RANDALL PATRICK,

Grievant,

v. Docket No. 98-HHR-510

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR PUBLIC HEALTH and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

This grievance was initiated October 15, 1998, by the Grievant, Randall Patrick, against the Respondents Department of Health and Human Resources/Bureau for Public Health ("HHR") and Division of Personnel ("Personnel"), alleging he was misclassified. As relief Grievant sought classification as an Information Systems Coordinator II, pay grade 11, and backpay from September 17, 1998. (See footnote 1) 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 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 the 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 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). Importantly, Personnel's interpretation and explanation of the classification specifica tions 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.

Grievant argued that Personnel does not have the technical expertise to evaluate his technical duties and should defer to Phil Weikle, Chief Information Officer, regarding Grievant's classification. He also argued he performed duties which are in a higher pay grade than the Information Systems Coordinator II, apparently to indicate that he at least should be in this classification.

Respondent Personnel pointed out that it must rely on the position description forms provided to it by the employee and his employer. It argued it is improper for the employer to now argue Grievant's position should be reallocated to an Information Systems Coordinator II, based upon the same duties he performed in February 1998, when the employer had submitted a request to upgrade Grievant's position at that time to Information Systems Coordinator I, which request was approved. No legal authority was cited for this proposition. Finally, Personnel noted that even if Grievant performed some duties normally associated with a classification in a higher pay grade, this was not controlling, as it is the predominant duties of the position which control classification. Personnel believed Grievant is properly classified. Personnel offered no explanation of the distinction between a Coordinator I and II, nor did it explain why Grievant was properly classified as a Coordinator I, except to say this was the proper classification when Grievant's position was reallocated, and that had not changed, nor had Grievant's duties changed significantly.

Although Grievant's supervisor and second-level supervisor supported his grievance, Respondent HHR did not, and argued simply that Grievant did not prove he should be placed in a different classification.

The classification specifications at issue are reproduced below, in pertinent part.

INFORMATION SYSTEMS COORDINATOR I

Nature of Work

Under general supervision, performs full-performance technical work in the information processing and office automation of a state agency. Monitors and controls the production of information processing through the various stages of completion. Works with management, users and information systems staff in purchasing, installing and maintaining a mid-range or LAN location. Ensures continuous operation by readying the system, responding to prompts and enters any data required by the system. Troubleshoots basic software and hardware problems, pulls cable, and installs hardware. Reviews literature and recommends purchase of hardware and software. May install, move and replace terminals, printer cables and other equipment as necessary. May specialize in telecommunications, data processing, or other area without accountability for the operation of the total system. May participate in a 24-hour call schedule. Performs related work as required.

Distinguishing Characteristics

This classification is intended for use by positions in an agency's central office or outlying facility with a large system of terminals/personal computers/LANs or a mid-range computer. The employee troubleshoots basic software and hardware problems, pulls cable, and installs hardware and software and handles daily operational activities. This classification is distinguished from the Information Systems Specialist classification in that the Information Systems Coordinator is responsible for either a single location or a smaller office or divisions LAN, mid-range or PC operations.

Examples of Work

Responsible for all PC's and other computer hardware at a location; determines best method of set-up of microcomputers or terminals, faxes, printers, or other peripherals.

Prepares requisitions for hardware, software and/or maintenance to be placed on bid or for purchasing.

Manages LAN or mid-range system, including but not limited to equipment maintenance, management of hardware and software upgrades and user support.

Works with users to ensure proper production runs; initiates production reruns, when necessary.

Performs back-up and recovery procedures.

Analyzes operational problems, assists in resolving the problems and notifies users of the problems and/or the corrections.

Pulls cable, makes arrangements to upgrading of power outlets and inspects and tests systems after set-up.

Trains new users in the basics of equipment operation, typically in an one-on-one situation. Attends conferences, vendor demonstra tions, and workshops to learn the implementation of new products, procedures, and programs.

Receives equipment and software packages; logs inventory, completes licensure and warranty information, maintains record of inventory and its location and maintains

and updates supplies.

May create, change and delete user profiles.

INFORMATION SYSTEMS COORDINATOR II

Nature of Work

Under limited supervision, performs advanced level technical work in the automation of a state agency. Works with management, users, and information systems staff in configuring, purchasing, installing, and training users on a mid-range computer system or substantial LAN. Documents user needs, performs the installation of equipment, and tests the system after installing software. Responsible for scheduling of production work for the most efficient utilization of equipment and personnel. Evaluate and resolves operational and equipment problems, develops operation standards, coordinates new software installations with related data processing units and users, conduct cost analysis of equipment and directs training of backup operations and users. Oversees the maintenance and upkeep of hardware and software and is responsi ble for maintaining systems operations by troubleshooting problems, determining whether the problem is user error, software error or hardware error; correcting errors quickly or replacing equipment to minimize downtime. May supervise a small staff devoted [to] some office or technical support. This position requires some travel. Performs related work as required.

Distinguishing Characteristics

The Information Systems Coordinator II has responsibility for more advanced and wider scope of activities than an Information Systems Coordinator I. This classification is distinguished from the Information Systems Specialist classification in that the Information Systems Coordinator is responsible for either a single location or a smaller office or division LAN, mid-range or PC operations.

Examples of Work

Discusses information processing strategies with superiors; makes recommendations for purchase of personal computers, peripherals, software, and related items; solicits information and bids from vendors.

Modifies software or develops new software in languages such as Dbase, Lotus 1-2-3, COBOL, Query, IDDU, or ORACLE.

Responsible for all PC's and other computer hardware at a location, determines best method of set-up of microcomputers or terminals, faxes, printers, or peripherals.

Manages LAN or mid-range system, including but not limited to equipment maintenance, management of hardware and software upgrades and user support.

Tests the system; analyzes test results for correctness and accuracy; verifies that

all necessary output is correctly produced.

Assures compliance with operational standards; directs the initial and continuation training of assigned personnel and users.

Directs the start up and recovery of equipment from power outages and equipment failures; develops preventative maintenance schedules.

Maintains security procedures for equipment and file security; creates, changes and deletes user profiles.

Evaluates equipment/software utilization and recommends changes; evaluates software acquisition proposals; coordinates new equipment and software installation with the user community.

Provides technical assistance to managers and other staff that use mid-range computer or LAN software and personal computer software.

Processes a variety of management reports on equipment utilization, production and downtime.

Evaluates run documentation and assures update of documentation manuals.

Attends conferences, vendor demonstrations, and workshops to learn the implementation of new products, procedures, or programs.

Prepares studies and reports relating to problems and workings of the division and/or department as they relate to system applications.

The following Findings of Fact are made based upon the evidence presented at Level III.

FINDINGS OF FACT

1. Grievant was hired by the Department of Health and Human Resources ("HHR") to work at the Bureau for Public Health's Office of Nutrition Services as an Information Systems Assistant I, pay grade 7, on August 28, 1996.

2. Grievant submitted a position description form on February 15, 1998, and his position was reallocated by the Division of Personnel ("Personnel") to an Information Systems Coordinator I, pay grade 10, effective February 15, 1998.

3. On July 22, 1998, Grievant's supervisor, Cindy Pillo, prepared and submitted to Personnel an updated position description form, and requested that Grievant's position be reallocated to Information Systems Coordinator II. This request was denied by Personnel on August 26, 1998. Denise Ferris, Director of Nutrition Services, requested that Personnel review the request again, and it was again denied on September 17, 1998, based upon a finding that the position description form did not indicate a significant change in Grievant's duties since his reallocation. This denial was appealed to Personnel and denied on October 7, 1998, by Edison Casto, Director.

4. Grievant summarized the general function and purpose of his job on his position description form as, "[t]roubleshooting software and hardware problems at 58 permanent and satellite sites located throughout WV. This includes also the installation of both software and hardware at above mentioned sites. Installation and maintenance of Novell 3.12 local area networks in all sites." On a third position description form prepared in September, 1998, the number of sites went from 58 to 60, and he added to the end, "[t]his includes Ethernet network, both wired and wireless. Troubleshooting software and hardware problems in state WIC office. This includes also the installation of both software and hardware at the state WIC office. Assists in maintenance of Novell 4.10 Local area network in state office. This includes token ring network and cabling."

5. When Grievant signed the second position description form in July 1998, he was spending about five hours a week "administering" the local area network ("LAN") location at 60 WIC sites, up from 58 since January 1998. He currently assists Bell Atlantic in maintaining the LAN, by placing the maintenance calls and assisting in problem resolution. He maintains a Centrex drop for the modems, so Bell Atlantic can troubleshoot. Grievant installed 180 new personal computers during 1998, which use Windows 95 and 98. Since the maintenance contract expired sometime after March 1998, he has taken over maintenance of the personal computers, wireless sites and wired sites. He was spending about 15 hours a week installing and maintaining computer terminals, personal computers, software and hardware, printers and peripheral equipment at the state WIC office and the 60 WIC sites. Approximately 75 personal computers still use DOS and Windows 3.1. He was spending about four hours a week training and assisting users with problems, and another three hours a week providing software and hardware support for the Helpdesk. He was spending three hours a week providing technical assistance to local area directors and staff, and currently makes recommendations for upgrading 12 personal computers; three hours a week in back-up and recovery procedures and training staff in this; two hours a week reviewing computer related literature; one hour a week in meetings of committees and teams; and four hours a week preparing requisitions, maintaining inventory, and purchasing supplies.

