. He stated that planning is required to assure there is no down time.

He argued he uses long-range planning to keep the computer lab equipped. He stated he looks into the type of strategies and products computer companies are developing, he calls different vendors, and then he designs a system to accommodate changes so the equipment will not have to be discarded. He stated cost- effectiveness is an issue. He argued general policies, procedures and guidelines are not available because he is the one who made the policies and procedures.

As an example of the type of problem he encounters, Grievant stated he had a bid for over $200,000.00 to equip the computer lab, but he put the lab together for $70,000.00 by putting the machines together himself, and securing educational packages from different vendors at significant discounts.

His PIQ provides the following examples "of common types of problems faced . . . and the course

of action taken to solve these problems":

1. Auditing Vendor's compliance to technical specifications and purchasing.

2. Oversee the bidding and acquisition of major hardware, software and service upgrades.

3. Making contacts with major donors and discuss prepared project plans and cost analysis.

4. Debugging systems and maintain a computer lab of 18 work stations.

5. Network wiring and hardware setup. Proved to certain authorities that their setup was less efficient and not cost effective than ours. A controversial issue.

Mrs. Buttrick pointed out that degree level 6.0 is assigned to persons who have ultimate responsibility, such as Managers andAssistant Directors, and that a Job Title which received a 6.0 in Complexity would generally receive a 4.5 or 5.0 in Freedom of Action. Grievant's Job Title received a degree level of 4.0 in Freedom of Action. She stated that the development of computer programs and processes would not be considered policy development for the departments. She stated that generally, if someone were responsible for policy development, that would increase the level of Complexity.

Grievant presented no evidence from which the undersigned can conclude that the problems he encounters are "extremely complicated," rather than "complex," and that "considerable resourcefulness and originality" is required. While he does some long-range planning prior to purchasing equipment to ensure it has a long useful life, this is not what he does on a daily basis, and the planning is done to save money, not to resolve extraordinary problems. He presented no evidence that he often deviates from traditional methods and proposes new policies, although he does research trends in computer equipment. His duties do not fall within a degree level of 6.0.

Grievant's duties do not fall within a degree level of 5.0 either. The problems encountered appear to be routine for someone dealing with computers, and Grievant presented no evidence to the contrary. He did not present facts to support a finding that he typically develops new programs, procedures or methods, or that he may determine the effectiveness of policies or practices. The only evidence of policy or procedure development is that he sets up therules for use of the computer lab; however, he did not indicate that this would involve unusual circumstances. Further, the undersigned is not convinced that these rules rise to the level of policy development.

4. Intrasystems Contacts

Intrasystems Contacts is defined in the Plan as a factor which:

> appraises the responsibility for working with or through other people within the SCUSWV [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contact and Nature of Contact. Grievant challenged the degree level received in Level of Contact only, arguing he should have received a degree level of 5.0, rather than a 3.0.

A degree level of 3.0 is defined in the Plan as:

> Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

A degree level of 4.0 in Level is defined in the Plan as:

> Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.

A degree level of 5.0 in Level is defined in the Plan as:

> Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator.

The only contact Grievant has which may be within a degree level of 5.0 is his quarterly contact with a Vice-President. Mrs.Buttrick stated that contact four times a year is not regular, recurring and essential.

Grievant's contact with the Vice-President four times a year regarding projects funded by the MU Foundation is not a key part of his job. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding this contact was not essential. See Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996).

5. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This point factor also consists of two parts, Level of Contact and Nature of Contact. Grievant

again challenged the degree level received in Level of Contact only, arguing he should have received a degree level of 5.0, rather than a 3.0.

