TIMOTHY NEELY and CHARLES STEWART, II,

Grievants,

v.

Docket No. 01-HHR-066D

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

Respondents.

D E C I S I O N

On February 28, 2001, Grievants, Timothy Neely and Charles Stewart, II, filed a default claim at Level IV alleging their employer, Respondent, Department of Health and Human Resources ("HHR") had defaulted at Level I when their supervisor did not issue a written decision within the statutory time periods. A telephonic conference was held on March 14, 2001, at which time HHR conceded that a default had occurred, and that it had no statutory excuse to the default. The Division of Personnel ("Personnel") was joined as a party, and this matter proceeded to hearing on the issue of whether the relief requested was contrary to law or clearly wrong. A Level IV hearing was held on March 30, 2001. Grievants represented themselves, HHR was represented by Jon R. Blevins, Esquire, and Personnel was represented by Robert Williams, Esquire. This matter became mature for decision upon receipt of the last of the parties' written arguments on April 30, 2001.

Grievants filed this grievance on February 5, 2001, because they believe they are misclassified as Information Systems Coordinator I's. As relief Grievants seek classification as Data Warehouse Specialist I's, and back pay to January 1, 2001.

The following Findings of Fact are made based upon the evidence presented at Levels III and IV.

FINDINGS OF FACT

1. Grievants are employed by HHR at the Bureau of Public Health, Division of Surveillance and Disease Control, West Virginia State Immunization Information System ("WVSIIS") Section, as Information Systems Coordinator I's.

2. WVSIIS is a major, first of its kind project. When the project is completed, every health care provider in the state will report all child immunization data to the local county health department, which will electronically send the data to WVSIIS. The data will be maintained on a database at the WVSIIS Section, readily accessible for review and for use in varying reports generated by Grievants, and the data will also be sent electronically to the federal government.

3. Grievants installed the software necessary to record the immunization data and transmit it to WVSIIS in every county health department office in the state. If the county health department has a problem with the software, Grievants offer assistance.

4. Upon request, Grievants develop a query using standard query language ("SQL"), which will call up the desired data and generate a report from the database. In the past, Grievants have frequently called upon Richard Lemons, a Database Administrator I for HHR, for assistance in developing the query, and for other assistance, and he trained them in the use of SQL.

5. Grievants' position description forms, signed by Grievants and their supervisor on December 1, 2000, describes the general function and purpose of the job as:

> Under general supervision, at the advanced level, performs data processing functions related to the development, implementation, maintenance and support of WVSIIS Central Registry. Works either independently or as a team member to facilitate the goals and meet the information and reporting needs of County Health Offices. Works on projects involving telecommunications connectivity between the various locations and systemsinvolving links to various federal, state and other external systems. Uses specialized SQL tools to produce complex reports from the Central Registry. Creates test reports, conducts test runs and debugs reports on the Oracle Database. Prepares documentation of work produced. Plans and directs User meetings and software training related to specific reporting requirements.

6. Grievants spend a little more than one-fourth of their time working "to implement the WVSIIS throughout the public and private immunization provider community in the state of West Virginia. Performs Level one and Level two technical support for the WVSIIS user community - either on site or via telephone." The remainder of their work time is split nearly equally, four or five hours a week, on a number of duties, as follows: logging help desk calls and directing support from the contractor, (See footnote 1) working with the contractor to implement solutions and to increase lower level

effectiveness, and participating “in planning of telecommunications connectivity between immunization providers and their external systems”; planning, coordinating and conducting user training and user group meetings, and meeting with users to determine system requirements and to discuss hardware, software, and connectivity options; consulting with users to determine reporting requirements, and serving as liaison between users and vendors “to identify issues, resolve problems, complete assignments and where appropriate, assist in developing policies and procedures,” and deploying “WVSIIS front end [client/server, Oracle-based] applications and upgrades;” maintaining “the day-to-day operations of the two key WVSIIS 'backend' technical components (communications gateway (Windows NT server) and Central Registry (Oracle database) as well as Feed back Module (Visual Basic System);” “upgrading software and configuring and maintaining user accounts” necessary to “configuration of the WVSIIS specific 'backend' applications”; generating reports; and, speaking with “immunization provider staff to ensure providers are complying with WVSIIS data reporting policies,” serving as a liaison between vendors and HHR offices “to ensurethe integrity of data,” speaking with “provider billing vendors to ensure data exports sent from billing vendors meets specifications,” and speaking with HHR's Management Information Services Staff to obtain assistance in implementation and configuration of WVSIIS on HHR “networks and technology infrastructures.”

7. When Grievants first began working in their current positions, they received assignments from the on-site contractor representative daily, and worked under his close supervision. Grievants are now able to perform their duties with little direction and supervision.

