ANGELA MYERS,

Grievant,

v. **Docket No. 00-HHR-392D**

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

Respondents.

DECISION

___On December 14, 2000, Angela Myers ("Grievant") filed a request for a default judgment at level four, alleging that a default had occurred at level one of the grievance procedure. By correspondence dated January 9, 2001, the Department of Health and Human Resources ("DHHR") conceded that the alleged default had occurred, and requested a hearing be scheduled to determine whether the relief sought by Grievant is clearly wrong or contrary to law, pursuant to the provisions of W. Va. Code § 29-6A-3(a)(2). The requested hearing was held in the Grievance Board's office in Morgantown, West Virginia, on February 27, 2001. Grievant represented herself; Respondent DHHR was represented by counsel, Jon R. Blevins; and the Division of Personnel ("DOP") was represented by Assistant Direct Lowell D. Basford. Grievant seeks as relief to be reclassified as a Health and Human Resources Specialist, Senior. This matter became mature for consideration upon receipt of Respondents' fact/law proposals on March 13, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

___1. Grievant is employed by DHHR's Bureau for Children and Families in the Office of Social

Services, Child Care Division. She is classified as a Health and Human Resources Specialist ("HHR Specialist").

2. Since mid-2000, Grievant's primary responsibility has been development of a quality assurance program for child care resource and referral agencies, who provide payments to and training for providers of child care. The focus of the project is to make sure that the resource and referral agencies are in compliance with all child care program contract provisions. Grievant is responsible for coordinating the entire project, which involves development and coordination of regional review teams, development of evaluation criteria and outcome measures, production of program reviews and audit reports, and monitoring the compliance of the agencies with any applicable corrective action plans. Grievant and the other employees working on the project are involved in such activities as looking at the agencies' records, talking to staff, monitoring training sessions, and conducting parent surveys and focus groups.

3. Aside from the contract review project described above, Grievant's normal duties are related to oversight of the resource and referral system, policy revision, technical assistance to the resource and referral agencies and DHHR's child care staff, and conducting training for staff.

4. Since July of 2000, two new employees in Grievant's unit, who are classified as HHR Specialist, Senior, have been performing the same or similar duties to Grievant's.

5. Grievant does not supervise other employees and does not function as a lead worker.

Discussion

Once it has been determined that the employer has defaulted in processing a grievance pursuant to the provisions of W. Va. Code § 29-6A-3, it is presumed that the grievant has prevailed upon the merits of the case. Respondent then has the burden of establishing by a preponderance of the evidence that the remedy requested is contrary to law or clearly wrong. See Hoff v. Bd. of Trustees, Docket No. 93-BOT-104 (June 30, 1994); Flowers v. W.Va. Bd. of Trustees, Docket No. 92-BOT-340 (Feb. 26, 1993). This Grievance Board has recently determined that the employer must prove its case by clear and convincing evidence, which 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. In the case of a default matter, this requires the employer to prove by this standard that the basic facts underlying the presumption are not true. Lohr

v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999). In the instant case, Respondents contend that Grievant's job duties simply do not entitle her to classification as a DHHR Specialist, Senior, so it would be contrary to law and clearly wrong to reclassify her as requested.

W. Va. Code §29-6-10 authorizes DOP to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as DHHR, which utilize 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).

DOP's job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples ofWork" 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 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 classification specifications for the two classifications at issue are reproduced below.

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 on standards and regulation, administrative oversight of and complex technical assistance with a program or a

particular major component of a statewide program, or major technical areaspecific 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 judgement 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.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area, its procedures, policies, and guidelines, and its relationship to the rest of the Department and other user entities.

Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.

Ability to represent area of assignment and to provide consultation on program or Department concerns.

Ability to synthesize information and provide interpretation.

Minimum Qualifications

Training:

Graduation from an accredited four-year college or university.

Substitution:

Additional experience as described below may be substituted for the requiredtraining on a year-for-year basis.

Experience:

Two years full-time, equivalent part-time paid or volunteer experience in a technical or program area that is related to the area of employment.

Substitution:

Post-graduate education in a field related to the technical or program area may be substituted for the required experience on the basis of fifteen semester hours for one year of experience.

OR

Master's Degree in social work from an accredited social work program in a four-year college or university.

HEALTH AND HUMAN RESOURCES SPECIALIST, SENIOR

Nature of Work

Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, a

statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi program operations. May consult on highly complex individual situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides others in developing and utilizing plans and recommends methods of improvement.

Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or delivery of service.

Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long-range work plans.

