MARY OILER, et al.,

Grievants,

v.

DOCKET NO. 00-HHR-361

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES/BUREAU FOR

CHILD SUPPORT ENFORCEMENT and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Mary J. Oiler, Deborah L. Hamner, Linda S. Knight, Donna Kenneda, Bruce S. Kimmel, and Patricia Stickler, are employed by the West Virginia Department of Health and Human Resources ("DHHR") as Accounting Technician II's in the Weston Office, Region Eight, of the Bureau for Child Support Enforcement ("BSCE"). TheY filed separate grievances against DHHR and the West Virginia Division of Personnel ("Personnel") on or about November 9, 2000, as follows:

> Equal pay for equal work, misclassification, job description, comparable worth and supervision.
>
> Relief sought: Reclassification to pay grade 10 and damages in the form of the difference between the salary that I would have received had I been properly classified, with back pay and interest.
>
> Duties performed by two child advocate legal assistants are the same duties performed by accounting technician II and should be in the same pay grade.
>
> Clarification of supervision and job description of accounting technician II. (See footnote 1)

The grievances were consolidated, and the parties agreed to waive levels one and two of the grievance process, and proceeded directly to a hearing at level three on November 1, 2000. Prior to

the level three hearing, a number of the ancillary issues were resolved, and the only remaining issue in this grievance is Grievants' claim they are misclassified. A level three decision denying the grievance was issued by Commissioner David Welker on November 9, 2000. Grievants appealed to level four on November 14, 2000, and a level four hearing was held in the Grievance Board's Elkins, West Virginia, office on January 17, 2001. This matter became mature for decision on March 12, 2001, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievants appeared pro se, DHHR was represented by B. Allen Campbell, Esq., Assistant Attorney General, and Personnel was represented by Lowell D. Basford.

SUMMARY OF EVIDENCE

Grievants' LIII Exhibits

Ex. 1 -

Examples of Duties and Outline of Adjustment Procedures.

Ex. 2 -

Financial Level I Class Handouts.

Ex. 3 -

Financial Level II Class Handouts.

Ex. 4 -

Financial Level III Class Handouts.

Ex. 5 -

Certificates of Completion for Levels I, II, III, and IV Financial OSCAR Training.

Ex. 6 -

Not admitted.

Ex. 7 -

Distribution packet.

Ex. 8 -

Multiple Cases with Proration.

Ex. 9 -

October 31, 2000 memorandum from Daniel J. Calvert to Case Managers re: Monthly Hearing Memo.Ex. 10 -
Policy 08000.65.25: Support Equals or Exceeds the Grant.

Ex. 11 -

W. Va. Code § 48A-3-1, et seq, Children's Advocate.

Ex. 12 -

Job Specification for Accounting Technician II.

Ex. 13 -

Job Specification for Health and Human Resources Associate.

DOP LIII Exhibit

Ex. 1 -

February 9, 2000 memorandum from Marjorie L. Tierney to Sue Smith re: Position Description - Accounting Technician II.

Grievants' LIV Exhibits

Ex. 1 -

Job Specification for Accounting Technician IV.

Ex. 2 -

Job Specification for Accountant/Auditor I.

Ex. 3 -

Performance Expectations - Accounting Technicians.

Ex. 4 -

May 18, 1999 memorandum from Marjorie Tierney to Mary Oiler re: Accounting Log

Report, with attachments.

Ex. 5 -

Employee Performance Appraisal of Mary Oiler, dated September 26, 2000.

Ex. 6 -

January 8, 2001 e-mail from Elizabeth Stollings to Mary Oiler; January 12, 2001 e-mail from Elizabeth Stollings to Mary Oiler; Minutes of August 31, 2000 meeting in Sutton, WV.

Ex. 7 -

February 9, 2000 memorandum from Marjorie L. Tierney to Sue Smith re: Position Description - Accounting Technician II.

Ex. 8 -

Employee Performance Appraisal of Mary Oiler, dated September 20, 2000.

DOP LIV Exhibits

Ex. 1 -

Job Vacancy Posting, May 15, 1998.

Testimony

Grievants testified in their own behalf, and presented the testimony of Susan Marion, Marjorie Tierney, Carolyn Clifton, Cathy Slaughter, Sandy Waugaman, Bruce Kimmel, and Lowell Basford. DOP presented the testimony of Lowell Basford.

