SHERRY BALDWIN, et al.,

Grievants,

v. Docket No. 99-HHR-142

DEPARTMENT OF HEALTH & HUMAN RESOURCES and

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Sherry Baldwin, Mick Scarff, Leslie Wright, Mary Mace, and James McCartney, employed by the Department of Health and Human Resources (DHHR) as Health Service Assistants at the William R. Sharpe, Jr. Hospital, individually filed grievances at level one on February 18, 1999, in which they alleged misclassification. Grievants allege discrimination in that similarly-situated employees at other facilities have been reclassified, and seek reclassification to Recreation Specialist, with back pay from March 1994, the date employees at Pinecrest Hospital were reclassified. The level one and level two grievance evaluators lacked authority to grant the requested relief. Following an evidentiary hearing, the matter was denied at level three.

The grievance was advanced to level four on April 9, 1999, and a hearing was conducted in the Grievance Board's Elkins office on July 16, 1999. Grievants were represented by Mike McCall, DHHR was represented by Tiffany Bost, Assistant Attorney General, and the Division of Personnel (Personnel) was represented by Lowell D. Basford. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by Personnel on September 1, 1999. Both Grievants and DHHR declined the opportunity to submit proposed findings and conclusions.

The following Findings of Fact are made based upon the evidence presented atlevels three and four.

Findings of Fact

1. Grievants are employed by DHHR at William R. Sharpe, Jr., Hospital as Health Service Assistants.

2. Grievants Baldwin, Mace, and Wright are assigned to the Expressive Therapy Center of the Therapeutic Programs Unit. Grievants McCartney and Scarff are assigned to the Vocational Training

Unit of the Adaptive Skills Center. All Grievants work in the Rehabilitation Services Unit.

3. Recreation Specialists employed at Sharpe Hospital are assigned to the Recreation Therapy Unit. None of the Grievants are assigned to the Recreation Therapy Unit.

4. On their position description forms completed in August 1998, Grievants Baldwin, Mace, and Wright provided the following general summary describing the function and purpose of their positions:

[u]nder general supervision . . . I formulate, construct, implement and conduct specialized craft programs and task skills groups for the mentally ill, MRDD, dually diagnosed substance abuse, physically or developmentally disabled, neuropsych clients. During programs I am responsible for independently managing and supervising the patients in the group, which I may rune [sic] alone, or with a co-leader. I make decisions regarding treatment objectives and modalities during the course of programming.

5. The position descriptions completed by Grievants Baldwin, Mace, and Wright describe their work as the development and delivery of rehabilitative treatment for clients assessed and designated by the unit treatment team, rehabilitation staff, and occupationaltherapist. “Our modality includes various arts and crafts such as woodworking, ceramics, graphic arts, pottery, collage, painting, sewing, [and] sculpting, which are employed in group or individual sessions.” They are responsible for developing lesson plans and class preparation, including pouring ceramic molds.

6. Grievant McCartney's position description includes a general description of his position as: “[u]nder limited supervision I construct and formulate rehabilitive [sic] programs for the mentally ill, developmentally disabled, chemical abusers, mentally ill geriatrics, and physically disabled clints [sic] in a state health care facility.”

7. The document listed Grievant McCartney's duties as the development and delivery of individual and group programs, including daily lesson plans for classes in current events, assertiveness training, and community integration. He also substitutes for absent coworkers and covers classes in substance abuse, and understanding mental illness, and assists in the operation of the hospital library and work program.

8. Grievant Scarff's position function, as stated on his position description, is “I conduct work at the full-performance level by formulating and supervising vocational training for the mentally ill, mentally retarded and physically or developmentally disabled clients in a state health care facility.”

9. The tasks Grievant Scarff performs consist primarily of supervising and instructing patient work groups in housekeeping skills, lawn maintenance, landscaping, and safe use of equipment including buffers, vacuums, lawn mowers, etc. He also formulates and presents an educational class titled “How To Succeed At Work”, instructing patients on job related issues and good work habits. 10. In 1994, two employees at Pinecrest Hospital prevailed at level three of the grievance procedure and were reclassified as Recreation Specialists. The only information regarding the Pinecrest employees' job duties included in the record of the present matter is that provided in the level three decision.

Discussion

In order for a 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 those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28,1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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. Dep't of Employment Security , Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dep't of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of theposition in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting his classification with a substantial obstacle to overcome in attempting to

establish that he is misclassified.

The relevant portions of the classification specifications for the Health Service Assistant and Recreation Specialist are reproduced below for comparison.

Health Service Assistant

Nature of Work

___Under general supervision, performs paraprofessional work at the full-performance level assisting professional staff in the care, treatment, habilitation and rehabilitation of mentally and/or physically challenged at state-operated facilities or in a community setting. Acts as a lead worker or charge assistant in assigning, scheduling and reviewing the work of Health Service Workers. Develops, writes, implements and evaluates basic therapeutic treatment programs. Assists professional staff in providing basic rehabilitative treatment in such areas as physical or occupational therapy, recreational therapy, restorative therapy or similar areas. Travel may be required. Performs related work as required.

Distinguishing Characteristics

This level is identified by the assignment of lead worker duties on an on-going basis or by the assignment of duties to develop and/or monitor program plans within a specific discipline at the facility. May be required to participate in additional training such as physical therapy assistance or basic education techniques. The employee has some latitude of action in the development of treatment plans; however, guidelines and client psychosocial development determine the parameter of individual care.

