ELLEN C. TONEY and SHARRON C. HAMPTON,

Grievants,

v. **Docket No. 00-HHR-347**

WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES/BUREAU FOR
CHILDREN AND FAMILIES, and
WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

DECISION

Ellen C. Toney and Sharron C. Hampton (Grievants) are employed by the West Virginia Department of Health and Human Resources/Bureau for Children and Families (BCF), as Social Service Worker IIs (SSW) in BCF's Beckley office. They seek reclassification as Health and Human Resources Specialists.

These two grievances were denied at Level I on June 23, 2000; and at Level II, on August 1, 2000. A Level III hearing was held for the consolidated grievances on October 20, 2000. Grievants were represented by Steve Rutledge of the American Federation of State, County and Municipal Employees, BCF was represented by Community Services Manager Jack Tanner, and the West Virginia Division of Personnel (DOP) was representedby Assistant Director for Compensation and Classification Lowell Basford. The consolidated grievances were denied at Level III on August 16, 2000.

On January 25, 2001, a Level IV hearing took place at this Grievance Board's Beckley office. (See footnote 1) Grievants were again represented by Steve Rutledge, BCF was represented by B. Allen Campbell, Esq., and the DOP was again represented by Assistant Director for Compensation

and Classification Lowell Basford. The parties were given until March 19, 2001, to submit proposed findings of fact and conclusions of law, all did so, and these grievances became mature for decision on that date.

The following Findings of Fact pertinent to resolution of these matters have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievants are Social Service Worker IIs assigned to BCF's Beckley office.

2. Grievants certify and register child care homes and facilities to enforce statewide rules & regulations designed to protect the health, safety, and well-being of children. They investigate homes, facilities, and persons responsible for the care of children, to ascertain compliance with rules & regulations. Their work includes regular monitoring, visits to facilities, and to family homes. 3. Social Service Workers generally perform the day-to-day work of implementing social service programs, policies, and procedures locally.

4. Health and Human Resources Specialists generally develop social service programs, policies, and procedures on a regional or statewide basis.

DISCUSSION

As these grievances do not involve a disciplinary matter, Grievants have the burden of proving them by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.21 (2000); Steadman v. Securities and Exchange Comm'n, 450 U.S. 91 (1981); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR- 486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievants seek reclassification as Health and Human Resources Specialists with back pay from October 1, 1997, a pay equity adjustment and interest. BCF and DOP respond that Grievants are

properly classified as SSWs.

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match those of another cited classification specification than the classification to which theyare currently assigned. See Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). DOP's classification specifications generally contain five sections: 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). Therefore, the "Nature of the Work" section of a classification specification is its most critical section. See 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 Grievants' current classification constitutes the "best fit" for their 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, DOP'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 state employees contesting their classification with a substantial obstacle to overcome in attempting to establish that they are misclassified.

The relevant portions of the classification specifications for Social Service Worker II and Health and Human Resources Specialist are provided below.

Social Service Worker II

"Nature of Work"

> Under general supervision performs full performance level social work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

"Distinguishing Characteristics"

All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker II provides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

"Examples of Work"

Maintains a caseload for programs and services at this level.

Takes, evaluates and approves client applications for services; explains services and eligibility criteria.

Recruits, evaluates and approves providers of services at this level; conducts on- site evaluation of provider facilities and services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education and counseling and guidance to assess client's needs and provide appropriate services.

Counsels clients/families in achieving goals of client service plan.

Speaks before community organizations and groups regarding services available and to develop community resources.

Writes report on case findings and summaries of client social and financial circumstances.

Health and Human Resources Specialist

"Nature of Work"

Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based onstandards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical area specific to or characteristic of the Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgment to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable

latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

"Distinguishing Characteristics"

The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operational area or a significant segment of a major statewide program or operational area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

"Examples of Work"

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.

Interprets laws and regulations governing program or technical area for participants and staff.

Monitors changes in laws and regulations and advises participants and other staff.

Confers with inter- and intra-agency personnel to transact business or discuss information.

Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.

Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.

Represents the program in the area of assignment with the agency and outside entities.

Has contact with federal, state, local program representatives and participants, or technical area personnel.

Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.

May oversee the work of support staff or other specialists in relation to the completion of specific assignments.

Grievants contend that they should be classified as Health and Human Resources Specialists because they certify and register child care homes and facilities to enforce statewide rules &

regulations designed to protect the health, safety, and well-being of children. They investigate homes, facilities, and persons responsible for the care of children, to ascertain compliance with rules & regulations. Their work includes regular monitoring, visits to facilities and to family homes. Grievants feel their work is regulatory in nature.

Lowell Basford, DOP's Assistant Director for Compensation and Classification, credibly testified that the Social Services Worker II position is the “best fit” for Grievants' duties, not the Health and Human Resources Specialist position; that the primary qualifications of the Health and Human Resources Specialist position are the development of a major statewide program, overseeing or providing technical assistance to a major statewide program or monitoring and evaluating the operation of a major program; that a person in this position would have great latitude in problem solving and face highly complex situations; and that Grievants' duties do not reflect the same level of responsibility. Mr. Basford further testified that Grievants' Position Description Forms reveal that Grievants are “doers”, and that Grievants spend the majority of their time carrying out the functions of a program, not developing or overseeing one. It thus appears that while Grievants certainly give advice to various local day care providers, this is not the level of responsibility contemplated by the Health and Human Resources Specialist job specification, which contemplates having responsibility for development and management of a statewide program or operational area for a significant segment of a major statewide program or operational area. In order for Grievants to fall within the Health and Human Resources Specialist position they would have to develop, oversee, or manage the Day Care Program for DHHR rather than simply be assigned to it. Grievants' duties appear to best fit the classification of Social Service Worker II.

Accordingly, Grievants have failed to establish that DOP's interpretation and explanation of the classification specifications at issue was clearly wrong. Blankenship, supra. The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. As these grievances do not involve a disciplinary matter, Grievants have the burden of proving them by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

2. In order for Grievants to prevail upon a claim of misclassification, they must prove, by a preponderance of the evidence, that their duties for the relevant period more closely match those of another cited classification specification than the classification to which they are currently assigned. See Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). 3. DOP'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 did not demonstrate that they are wrongly classified as Social Services Worker IIs.

Accordingly, these grievances are **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 these grievances 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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ANDREW MAIER

Administrative Law Judge

Dated: May 10, 2001

Footnote: 1

Pursuant to the undersigned's authority to "control the processing of each grievance assigned to him or her and, to take any such action considered appropriate consistent with the provisions of W. Va. Code §§ 18-29-5 and 29-6A-5," these grievances were consolidated with that of Vernie S. Brown for hearing at Level IV. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.21 (2000). See Brown v. W. Va. Dep't of Health and Human Resources/Bureau for Children and Families and W. Va. Div. of Personnel, Docket No. 00-HHR-277 (May 10, 2001). Two

decisions will be issued for ease of writing and readability.