WILBERT E. BARNETT,

Grievant,

v.

DOCKET NO. 99-HHR-144

WEST VIRGINIA DEPARTMENT OF

HEALTH & HUMAN RESOURCES and

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Wilbert E. Barnett, filed this grievance against his employer, the West Virginia Department of Health & Human Resources ("DHHR") and the West Virginia Division of Personnel ("DOP") on March 18, 1999:

> The Division of Personnel has discriminated against my position re- classification and after several attempts to prove the misclass, the Division of Personnel still shows favor that the Storekeeper III does not accurately match the duties and responsibilities assigned my position. Supervisor I matches my duties and responsibilities more accurately.
>
> Relief sought: Re-classification to Supervisor I, and damages in the form of the difference between the salary that I would have received, if I had been properly classified and the salary I did not receive while classified as Storekeeper III with backpay and interest.

On March 26, 1999, the level one grievance conference was waived by both Grievant and Mr. Todd Deal, Grievant's immediate supervisor. On March 26, 1999, the level two conference was also waived by Grievant and Kieth Ann Dressler, Huntington Hospital Human Resources Director. A level three hearing was conducted on April 5,1999, and a decision denying the grievance was issued on April 12, 1999. Grievant appealed to level four on April 15, 1999, and a level four hearing was

conducted on June 24, 1999, at which time this case became mature for decision. Grievant appeared pro se, DHHR was represented by Dennise Smith, Esq., Assistant Attorney General, and DOP was represented by Lowell D. Basford.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

October 16, 1987 memorandum from Kieth Ann Dressler to Mary Blizzard, with attached Position Description Form for Grievant.

Ex. 2 -

Storekeeper III Position Description Form for Grievant, dated October 1998.

Ex. 3 -

Grievant's Application for Examination, dated October 1998.

Ex. 4 -

Procurement Officer/Storekeeper III Position Description Form for Emily Jane Moore, dated July 1998.

Ex. 5 -

January 15, 1999 memorandum from Grievant to Lowell D. Basford.

Ex. 5b -

March 9, 1999 memorandum from Lowell D. Basford to Grievant.

Ex. 5c -

January 12, 1999 memorandum from Kieth Ann Dressler to Grievant.

Ex. 6 -

Job Description Rating Form for Marsha Workman, Supervisor I (also entered as LIV G. Ex. 1).

Ex. 7 -

Supervisor I Classification Specification, effective September 20, 1994.

Ex. 8 -

Procurement Officer Classification Specification, effective July 26, 1993 (also entered as LIV G. Ex. 2).

Ex. 9 -

Storekeeper Classification Specification, effective June 17, 1996.

Ex. 10 -

Professional Appraisal Form for Marsha Workman, dated October 27, 1998.

Ex. 11 -

Storekeeper Classification Specification, effective December 1, 1991 (outdated).

Respondents' Exhibits

None.

Testimony

Grievant testified in his own behalf, and presented the testimony of Todd Diehl, Lowell D. Basford, Marsha Workman, Emily Jane Moore, and Kieth Ann Dressler. DOP and DHHR presented the testimony of Virginia Fitzwater, Donna Monte, and Lowell D. Basford.

FINDINGS OF FACT

1. Grievant is currently classified as a Storekeeper III in DHHR's Huntington Hospital.

2. Prior to the statewide reclassification, a Storekeeper III classification included supervisory duties. G. Ex. 11. On June 17, 1996, the Storekeeper III classification was changed, and the duties and responsibilities were changed to reflect a “lead worker” as opposed to a “supervisory” role. G. Ex. 11.

3. As early as 1987, Huntington Hospital's current Human Resources Director, Keith Ann Dressler (then a Personnel Assistant), believed Grievant was misclassified, and forwarded a position description form to the then-Department of Health's Human Resources Division, requesting he be reclassified as a Supervisor I. G. Ex. 1.

4. On October 8, 1998, Ms. Dressler again requested that the Division of Personnel review Grievant's position to determine whether the Storekeeper III classification was the best fit for his duties and responsibilities. G. Ex. 3.