Examples of Work

Participates in a formal training program to develop knowledge and abilities required for career growth and development. Leads and performs required personal care and hygiene services such as bathing, grooming, dressing and feeding clients.

Teaches clients basic skills of daily living habits such as cleanliness, personal hygiene, dressing, eating, etc.

Provides training, role modeling and direction to assigned staff and clients; prepares work schedules and makes assignments.

Oversees and participates in planned recreational and social programs.

Provides basic nursing care such as taking temperature, blood pressure, and pulse; performs routine treatment and first-aid under the direction of a licensed practical nurse, registered nurse, or physician.

Confers with supervisors and professional staff regarding problems, patient behavior, and assignment and scheduling of personnel.

Assists professional staff in the implementation of established therapeutic treatment programs; serves as a member of the therapeutic treatment team to facilitate change in the clients' behavior.

Develops individual treatment plans for clients in assigned specialty area; records plans in client records and oversees or leads clients in activities, testing, or life skills training.

Follows physicians' or therapists' direction in providing hands-on therapy or care in assigned area.

Leads and may perform duties necessary to maintain a safe, clean and orderly living and work area; reports needed repairs to maintenance staff; recommends needed equipment and supplies; orders, distributes and inventories supplies.

Observes, records and reports clients' behavior, attitudes and physical condition and reports significant changes to proper staff.

Teaches clients skill-building in such areas as independent travel, self administration of medication, crafts, money management, self expression, nutrition, crisis management and social intervention.

Recreation Specialist

Nature of Work:

Under general supervision, at the full-performance level, performs recreation planning and participation work at a state health or rehabilitation facility. Plans and gathers materials, and leads activities for patients or clients. Ensures that activities are in compliance with court orders, certification guidelines and/or facility policy. Work may involve irregular hours. The position has significant latitude for planning activities within budgetary and programmatic limitations. Performs related work as required.

Examples of Work

Plans weekly and monthly activities to provide structural group or individual recreation for patients

or clients. Instructs groups in team sports, arts and crafts, and group activities such as board games or aerobics.

Oversees recreation room during leisure activities; instructs individuals in the safe use of equipment such as weights.

Gathers and dispenses equipment, materials, and supplies.

Organizes staff or volunteers to ensure adequate supervision and support services for activities such as day camping and special occasion parties.

Evaluates activity-related injuries; applies first aid knowledge and/or contacts medical staff.

Documents patient or client participation and behavior; plans individual activities to encourage or reinforce patient or client behavior.

Monitors equipment usage; orders repairs or recommends replacement of equipment.

Purchases materials used for activities.

May drive buses or vans; may teach swimming, gardening, music, or other specialty area.

May care for pets used in pet therapy.

May attend staffings and treatment meetings; may conduct intake interviews with individuals arriving at the facility.

Consistent with their position descriptions, Grievants testified that they are responsible for the development of lesson plans and presentation of classes or other training sessions in arts and crafts, or other areas. Grievants do not provide personal care and hygiene services, teach skills for daily living, such as dressing and eating, or administer nursing care to the clients. Grievants opine that their work is recreational in nature, and the Recreation Specialist classification best fits their duties.

Mr. Basford stated that Grievants' duties are properly included in the Health Service Assistant classification, which is not limited to nursing assistants. Even though Grievants engage their clients in what may be defined as leisure activities, Mr. Basford noted that they work in the Rehabilitative Services Unit which provides therapeutic and rehabilitative treatment as opposed to recreational activities.

Grievants' perception that they should be classified as Recreation Specialists,particularly Grievants Baldwin, Mace, and Wright, who primarily work in arts and crafts, is understandable. Individuals who are not personnel experts generally consider arts and crafts activities to be leisure or

recreational in nature. Further, the language of the two classification descriptions is somewhat overlapping, particularly relating to arts and crafts work. It appears the differentiating factor in this situation is that the work performed by Grievants is part of the clients' treatment, rehabilitation, and training to enable them to productively function in society. Recreation Specialists, by comparison, develop and present activities for clients which are not intended to be therapeutic, but simply leisure activities.

Grievants correctly assert that they do not perform many of the examples of work included on the Health Service Assistant classification description; however, they clearly do engage in teaching clients skill-building, and oversee and participate in planned recreational programs, consistent with that position. Grievants also heavily rely upon a level three grievance decision in which four individuals classified as Health Service Assistants at Lakin Hospital were determined to be misclassified, and their correct classification to be Recreation Specialist. Similar cases from Hopemont and Pinecrest were noted. This evidence is not persuasive because the record includes limited information regarding the employees and the circumstances under which they work. Further, classification determinations are not based upon comparison to other employees, but rather, which classification description is the best fit for the employee's duties. After due consideration of all the evidence of record, it cannot be determined that Personnel's determination that Grievants' positions best fit the classification of Health Service Assistantwas clearly wrong.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following conclusions of law.

Conclusions of Law

1. In order to prevail in a misclassification claim, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

2. The "Nature of Work" section of a classification specification is its most critical section. See generally, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

3. Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. Grievants have failed to prove that Personnel's determination that the Health Service Assistant classification specification is the best fit for their duties is clearly wrong.

Accordingly, the grievance is **DENIED**.

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 §29- 5A-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: October 28, 1999 _____

Sue Keller

Senior Administrative Law Judge