A degree level of 3.0 in Level of Contact is defined in the Plan as:

> Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

A degree level of 4.0 in Level of Contact is defined in the Plan as:

> Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems. A degree level of 5.0 in Level is defined in the Plan as:
>
> Substantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant's PIQ states he has contact twice a semester with publishers "[t]o inquire about instructional books and educational software"; monthly with "[v]arious Industries" to "[d]iscuss technologies and trends"; monthly with product engineers to "[t]est the beta products and inform them of drawback or malfunction. Resolve problems"; and monthly with "[m]ajor donor" regarding "[h]ow their funds are utilized and updates." He pointed out that when he talks to "publishers", he is talking to whoever answers the telephone for a publishing company. He stated when he talks with "various industries," he has talked to a company Vice-President to obtain a discount on a product. He stated that a product engineer would be a technical person, and not a sales person. He stated he has contact with all the Board members of the HELP Program, whom he characterized as mainly affluent businessmen, regarding promotion of the HELP program and fund drives. He could not recall who the Board members were prior to 1994, and did not state the names and positions of any persons who have ever served as Board members. He also pointed to his contact with major donors.

Mrs. Buttrick stated that contact twice a semester is very limited, and opined that soliciting money from donors is not one of Grievant's job responsibilities, based upon his duty statement.

Grievant based many of his arguments upon his solicitation of money from major donors, whom he believed were substantiallyprominent persons. However, Grievant's explanation of how he came to solicit money and his testimony regarding whether he is required to solicit funds make it clear this is not one of his job duties. Grievant stated that no one told him he needed to solicit money, and that he would not have been terminated for not soliciting money. He stated he took it upon himself to present Vice-President Ned Beam with a proposal for a computer facility, and then asked him if it

would be okay for him to approach a major donor to solicit money for the facility. He stated the Vice-President told him to call the donor. However, he stated that someone else had already arranged to have computers donated for the computer lab prior to his involvement in soliciting money from a donor to purchase the equipment. He stated he has asked a donor for money for a project two times, but that donors stop by the department or call him at home about one time per week for a few minutes. He did not indicate the content of these conversations. It is important to note here that these donors are relatives of students in the HELP Program. He stated he must obtain approval from MU Vice- Presidents before he can approach a donor.

The undersigned is not convinced that soliciting money is one of Grievant's job duties. However, assuming that it is, it is not essential. See Braniff supra. No facts were presented to support Grievant's conclusion that HELP Board members are affluent businessmen. Grievant's other contacts do not fall within either a degree level 4.0 or 5.0.

6. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This point factor consists of two parts, Number of Subordinates and Level of Supervision. Grievant challenged the degree levels received in both parts. Grievant argued he should have received a degree level of 3.0 in Number rather than a 2.0. A degree level of 2.0 is defined in the Plan as one direct subordinate, and a degree level of 3.0 is defined in the Plan as two to three direct subordinates. Grievant argued he supervises an Accountant and a Graduate Assistant. Whether Grievant supervises the Accountant will be addressed under Level.

Grievant argued he should have received a degree level of 5.0 in Level of Supervision, rather than a 2.0.

A degree level of 2.0 in Level is defined in the Plan as:

> Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

A degree level of 3.0 in Level is defined in the Plan as:

> Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

A degree level of 4.0 in Level is defined in the Plan as:

> Direct supervision over a unit of non-exempt employees orlead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

A degree level of 5.0 in Level is defined in the Plan as:

> Direct supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions.

Mrs. Buttrick stated the Accountant was not under Grievant's supervision. She stated credit is given for Direct Supervision at a degree level 5.0, when the person is responsible for hiring and recommending firing, he may complete the performance appraisal, and he is ultimately responsible for the work of the employee, setting the objectives for the employee, reviewing the employee's work, evaluating or providing input into the evaluation, and approving leave.

Grievant failed to prove his working relationship with the Accountant is of a supervisory nature, or that it fits the definition of a degree level of 5.0 under Level, (See footnote 8) or any of the other degree level definitions.

Further, this point factor, by definition, gives credit only if an employee is formally assigned to supervise another employee. See, Hardee, et al., v. Bd. of Directors, Concord College, Docket No. 94-MBOT-373 (Jan. 10, 1997). The Accountant is listed on Grievant's February 4, 1994 PIQ as an employee Grievant directly supervises, but is not listed on Grievant's 1991 PIQ. None of the various organizational charts placed into evidence show that the Accountant was in Grievant's line of authority prior to January 1, 1994. Further, Grievant did not list any supervisory duties in his duties and responsibilities statement. From all of this, the undersigned concludes that, if Grievant began formally supervising the Accountant, this occurred after January 1, 1994.

7. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Plan as:

> This factor measures the job's responsibility for the indirect supervision of subordinates. Only the formal assignment of such responsibility to a job should be considered; informal work relationships should not be considered. Indirect supervision

> takes into account the number of subordinates under the position's line of authority but who do not directly report to it. The number of subordinates should be reported in full-time equivalents (FTEs).

Grievant argued he manages the operation of a unit, computer services for the HELP Program. He stated he "supervises" an Assistant Director when that person is in the computer lab, explaining this "supervision" as providing training and some guidance. He stated the Assistant Director supervises three full- time employees and a number of part-time Graduate Assistants. He also argued he indirectly supervises students, staff or other personnel when they come into computer services, because they are subject to his "supervision" during that time. He did not explainwhat type of "supervision" was provided.

While Grievant's arguments are creative, the definition of this point factor makes it clear that this is not how this point factor is applied. "This point factor applies only to those employees who supervise first line supervisors who received credit for Direct Supervision Exercised." Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (April 29, 1996). Grievant does not supervise anyone who received such credit. He is not supervising the Assistant Director, or other persons, while they are using the computer lab.

8. Physical Coordination

Physical Coordination is defined in the Plan as:

> This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant argued he should have received a degree level of 4.0, rather than a 1.0 in this point factor.

A degree level of 1.0 is defined in the Plan as:

> Work requires normal level of ability common in almost every job, such as writing, sorting, filing/reviewing text materials, and/or occasional use of office equipment without any demand for speed.
>
> A degree level of 2.0 is defined in the Plan as:
>
> Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

A degree level of 3.0 is defined in the Plan as:

> Work requires some speed and accuracy of hand/eyecoordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

A degree level of 4.0 is defined in the Plan as:

> Work requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Grievant argued he must be exact and precise when using a screwdriver, and he uses manual actions involving rapid physical motions when he is typing. He stated he uses a keyboard to diagnose and correct problems. He stated he uses various hand instruments to diagnose computer problems.

Mrs. Buttrick stated Grievant's duties and responsibilities indicate that the level of Physical Coordination required is the same as that required of almost any job. She stated that this, and other point factors, measure what the employee normally does in performing his job duties.

No speed requirement is imposed on Grievant in performing his duties; therefore, when using a keyboard, his duties fall within a degree level of 1.0. When using hand instruments to diagnose computer problems, Grievant's testimony indicates that he must have some understanding of what he is doing in order to diagnose the problem, and may need to be careful, but it does not indicate that a "high degree" of manual skill and exactness is required. Speed is not a requirement in using these hand instruments; therefore, his duties do not fall within a degree level of 3.0. See Barber, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-872(Oct. 31, 1996).

When Grievant is diagnosing computer problems, it is arguable that this falls within a degree level of 2.0; however, Grievant spends less than 25% of his time in this activity. In comparing this duty to his other duties, the better characterization of his job is that his "[w]ork requires normal level of ability common in almost every job." Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning his Job Title a degree level of 1.0.

9. Working Conditions

Working Conditions is defined in the Plan in conjunction with Physical Demands as:

> This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Grievant argued he should have received a degree level of 2.0, rather than a 1.0 in this point

factor. A degree level of 1.0 is defined in the Plan as:

> No major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilation problems.

A degree level of 2.0 is defined in the Plan as:

> Occasional minor discomforts from exposure to less-than- optimal temperature and air conditions. May involve dealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video displayterminal.

Grievant argued he is exposed to less-than-optimal temperature in that his office is always cold (66 degrees) to accommodate computer temperature requirements, and that he uses a video display terminal and has frequent headaches. He characterized 66 degrees as an extreme temperature. He stated when he is evaluating software (10% of his time) he may spend eight hours at a time, for several days, on the computer.