FINDINGS OF FACT

After a careful review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

1. Grievants are currently classified as Accounting Technicians II in BCSE. 2. Grievants filed grievances on November 1, 1999, alleging that they were misclassified as Accounting

Technicians II and requesting they be reallocated to a higher job classification with back pay and interest. Initially, Grievants sought to be reallocated to the Health and Human Resources Associate classification. However, at the Level IV hearing, Grievants amended their claim, without objection, to argue that if HHR Associate is not the best fit, then they might more appropriately be classified as an Accounting Technician IV or an Accountant/Auditor I.

3. Grievants' duties include: receiving referrals, reviews, and evaluating and gathering case accounting information from an automated system file and a case record file. Grievants review case accounting transactions for accuracy, completeness and compliance with child support enforcement policy. Grievants perform moderate to complex posting to a child support enforcement accounting ledger, listing the payments received and the distribution of the support payments on an ongoing monthly basis. Grievants forward the accounting ledger to the child support enforcement Central Financial Unit, where the corrected balances are established in the automated file. See G. Ex. 7, Position Description Forms, Attachment I.

4. The classification specification for Accounting Technician II, “Nature of Work”, provides as follows:

> Under general supervision, preforms entry level accounting support duties. The incumbent is responsible for performing routine posting and adjusting to the general ledger, processing claims and invoices, and reviewing transactions for completeness, accuracy, and compliance with state and federal laws and regulations. Performs related work as required.

5. The classification specification for the Health and Human Resources Associate position, “Nature of Work”, provides as follows:

> Under general supervision, performs work at the full-performance level by maintaining responsibility for carrying out complex technical functions necessary for the operation of a statewide Health and Human Resource program, providing technical and/or programmatic assistance to staff, participants, and other user entities of a component of a statewide program or major technical area specific to or characteristic of the Department of Health and Human Resources. Helps assure compliance with laws and regulations governing the program or technical area. Maintains responsibility of operational procedures and policies related to their technical function. Uses independent judgment to determine approaches to technical or operational programs. Consultation on individual situations related to assigned technical function. Exercises latitude in varying methods and procedures within the parameters of program or technical area guidelines. May assign and review work of clerical staff. Maintains responsibility for application of standards to individual situations as well as monitoring and evaluation of individual situations. Has responsibility for formulation of training of other staff as related to his/her function. This class may also be used as the entry or beginning level of the professional Health and Human Resources Specialist series. Performs related work as required.

6. The classification specification for Accountant/Auditor I position, “Nature of Work” provides as follows:

> In a training capacity, acquires the ability to perform entry level professional accounting/auditing work in one or more of the following areas: general accounting, internal auditing, external auditing, budgeting/administration, and financial analysis. Through formal classroom training and on-the-job training, job assignments are designed to develop familiarity with accounting/auditing practices and procedures, knowledge of laws and regulations governing accounting/auditing and the ability to post accounting records, and the ability to prepare any analyze financial records for completeness and accuracy. The work may require considerable travel. Performs related work as required.

7. The classification specification for Accounting Technician IV, “Nature of Work”, provides as follows:

> Under general supervision, performs advanced accounting support duties. The incumbent is responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

DISCUSSION

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 another cited Personnel classification specification than that under which they are currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Res., Docket No. NR- 88-038 (Mar. 28, 1989). Personnel 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. Atchison v. W. Va. Dept. of Health, Docket No. 90-H-444 (Apr. 22, 1991); see generally, Dollison v. W. Va. Dept. 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. Dept. of Health and Human Res., 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).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin.Rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR- 041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, § 4.04(d). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined not to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

The primary classification specifications at issue are:

ACCOUNTING TECHNICIAN II

Nature of Work

Under general supervision, performs entry level accounting support duties. The incumbent is responsible for performing routine posting and adjusting to the general ledger, processing claims and invoices, and reviewing transactions for completeness, accuracy, and compliance with state and federal laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is beginning level paraprofessional accounting/auditing work. Duties are distinguished by the recording and balancing of routine financial and numerical data in accordance with agency standards and work procedures.

Examples of Work

Processes claims and invoices; accurately calculates and records amounts.

Prepares bank deposits and/or checks.

Performs routine posting and adjusting to ledger.

Identifies and corrects own routine posting errors.

Classifies/codes according to a chart of accounts.

Performs routine reconciliation reports such as bank reconciliations and batch reports.

Maintains accounting records; gathers data and prepares financial statements and reports from records maintained.

Contacts associates, administrators, and general public in order to obtain information, discuss changes in documents, or resolve routine problems with accounts.

HEALTH AND HUMAN RESOURCES ASSOCIATE

Nature of Work: Under general supervision, performs work at the full-performance level by maintaining responsibility for carrying out complex technical functions necessary for the operation of a statewide Health or Human Resource program, providing technical and/or programmatic assistance to staff, participants, and other user entities of a component of a statewide program or major technical area specific to or characteristic of the Department of Health and Human Resources. Helps assure compliance with laws and regulations governing the program or technical area. Maintains responsibility of operational procedures and policies related to their technical function. Uses independent judgement to determine approaches to technical or operational problems. Consultation on individual situations related to assigned technical function. Exercises latitude in varying methods and procedures within the parameters of program or technical area guidelines. May assign and review the work of clerical staff. Maintains responsibility for application of standards to individual situations as well as the monitoring and evaluation of individual situations. Has responsibility for formulation of training of other staff as related to his/her function. This class may also be used as the entry or beginning level of the professional Health and Human Resources Specialist series. Performs related work as required.

Distinguishing Characteristics: The Health and Human Resources Associate is distinguished from the Health and Human Resources Specialist by the assignment to limited technical or operational areas rather than program or broad operational development or consultation. Problems are typically procedural or standard precedents. If used as an entry or beginning level class, work is characterized by more direct supervision and a training and developmental nature. **NOTE:** Promotion from the class may occur only if and when the job duties and responsibilities change significantly enough to make a higher level classification more appropriate.

Examples of Work

Develops new or updates existing forms, paper and/or electronic, to facilitate operations.

Sets up and maintains paper and electronic files.

Reviews forms for completeness and compliance.

Talks with state, federal, and local program participants, or technical area personnel to explain procedural changes, clarify guidelines, and answer general questions.

Monitors procedures for effectiveness and efficiency.

Advises program participants and/or other staff on changes in operational and procedural policies, regulations, and guidelines, and answers questions regarding those changes.

Determines compliance with regulations and or acceptability of a program within context of applicable standards.

Assists in development of regulations, standards and procedures as appropriate to the area of technical functioning.

ACCOUNTING TECHNICIAN IV

Nature of Work

Under general supervision, performs advanced accounting support duties. The incumbent is responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is advanced level paraprofessional accounting work. Job duties include performing complex balancing and reconciling of multiple accounts. Employees in this class are responsible for accuracy of accounts for others and require little supervision. Responsibilities may also include being a lead worker.

Examples of Work

Classifies/codes a variety of transactions which may require considerable knowledge.

Transfers funds and balances multiple accounts such as hospital billing.

Examines accounting records to assure adherence to accounting laws and regulations; verifies calculations and ensures accuracy and validity of transactions.

Prepares and illustrates specialized statements and reports which reflect the relationships among accounts and which require steady searching and analysis.

Makes complex journal entries and other transactions which require use of specialized accounting procedures.

Maintains accounting records; gathers data and prepares complex financial statements and reports from records maintained.

Assists supervisor in preparing budget by compiling data, preparing summaries and requests, and/or developing cost projections.

Contacts associates, administrators, and general public in order to obtain information, discuss changes in documents, or resolve problems with more complex accounts.

Makes recommendations on the development or revision of agency policies and procedures.

May assign account/department codes.

May train Accounting Technicians and subordinate staff.

May lead and review work of other Accounting Technicians.

ACCOUNTANT/AUDITOR I

Nature of Work

In a training capacity, acquires the ability to perform entry level professional accounting/auditing work in one or more of the following areas: general accounting, internalauditing, external auditing, budgeting/administration, and financial analysis. Through formal classroom training and on-the-job training, job assignments are designed to develop familiarity with accounting/auditing practices and procedures, knowledge of laws and regulations governing accounting/auditing and the ability to post accounting data to the general ledger, ability to prepare audit workpapers, ability to balance and reconcile accounting records, and the ability to prepare and analyze financial records for completeness and accuracy. The work may require considerable travel. Performs related work as required.

Distinguishing Characteristics

This is the trainee level in the Accountant/Auditor series. Employees assigned to this class are expected to acquire the work specific knowledge, skills and abilities to function as an Accountant/Auditor. As technical proficiency is acquired, incumbent may be assigned more complex accounting/auditing areas with diminished oversight and direction. Work is performed under close supervision.

Examples of Work

In a training capacity:

Participates in formal classroom and on-the-job training to develop familiarity with state and federal rules, regulations, and laws, and accounting/auditing methods and procedures.

Assists in the balancing and reconciling of accounting records.

Assists in posting accounting data to general ledger accounts; in recording adjusting or correcting entries to the general ledger.

Assists in compiling data for preparation of accounting reports; may prepare reports of limited complexity.

Assists in the maintenance and review of expenditure and budgetary control accounts, subsidiary and general ledgers, accounting journals, financial reports, batch reports, and other fiscal records.