5. On January 12, 1999, Ms. Dressler informed Grievant that DOP considered him properly classified as a Storekeeper III. G. Ex. 5c.

6. On January 15, 1999, Grievant asked Mr. Lowell D. Basford, Classification and Compensation Section, DOP, to reconsider his classification placement. G. Ex. 5a.

7. On March 9, 1999, Mr. Basford informed Grievant that he considered the Storekeeper III classification to be the best fit for Grievant's duties and responsibilities. G. Ex. 5b. 8. Grievant performs the duties and responsibilities set forth in the Supervisor I classification specification.

DISCUSSION

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited DOP classification specification than that under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989). DOP 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. 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 his required duties. Simmons v. W. Va. Dept. of Health and Human Res./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).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job

classification invalid. W. Va. Admin. Rule, § 4.04(d). Finally, DOP's interpretation and explanation of the classification specifications at issue 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).

The classification specifications at issue in this grievance are Storekeeper III and Supervisor I.

STOREKEEPER III

Nature of Work

Under general supervision, at the full-performance level, leads and participates in the ordering, receiving, recording, storing, and shipping of materials, and/or equipment in a state operated stockroom or warehouse. Performs related work as required.

Examples of Work

Leads the purchasing, receiving, storing, and dispersing of supplies, materials, parts, and equipment.

Assigns work to subordinate personnel.

Reconciles physical and documented inventories.

Expedites the purchase of emergency supplies and equipment.

Invoices and posts federal property acquisitions.

Monitors volume of equipment and supplies to ensure adequate stock is on hand.

Knowledge, Skills and Abilities

Knowledge of storeroom methods and procedures.

Knowledge of safe handling procedures of equipment and supplies.

Knowledge of various types and grades of equipment and supplies used by the agency.

Knowledge of transportation and shipping methods.

Knowledge of the various types and grades of equipment and supplies used by the agency.

Ability to compare materials and supplies with prescribed specifications.

Ability to assign and review clerical procedures in the filing,

updating, and retrieving of receipts, requisitions, invoices, transfers, and other information.

Ability to safely perform moderately heavy manual labor in lifting and storing materials and equipment.

Ability to operate a fork lift may be required for some positions.

SUPERVISOR I

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

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

Examples of Work

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

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

Trains employees in proper work methods.

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

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

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

Answers inquiries from employees; relays information from management.

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

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

Knowledge, Skills and Abilities

Knowledge of office methods and procedures, inspection practices or procedures, skilled trade and related activities.

Knowledge of departmental procedures and policies.

Ability to plan, assign, and coordinate the work of employees engaged in complex clerical activities, field inspection work, or skilled trades.

Ability to make decisions based on governing laws and regulations and to explain policies to subordinates.

Ability to make composite detailed reports based on individual reports of subordinates.

Ability to maintain effective working relationships with fellow employees and the general public.

Grievant's duties and responsibilities as a Storekeeper III in Huntington Hospital include, but are not limited to, the following: Supervises Central Receiving, Inventory Control Section, Mailroom, and Clothing Room staff; conducts performance evaluations of employees; updates personnel training education and assists in monthly in-service training; metes out progressive discipline, as necessary; coordinates and supervises all data entered into computer for Central Receiving and Inventory control; supervises and coordinates all inventory and tagging of state owned equipment and furniture; prepares work schedules for all employees in the department; applies policies and procedures pertaining to his departments; coordinates the constant update of all Statewide contracts, numbering system and ordering supplies; represents department before management at meetings; approves annual and sick leave, and recommends hiring, disciplinary action and other employee activity; and discusses personnel issues with staff, including answering grievance issues. G. Ex. 2.

Grievant is responsible for a $200,000 yearly budget, and is involved in direct supervision of other employees. Grievant's immediate supervisor, Todd Diehl, Hospital Administrative Assistant/Director of Fiscal Services, considers Grievant the supervisor over the Central Receiving Department. Grievant is required to take the same mandatory supervisor training as all other supervisors and administrators at Huntington Hospital.

Throughout the testimony in this grievance, Mr. Lowell D. Basford repeatedly referred to Grievant's claim as one for reallocation, which requires a substantial change in an employees' duties and responsibilities. There is no question but that Grievant's duties and responsibilities over the years have not changed. However, Grievant is not seeking areallocation. Grievant is seeking reclassification. Thus, the issue to be resolved is not whether Grievant's duties and responsibilities have substantially changed, but whether they are more accurately described by the Supervisor I classification specification than the Storekeeper III classification specification. Mr. Basford testified, regarding that issue, that Grievant's position was more of a “lead” position than a “supervisor” position. A review of the applicable class specifications indicates that this distinction, as it relates to these classifications, is very vague.

The Storekeeper III “leads and participates in the ordering, receiving, recording, storing, and

shipping of materials, and/or equipment in a state operated stockroom or warehouse." The Storekeeper III also "assigns work to subordinate personnel." The Supervisor I is responsible for "overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised." The Supervisor I "is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees."

It appears that the distinguishing characteristic between a lead worker who "participates in the ordering, receiving, recording, storing and shipping of materials", etc., and a supervisor who usually performs "tasks similar to [his] employees", boils down to signature and disciplinary authority. The lead worker description does not mention any authority to approve or disapprove sick or annual leave, or to discipline employees. The supervisor description explicitly grants that authority. In the instant case, Grievant has the authorityto sign off on sick and annual leave, to discipline employees, and to complete performance evaluations.

Grievant offered evidence of other employees who hold either the Supervisor I or Purchasing Agent titles who perform the same work as he. However, because the distinction above clearly places Grievant in the Supervisor I classification specification, it is unnecessary to engage in a comparison between employees, which is not always determinative of misclassification.

Finally, Respondents raised a timeliness objection at level three to the filing of the grievance. W. Va. Code § 29-6A-3(a)(2), as amended effective July 1, 1998, provides that an employer asserting timeliness as a defense must do so at or before the level two hearing. However, as levels one and two in this grievance were waived by agreement of both parties, level three was the first opportunity to present any assertions or defenses. Therefore, Respondent's timeliness objection is deemed properly asserted. Grievant alleges he has been misclassified since at least 1987, but did not file this grievance until March 18, 1999. Misclassification is a continuing practice, and as such, a grievance may be initiated at any time during the time the misclassification continues. However,

> [a]s with a salary dispute, any relief is limited to prospective relief and to back relief from and after [ten] days preceding the filing of the grievance.

Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995). W. Va.

Code § 29-6A-2. Stollings v. Div. of Envtl. Protection, Docket No. 97-DEP- 411 (June 8, 1998). The grievance was timely as to the claim of working out of classification, as it was a continuing violation; however, backpay is limited to ten dayspreceding the filing of the grievance, absent some excuse. Grievant offered no excuse which would lift the bar on backpay more than ten days prior to the filing of the grievance.

CONCLUSIONS OF LAW

1. In order to prevail in a misclassification grievance, an employee must establish that his duties more closely match those of another classification. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. Grievant has proven by a preponderance of the evidence that he supervises employees, approves sick and annual leave, and is responsible for discipline of his employees. These are not responsibilities found in the Storekeeper III classification specification.

3. Misclassification is a continuing practice, and as such, a grievance may be initiated at any time during the time the misclassification continues. However,

> [a]s with a salary dispute, any relief is limited to prospective relief and to back relief from and after [ten] days preceding the filing of the grievance. (See footnote 1)

Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995). W. Va. Code § 29-6A-2.

Accordingly, this grievance is **GRANTED**, and Respondents are hereby **ORDERED** to reclassify Grievant into the Supervisor I classification specification, and to compensate him the difference between the salary he currently makes as a Storekeeper III and the salaryhe would have made as a Supervisor I from ten days prior to the filing of the grievance, with interest.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon

the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: July 20, 1999

Footnote: 1 The education employees' grievance procedure provides that a grievance must be initiated within 15 working days of the date the event becomes known to the grievant, whereas the state employees' grievance procedure provides a ten working day filing deadline.