Grievant Hameed's duties and responsibilities, and his testimony generally, do not support that he uses a video display terminal almost all the time. Grievant has not proven the office temperature cannot be characterized as a minor inconvenience in a standard work environment due to minor cooling problems. While 66 degrees is not a preferred daytime office temperature for most of us, it is not so cold that it cannot be dealt with by wearing only slightly warmer clothing, which may be characterized as a minor inconvenience. Further, there is no evidence that 66 degrees is not within the range of optimal temperatures. Finally, and significantly, if it were not for some space problem at MU which placed Grievant's office in the room housing the computers, most of Grievant's job duties could be performed in a normal office environment. The undersigned is of the opinion that this point factor is designed to measure the conditions under which the duties must be performed, not the conditions under which the duties happen to be performed because of the location of one individual's office. Grievant failed to meet his burden of proof on this point factor. 10. Physical Demands

Grievant argued he should have received a degree level of 2.0, rather than a 1.0 in this point factor. A degree level of 1.0 is defined in the Plan as:

> Job is physically comfortable; individual is normally seated and has discretion about walking, standing, etc. May occasionally lift very lightweight objects.

A degree level of 2.0 is defined in the Plan as:

> Light physical effort required involving stooping and bending; individual has limited discretion about walking, standing, etc.; occasional lifting of lightweight objects (up to 25 pounds).

Grievant argued he must do some lifting, although he sometimes asks Graduate Assistants to assist him. His PIQ states he moves computer equipment and kneels at times to move up to 40 pounds of equipment on an as needed basis. He stated he also sits for long periods of time when trying to diagnose computer problems, and stoops and bends every other day to look at machines.

Mrs. Buttrick concluded that Grievant's statement that he does some lifting and kneeling on an as needed basis indicates that this is a very small part of his job, which would not be frequent enough to place him in a higher degree level.

While Grievant may occasionally lift equipment weighing more than 40 pounds, his job is best characterized as physically comfortable. Further, there is no indication that he is required to lift this much weight without assistance. His testimony and job duties suggest that he is normally seated, and that he may sit, stand or walk as he desires, all of which is within a degree level of 1.0. He is not required to stand for long periods of time, asis a clerk waiting on customers; nor is he required to sit for long periods of time, although he may choose to do so. See Barber, supra. Grievant failed to prove a 2.0 is a better fit for his duties.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job classifi cations for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health

Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant is a HELP Coordinator, Pay Grade 17, is not clearly wrong or arbitrary and capricious. 5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title HELP Coordinator is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Farrukh Hameed is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Cabell County, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 15, 1997

Footnote: 1

The reader is referred to Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

HELP is an acronym for Higher Education for Learning Problems.

Footnote: 3

Effective May 1, 1996, Grievant was no longer an employee of Marshall University.

Footnote: 4

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 5

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 6

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 7

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; IC, LVL is Intrasystems Contacts, Level of Contact; EC, LVL is External Contacts/Level of Contact; DSE, NUM is Direct Supervision Exercised/Number of Subordinates; DSE, LVL is Direct Supervision Exercised/Level of Supervision; ISE, NUM is Indirect Supervision Exercised/Number of Indirect Subordinates; ISE, LVL is Indirect Supervision Exercised/Level of Indirect Supervision; PC is Physical Coordination; WC is Working Conditions; and PD is Physical Demands. Grievant also initially challenged the degree level received in Breadth of Responsibility, but later withdrew this challenge.

Footnote: 8

Grievant pointed out the HELP Assistant Director received a 5.0 in Level, but that she does not complete any performance appraisals. Degree levels are assigned to Job Titles, not individuals. The fact that the Assistant Director Job Title received a 5.0 does not mean the duties of every person in that classification fit this degree level, and has no bearing on Grievant's classification. Grievant's counsel also suggested at one point that Grievant had substantial input into the Accountant's evaluation, but Grievant presented no such evidence.