8. The Data Warehouse Specialist I classification specification was developed by Personnel for positions in the Information Systems and Communications Division of the Department of Administration, which is a central data processing division which maintains the mainframe system, and provides computer support to all other agencies in state government. It is part of a class series, and it was intended by Personnel for large data warehouses, of a complicated nature, in a central location, that provide information to all state agencies.

DISCUSSION

Because Grievants are presumed to have prevailed by default, the burden of proof is upon Respondents to prove by clear and convincing evidence that the relief requested by Grievants is

clearly wrong or contrary to law. This standard requires the party with the burden of proof to produce evidence substantially more than a preponderance of the evidence, but less than that required to prove the matter beyond a reasonable doubt. Lohr v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999).

W. Va. Code §29-6-10 authorizes Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR, which utilize such positions must adhere to that plan in making assignments to theiremployees. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994).

In a misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they 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 employee'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 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 classification specifications for the two classifications at issue are reproduced below.

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 demonstrations, 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.

Knowledge, Skills and Abilities

Knowledge of the basic functions and operations of the agency to which assigned.

Knowledge of the principles and practices of data processing.

Knowledge of personal computing.

Knowledge of data processing procedures and equipment involved in operating a mid-range computer or LAN.

Knowledge of backup and recovery procedures.

Knowledge of methods used to correct job production problems.

Ability to understand technical manuals and apply the methods to correct mid-range computer or LAN operational problems.

Ability to maintain accurate detailed records according to a prescribed format.

Ability to analyze test data and results.

Ability to establish and maintain effective working relationships with other employees.

Ability to prepare clear, comprehensive and accurate reports.

Minimum Qualifications

Training:

Successful completion of twelve semester hours of computer science from an accredited college or

university.

OR

Successful completion of six credit hours or the equivalent thereof of industry recognized authorized/certified LAN administration, network service/support and/or network.

Substitution:

One year of full-time or equivalent part-time paid experience in computer programming, data job coordination, user/systems development, or sale and/or installation and testing of terminals or personal computers and peripherals may be substituted for the required training.

Established: 3/21/96

Effective: 7/16/96

DATA WAREHOUSE SPECIALIST I

Nature of Work

Under limited supervision, at the full-performance level, performs data processing functions related to the design, development, implementation, maintenance and support of a data warehouse. Works either independently or as a team member to facilitate the goals and meet the information and reporting needs of state agencies. Works on projects involving telecommunications connectivity between the various locations and systems involving links to various federal, state and other external information systems. Uses specialized SQL tools to produce reports from the data warehouse. Creates test reports, conducts test runs and debugs reports. Prepares documentation of work produced. Plans and directs internal and external meetings related to specific reporting requirements. Performs related work as required.

Distinguishing Characteristics

This is full-performance level, technical position where familiarity with the technical infrastructure and the specialized SQL reporting software allows the incumbent some latitude in the preparation and/or assistance in preparing reports and documents. May serve as coordinator for specialized state-level

reporting projects. Serves as liaison with state agencies, vendors and elected officials to identify issues, resolve problems, complete assignments and where appropriate, assist in developing policies and procedures.

Examples of Work

Meets with users to determine informational needs and system requirements; discusses hardware/software/telecommunications connectivity options.
Uses specialized SQL tools to produce reports from the data warehouse; creates test reports, conducts test runs and debugs reports; prepares documentation of work produced.
Assists management in establishing information standards and methodology for analysis, design and production of SQL reports.
Ensures that users have followed established reporting standards.
Plans, conducts or assists in group and one-on-one training of reporting software and initial telecommunications connectivity procedures.
Supports end-users via telephone and/or site visit regarding data warehouse and/or reporting problems.
Attends and may lead user meetings.
Participates in self-study and vendor-supplied courses to improve skills in more complex technical areas.
May participate on a committee or works independently for the review and possible selection of necessary infrastructure and software for agency informational needs..

Knowledge, Skills and Abilities

Knowledge of data processing concepts.
Knowledge of the computer and personnel resources available; the capabilities of the specialized reporting tool, hardware configurations and technical infrastructure.
Knowledge of basic networking, information processing and telecommunications concepts.
Skill in developing reports utilizing specialized SQL tools.
Ability to clearly report activities and identify potential problem areas such as data integrity.
Ability to communicate clearly, both orally and in writing.

Ability to analyze reporting problems and apply technical solutions.

Ability to compile information and interpret technical information for non-technical staff in a user friendly format.

Ability to evaluate and analyze user requests and develop effective work plans for report development and maintenance to meet user requirements.

Ability to present ideas in a clear, concise format.

Ability to maintain effective working relationships with users.

Ability to understand technical manuals.

Ability to develop and perform report design checks which are sufficient to test the thoroughness and accuracy of the report.

Minimum Qualifications

Training:

A Bachelor Degree from an accredited four-year college or university.

Substitution:

(1) An Associate Degree in a related field and two years of full-time or equivalent part-time paid experience in report design with one or more current specialized reporting tools may substitute for the required training.