6. The third position description form prepared in September 1998, listed the same duties as the July 1998 position description form, although the number of hours had changed somewhat. New duties listed were helping administer the Novell 4.10 LAN Token ring location at state WIC offices two hours a week, and network planning, upgrading and installing wiring six hours a week.

7. Grievant's supervisor has no technical background and is unable to supervise his technical work.

DISCUSSION

In addition to the evidence set forth above, Grievant offered the testimony of his supervisor, Cindy Pillo, that Grievant had taken on more responsibility during 1998, and has been more self guided in his solutions to technical concerns or problems, with limited supervision from her. She stated he consults with her, mainly to keep her apprised of the situation.

Grievant also offered testimony that the Windows 95 base system is a much more difficult, advanced operating system to implement and maintain than the DOS base system which had been used in the past, and requires much more advanced skills. Testimony was also offered that Grievant works on a Novel Netware 312 server, performing maintenance and modifications to the netware loadable modules, including the print console and the network hard configurations, and that this is an advanced operating system which far surpasses any functions of any desktop operating system. Grievant is also assisting in testing and installing Windows NT4, and testimony was offered that this is the most advanced network operating system on the market.

Finally, Grievant offered into evidence a letter from Phil Weikle, HHR's Chief Information Officer, that the Information Systems Coordinator classifications are outdated and need to be rewritten, and that, in his opinion, Grievant is performing duties that are beyond the scope of the duties of an Information Systems Coordinator I, citing his work with communication routers, the installation of personal computers, and upgrading of services in multiple locations. Mr. Weikle did not indicate, however, how he was familiar with these classifications, or how much of Grievant's time was spent working out of classification.

While Grievant's duties seem to be quickly and continuously evolving into more complex areas, and he continues to take on more responsibility, most of his duties are still listed within the Information Systems Coordinator I classification. Some of his duties seem to fall within the Information Systems Coordinator II classification, and some fall within both. It appears from reading the two classification specifications that the Information Systems Coordinator II position is designed for someone who often, if not always, directs activities, whereas Grievant is the person actually performing the work which needs to be done. The undersigned is not convinced that Grievant's

freedom to act is better described as limited supervision than general supervision. Some of his more complex duties are performed as an assistant.

While Grievant may well be performing some duties normally associated with the Information Systems Coordinator II classification, this would not necessarily render him misclassified, as it is the predominant duties of the position which are controlling. Giving deference to Personnel's interpretation, Grievant has not demonstrated that the Information Systems Coordinator II classification clearly is a better fit for his duties.

The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. "The West Virginia Division of Personnel (Personnel) is authorized by W. Va. Code §29-6-10 to establish and maintain a position classification plan for all positions in the classified service. State agencies utilizing such positions must adhere to that plan in making assignments to their employees." Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR-460 (June 17, 1994), at 12.

2. 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).

3. While Grievant's job continues to evolve and become more complex, he has not demonstrated that the Information Systems Coordinator II classification is a better fit for his duties.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. 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. 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: March 8, 1999

Footnote: 1 Grievant's supervisor responded on October 23, 1998, that she was without authority to grant the relief requested. Grievant appealed to Level II, where his second level supervisor gave the same response, on November 2, 1998. Grievant appealed to Level III on November 2, 1998, where a hearing was held on December 7, 1998. A Level III decision denying the grievance was issued on December 14, 1998. Grievant appealed to Level IV on December 21, 1998. A hearing was scheduled at Level IV for February 4, 1999, but was canceled when Grievant informed the Grievance Board that the parties had agreed to submit this matter for decision based upon the record developed at Level III, supplemented by briefs. Grievant represented himself, Respondent HHR was represented by Tiffany M. Bost, Esquire, and Respondent Division of Personnel was represented by Lowell D. Basford, its Assistant Director. This matterbecame mature for decision on February 24, 1999, upon receipt of the last of the parties' post-hearing written arguments.