May lead or supervise professional and support staff.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department ofHealth and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area its procedures, policies, and guidelines, and its relation ship to the rest of the Department and other user entities.

Ability to plan and coordinate work, plan and project budgeting needs, and organize work and projects.

Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.

Ability to assign, direct, and review the work of others.

Minimum Qualifications

Training:

Graduation from an accredited four-year college or university.

Substitution:

Additional experience as described below may be substituted for the required training on a year-for-year basis.

Experience:

Four years full-time, equivalent part-time paid or volunteer experience in a technical or program area that is related to the area of employment.

Substitution:

Post-graduate education in a field related to the technical or program area may be substituted for the required experience on the basis of fifteen semester hours for one year of experience.

Mr. Basford, DOP's Assistant Director of Classification and Compensation, testified that, while Grievant unquestionably has a great deal of responsibility as the coordinator oflarge projects such as the contract review project, she cannot be classified as an HHR Specialist, Senior, because she is not responsible for a major component of a DHHR program. Mr. Basford explained that, although Grievant's responsibilities in her assigned area are quite extensive, the focus of her duties is upon only one segment of a portion of a major DHHR program. In other words, Grievant's responsibilities are limited to the resource and referral agencies, which comprise a portion of what the Child Care Division does. However, child care is only a small portion of the responsibilities assigned to the Office of Social Services. While Grievant may be responsible for the conceptualization and development of the resource and referral contract review project, it is only a project, not a major program or program

component.

It appears that a motivating force behind Grievant's request for reclassification stems from the fact that she is working closely with two individuals who are classified as HHR Specialists, Senior, and who are clearly performing the same duties as she. However, after hearing all of the evidence in this case, Mr. Basford testified that it is very likely that these two people are misclassified, and their positions will be reviewed. The remedy, in a situation involving a grievant's claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. Akers v. W. Va. Dept. of Tax and Revenue, 194 W. Va. 956, 460 S.E.2d 702 (1995).

As noted recently in Loudermilk v. Department of Health and Human Resources, Docket No. 00-HHR-304 (Dec. 29, 2000), there is not much to distinguish the classifications of HHR Specialist and HHR Specialist, Senior. However, Grievant's responsibility for project oversight and development do not amount to program oversightand development, which is necessary to be classified as an HHR Specialist, Senior. All of the duties and responsibilities described by Grievant clearly fall within the classification specification for HHR Specialist, a position which “clearly contemplates that the employee will have a significant level of responsibility . . . and come up with solutions to problems.” Id. The undersigned cannot find that Grievant is entitled to the remedy requested.

Accordingly, Respondents have established by clear and convincing evidence that it would be clearly wrong and contrary to law to grant Grievant's requested remedy.

Conclusions of Law

1. A grievant who has prevailed by default at one of the lower levels of the grievance procedure for state employees is entitled to receive the remedy requested, unless the employer timely requests a level four hearing, and demonstrates that, notwithstanding the presumption that the grievant prevailed on the merits of his or her grievance, awarding such remedy would be contrary to law or clearly wrong. W. Va. Code §29-6A-3(a)(2); Parsons v. Div. of Corrections, Docket No. 99-CORR-056D2 (July 19, 1999).

2. The language of W. Va. Code §29-6A-3(a)(2) creates a presumption that the grievant prevailed on the merits of the case when the employer did not timely respond to the complaint, resulting in a default.

3. To rebut the presumption created in W. Va. Code §29-6A-3(a)(2), a respondent must present clear and convincing evidence that the basic facts underlying the asserted presumption are not true. Lohr v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999).

4. The key to the analysis in a misclassification claim is to ascertain whether thegrievant'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, 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).

5. In order to be classified as an HHR Specialist Senior, an employee must either have supervisory or lead work responsibilities, or have responsibility for a major complex program and/or operational system. Conclusion of Law #3, Loudermilk v. Department of Health and Human Resources, Docket No. 00-HHR-304 (Dec. 29, 2000).

6. The remedy, in a situation involving a grievant's claim that others are enjoying a higher classification and performing the same work that she performs, is not to similarly misclassify the grievant. Akers v. W. Va. Dept. of Tax and Revenue, 194 W. Va. 956, 460 S.E.2d 702 (1995).

7. The HHR Specialist, Senior, classification specification is not a better fit for Grievant's duties than HHR Specialist, so granting her requested remedy of reclassification would be contrary to law and clearly wrong.

Accordingly, this 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 grievanceoccurred, and 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.

Date: March 30, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge