BARBARA BECKLEY,

Grievant,

v v.

DOCKET NO. 98-HHR-354

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES,

Respondent.

D E C I S I O N

Grievant, Barbara Beckley, filed the following grievance against her employer, the West Virginia Department of Health and Human Resources ("DHHR") on August 4, 1998:

> Due to a posting that came out in February, 1998 from the Kanawha Office, it appears I have worked out of classification since August, 1997 in the position of Personnel Clerk, technically titled Office Assistant II.
>
> A Position Description Form was submitted to my supervisor, then given to the Community Services Manager and then sent to the Division of Personnel in March, 1998. Due to a very long delay and not hearing anything from the Division of Personnel, the Community Services Manager requested a job audit. The job audit was held in this office on July 7, 1998 by Tim Basford. I received written notification on August 4,1998 denying any reclassification or promotion as a result of the job audit.
>
> Relief sought: Reclassification to Office Assistant III or comparable and back pay with interest starting August, 1997.

Grievant's first level supervisor was without authority to grant the relief requested, and denied the grievance on August 7, 1998. A level two conference was held on August 12, 1998, and the

grievance was again denied by Joyce S. Campbell, Social ServiceCoordinator, on August 18,1998. A level three hearing was conducted on September 2, 1998, and the grievance denied by Jack Frazier, Commissioner, by decision dated September 11, 1998. On that same date, Grievant appealed to level four, claiming she prevailed by default, as she had not yet received the level three decision. A hearing on Grievant's default claim was held in this Board's Charleston, West Virginia office on December 8, 1998, and an Order denying Grievant's claim of default was issued by the undersigned on December 17, 1998. Thereafter, this matter came for hearing on the merits at level four on May 27, 1999, at which time this case became mature for decision. Grievant appeared pro se, DHHR was represented by Assistant Attorney General B. Allen Campbell, Esq., and the Division of Personnel ("DOP") was represented by Lowell D. Basford, Assistant Director, Classification and Compensation Division.

SUMMARY OF EVIDENCE

Grievant's Level Three Exhibits

Ex. 1 -

Career Opportunity Posting for Office Assistant III, dated February 23, 1998.

Ex. 2 -

Classification Specifications for Office Assistant II and Office Assistant III.

Ex. 3 -

March 13, 1998 memorandum from Ruth Anderson to Sharon Winkler- Serena; July 23, 1998 response from Tim Basford to Mike McCabe; Position Description Form.

Grievant's Level Four Exhibit

Ex. 1 -

Career Opportunity Posting for Office Assistant III, dated March 15, 1999.

DHHR's Level Three Exhibit

Ex. 1 -

Section 4.4, Administrative Rule, Division of Personnel.

DOP's Level Three Exhibit

Ex. 1 -

April 9, 1998 memorandum from Thomas Gunnoe to Mick McCabe.

Testimony

At level three, Grievant presented the testimony of Ruth Anderson, Lowell D. Basford, and Sharon Winkler-Serena. At level four, Grievant presented the testimony of Sharon Winkler-Serena and Lowell D. Basford. DHHR and DOP presented no additional witnesses.

FINDINGS OF FACT

1. Grievant is employed by DHHR in the Bureau for Children and Families in the Huntington Community Services District. At the time she filed this grievance, Grievant was classified as an Office Assistant II at pay grade 4. Her functional title was Personnel Clerk. On September 1, 1998, Grievant applied for and was awarded an Accounting Technician II position at pay grade 6 within the same office.

2. Grievant presented evidence demonstrating that, for the time period she seeks back pay, she performed the following duties: (1) completed a variety of Personnel Action Forms and related forms such as Medical/Life Insurance, Public Employees Retirement System, and Civil Service forms for more than 100 employees; (2) responded to inquiries from more than 100 employees regarding personnel procedures, insurance information, retirement information, attendance rules and regulations; (3) audited all time sheets and entered information into TSO system for monthly attendance report; (4) reported all overtime to the Payroll department which includes auditing and submitting OPS-2Bs, tracking budget monies and attending monthly budget meeting to relate balance of budgets for the various programs, and preparing monthly report for Customer Service Manager ("CSM") on the balance of each program; (5) maintained and made additional files on more than 100 employees; (6) posted all vacancies through the use of terminal andCICSHL System; (7)

scheduled interviews with possible employee candidates; (8) maintained controls for over 100 employees; (9) served as back up and assistant to the CSM's secretary; (10) explained the procedure for employment to people who are interested in state employment; (11) answered all calls verifying employment; (12) sent out reference request letters on prospective candidates; (13) notified prospective candidates that they had been submitted for employment; (14) fingerprinted new employees and submitted fingerprints to the Investigation and Fraud Management Unit; (15) prepared identification cards; (16) figures annual increment pay for eligible staff; (17) served as back up on main switchboard when needed; (17) made sure that all necessary personnel forms are kept in stock; and (18) operated typewriter, computer, calculator, fax machine and copying machine. LIII G. Ex. 3.

3. Several attempts have been made in the past by Grievant's supervisor, Ruth Anderson, to upgrade Grievant's former Office Assistant II position.

4. Sharon Winkler-Serena, Grievant's Community Service Manager (CSM), forwarded the requests to upgrade Grievant's position to the Regional office. All efforts to upgrade Grievant's position were stopped at the Regional office.

5. On February 13, 1998, a vacancy for an Office Assistant III position in the Kanawha Community Services District was posted, which described the position as follows:

> Types a variety of documents often confidential in nature using the typewriter or personal computer. Composes responses or from drafts. At times takes dictation. All personnel work for approximately 200 permanent and temporary employees. Keeping all files on permanent and temporary employees. Takes ID photos and does CIB checks on all staff. Use of special camera/equipment. Briefed on meetings to assist in implementing any changes or new procedures. Attends monthly supervisors meetings toanswer questions or relate personnel information. Keeping track of all absences of temporary staff. Contacting supervisors for PC-1A on any staff reported assent and sending PC-1A to payroll for docking of pay. Maintain files (such as, files of personnel forms, correspondence, equipment, budget, etc.), filing loose material and making additional files when necessary. Maintain control files of reports due, informational logs, etc. Use of typewriter, computer, and calculator. Figuring annual increment payment for staff eligible (completion of forms necessary for eligible staff), verification of employment, explaining the procedure for employment to people who call or come in the office and are interested in employment with the state. Knowledge of department and personnel policies and procedures required. Knowledge of computer and various software programs, including Wordperfect, Lotus, DHHR mainframe programs such as job posting and WVFIMS.

6. The functional title of this position is Personnel Clerk. This individual also functions as Secretary to two Coordinators, back up secretary to the CSM's secretary, and is responsible for all

budget and overtime work. LIII DOP Ex. 1.

7. Grievant saw this posting and believed it accurately described the position she was serving in as Office Assistant II. She completed a position description form, which was forwarded to the Division of Personnel in March 1998. A desk audit was performed by Lowell D. Basford, Assistant Director, Classification and Compensation, on July 7, 1998.

8. Mr. Basford denied Grievant's request for reclassification on August 4, 1998 Grievant filed this grievance on the same day.

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 match another cited Personnel classification specification than that under which she is currentlyassigned. See generally, Hayes v. W. Va. Dept. of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in “pyramid fashion,” i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the “Nature of Work” section of a classification specification is its most critical section. Atchison v. W. Va. 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, 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, 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 (W. Va. 1993). The classification specifications at issue in this grievance are 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 callers when 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.

Grievant alleges the job description in Finding of Fact 5 is an identical and accurate description of the Personnel Clerk position she held in the Huntington Community ServicesDistrict, concluding that she was misclassified as an Office Assistant II, and should have been an Office Assistant III starting

in August 1997.

DHHR and DOP contend that, while she does perform the duties described in Finding of Fact 5, it is the proportion of time spent on each particular function that dictates the classification specification. Specifically, the posted vacancy anticipates the predominant duties are secretarial, while Grievant's predominant duties were personnel-related. Mr. Lowell D. Basford, Assistant Director, Classification and Compensation, testified that mixed positions such as the posted vacancy are broken down into separate functions to determine the proper classification and pay grade. Because the posted vacancy calls for a majority of time spent on secretarial duties, and the Secretary classification is a higher classification than an Office Assistant classification, it was determined that position warranted the Office Assistant III classification. Conversely, Grievant's position fell more squarely in the Office Assistant II classification, because she did not spend a majority of her time performing secretarial duties, but rather, her time was spent performing set procedures and policies that are standardized across the entire department.

In addition, Mr. Basford noted that there is a hierarchical organizational structure within DHHR which also dictates classifications. In this case, the posted vacancy was located within the Regional Director's office in Charleston, West Virginia, and performed certain duties associated with that office, while Grievant's position was located in a regional office, and she strictly performed Personnel functions in that office. Mr. Basford testified that, traditionally, there was no Office Assistant III position assigned to that regional office forthis reason. Further, Grievant reports to individuals holding the Office Assistant III classification.

While this case is a close call, and reasonable minds could differ regarding whether the Office Assistant II is the “best fit” for Grievant's position, simply because an individual performs some duties outside her classification does not render her misclassified. Dooley v. W. Va. Dept. of Health and Human Res., Docket No. 90-H-498 (Mar. 19, 1991). In reviewing Grievant's position description form, along with the Office Assistant II and Office Assistant III classification specifications, I find that, although Grievant may have performed some duties consistent with the Office Assistant III classification, the predominant duties assigned to Grievant's former position fell more in line with the Office Assistant II class.

CONCLUSIONS OF LAW

1. After careful consideration of all testimony and evidence presented, the undersigned finds that Grievant has failed to prove by a preponderance of the evidence that she was misclassified as an Office Assistant II prior to the reallocation of her position to Accounting Technician II.

2. Grievant has failed to prove by a preponderance of the evidence that the “best fit” for her position during this period was Office Assistant III.

3. Grievant has failed to establish that Personnel's classification of her position was arbitrary, capricious, or clearly wrong.

Accordingly, this grievance is **DENIED**.

Any party 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: June 17, 1999