OR

(2) Four years of full-time or equivalent part-time paid experience in report design with one or more current specialized SQL reporting tools may substitute for the required training.

OR

(3) Successful completion of an authorized certification program emphasizing in the capabilities and functionality of the specialized reporting tools may substitute for two years of experience listed in (1) and (2) above.

Established: 9/16/99

Effective: 11/1/99

Lowell Basford, Assistant Director of Personnel's Classification and Compensation Section,

testified that the Data Warehouse Specialist I classification was developed for the Information Systems and Communications Division of the Department of Administration, which is a central data processing division which maintains the mainframe system, and provides computer support to all other agencies in state government. He explained that it is part of a class series, and it was intended for large data warehouses, of a complicated nature, in a central location, that provide information to all state agencies. He stated only four or five positions are in this classification, and it was intended for a specialist. He explained the position requires skill and expertise in storing and accessing data, and in compiling it into different types of reports which may be requested on a daily basis.

Mr. Basford testified that Grievants' duties are not of the level of complexity envisioned in the Data Warehouse Specialist I classification. He pointed out that Grievants' duties are limited to the immunization program, and there are a limited number of users. Grievants are within a unit, which is within a division, within the Office of Epidemiology, and are supervised by a project manager. The database with which Grievants work is a reporting system for immunization data for children throughout the state. It has a singular focus, immunization reporting, which minimizes the complexityrelative to other programs. He noted that agencies other than HHR have their own in-house databases, and even other sections of HHR have their own complicated databases. He compared Grievants' duties to the Information Systems Coordinator I classification specification, and concluded that Grievants perform the duties of the classification. Mr. Basford reviewed Grievants' position description forms, noting that their work is reviewed daily by their supervisor, which is not within Personnel's definition of limited supervision, as is stated in the Data Warehouse Specialist classification specification.

Grievants pointed out that many of the responsibilities listed in the Information Systems Coordinator I classification specification are not within their range of responsibilities, as HHR's Management Information Services section is responsible for purchasing, installing and maintaining computer equipment. They maintained that they generate reports using SQL to access data stored in a data warehouse. They stated that, contrary to what is stated on the position description forms, their supervisor does not review their work daily, rather, he reviews their daily reports on a monthly basis, and they work with little supervision.

Mr. Basford's explanation of the classification specification for Data Warehouse Specialist I is supported by the language of the specification. It obviously envisions a specialist who is not only

implementing, maintaining, and supporting a data warehouse, without daily oversight and direction, but is also able to design and develop such a system. There was no indication that Grievants have this expertise; to the contrary, an outside contractor was hired by HHR for this purpose, Grievants took daily direction from a contractor representative for a long time, and they have continued to call on Mr. Lemons for assistance. The classification specification clearly states that the classification assists state agencies, plural, not one section of one state agency. In addition, while Grievants certainly do generate reports from the database using SQL, which is listed in the Data Warehouse Specialist I classification specification, they spend only 5 hours a week, orabout 12% of their time on this task, and they have relied heavily on Mr. Lemons to help them with this task.

While Grievants may not perform every duty listed in the Information Systems Coordinator I classification specification, they do work with management, users, and information systems staff in installing and maintaining the software, they help users with software problems, and they train users.

Certainly, if a classification specification were being written to describe only Grievants' duties and responsibilities, it would not look exactly like the Information Systems Specialist classification specification; nor would it look like the Data Warehouse Specialist I classification specification. In particular, the level of technical responsibility, and responsibility for assisting all state agencies which the Data Warehouse Specialist I has are well above the level of responsibility of Grievants. Respondents have demonstrated by clear and convincing evidence that the Data Warehouse Specialist I classification specification is not the best fit for Grievants' duties.

The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. Respondent defaulted at Level I of the grievance procedure when a written decision was not issued within the statutory time period. W. Va. Code § 29-6A-3.

2. It determining whether the remedy requested is contrary to law or clearly wrong, it is presumed that the grievant prevailed on the merits of the grievance. W. Va. Code § 29-6A-3.

3. The burden of proof is upon Respondents to prove by clear and convincing evidence that the relief requested by Grievants is clearly wrong or contrary to law. This standard requires the party with the burden of proof to produce evidence substantially more than a preponderance of the evidence, but less than that required to prove the matterbeyond a

reasonable doubt. Lohr v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999).

4. In a misclassification grievance, the focus is upon whether the grievant's 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).

5. 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 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).

6. The Data Warehouse Specialist I classification specification is not a better fit for Grievants' duties than Information Systems Coordinator I, so granting the requested remedy of reclassification would be contrary to law and clearly wrong. Myers v. W. Va. Dep't of Health and Human Resources, Docket No. 00-HHR-392D (Mar. 30, 2001).

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. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: July 6, 2001

Footnote: 1

HHR contracted with a private company to assist in the development of WVSIIS.