Assists in preparing workpapers to support audit adjustments and recommendations.

Assists in the transferring and encumbering of funds.

Assists in analyzing financial records for completeness and accuracy to determine compliance with state and federal laws as well as with national accounting and auditing standards.

Grievants assert they perform advanced accounting support duties which are at full- performance level, and are responsible for posting complex journal entries requiring the use of specialized accounting procedures. Grievants contend they routinely create ledgers (ARTM) in OSCAR to calculate child support balances taking into consideration multipleaccounts, obligations, West Virginia court orders, and out-of-state court orders, AFDC grant history, payments and tax offset money. Grievants conclude their duties best fit within the classification specifications of Accounting Technician IV or Accountant/Auditor I.

Grievants believe the most complex portion of the Legal Assistants' job, the financials, was

assigned to them. Susie Marion, Health and Human Resource Specialist, testified that Grievants "have to have all the knowledge of the Legal Assistants and then you have to have the additional knowledge." LIII Tr., p. 7.

Grievants testified they require little supervision. Grievants must keep abreast of current rules and regulations and must also be mindful of previous regulations in accurately calculating child support accounts. Grievants post moderate to complex journal entries that require the use of specialized accounting procedures. Grievants are responsible for transferring funds between accounts, balancing multiple accounts and coding payments to apply to arrears properly. Grievants prepare and illustrate specialized and complex financial statements and reports which reflect the relationships among accounts and which require steady searching and analysis. Grievants contact associates, administrators, and the general public in order to obtain information, discuss changes in documents, or resolve problems with more complex accounts. Grievants make recommendations on the development or revision of agency policies and procedures. They help lead, train, and review the work of new Accounting Technicians. Finally, the level three evaluator concluded, "[i]t should be noted that the Grievants have presented credible evidence that the work performed by Field Adjustment Workers ("FAW") may well exceed entry levelaccounting support duties and routine posting and account adjustments as contemplated by the Accounting Technician II job classification and are deserving of a higher classification."

Lowell D. Basford, Director of Classification and Compensation, testified that the positions occupied by Grievants were allocated and posted at the Accounting Technician II level because of the close supervision required of their work product by the Central Adjustment Workers and the relationship of the FAW positions to the Central Adjustment Workers. The Central Adjustment Workers are classified as Accounting Technician III and have greater responsibility in that they review the work of the Grievants and also have responsibility for correcting the balances and establishing the adjustments in the automated systems file. Mr. Basford opined Grievants do not have the same level of complexity and difficulty and responsibility in their positions as do the Central Adjustment Workers, and should not be in the same or higher job classification.

Mr. Basford testified that Grievants' positions are not consistent with the Health and Human Resources Associate classification because that classification is part of a class series which is responsible for providing program development, coordination, administration and monitoring; that

Grievants perform highly structured, routine work that is part of a work process in which they perform a particular segment of the work and then the work product is submitted to the next step for further processing; and that Grievants are not responsible for the development, coordination, monitoring, and evaluation of programs. He further testified that Grievants did not perform any of the examples of work listed in the Health and Human Resource Associate class specification. With respect the Accounting Technician IV job classification, Mr. Basford testified that position provides advanced accounting support and utilizes complex accounting methods that may involve multiple accounts. Additionally, the Accounting Technician IV is a lead worker and is responsible for the work of others. Mr. Basford explained that Grievants are not responsible for the work of others, are under close supervision, and have their work reviewed.

Finally, Mr. Basford testified that the Accountant/Auditor I position is not appropriate for Grievants' duties because Grievants do not do professional accounting work, but perform paraprofessional accounting support work.

Upon careful review of the evidence presented, the undersigned concludes the classification designation given by DOP to Grievants is not clearly wrong. Grievants' job duties are not reflected by the Health and Human Resource Associate, Accounting Technician IV, or Accountant/Auditor classification specifications. While there may be a better fit for their duties than the Accounting Technician II classification specification, Grievants have the burden of producing a classification specification which would provide the best fit. This they have not done.

CONCLUSIONS OF LAW

1. 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 another cited Personnel classification specification than that under which they are currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989).

2. Personnel 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. Atchison v. W. Va. Dept. of Health, Docket No. 90- H-444 (Apr. 22, 1991); see generally, Dollison v.

W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

3. The key to the analysis is to ascertain whether Grievants' current classification constitutes the “best fit” for their required duties. Simmons v. W. Va. Dept. of Health and Human Res., 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).

4. Class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Admin. Rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, § 4.04(d).

5. Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined not to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). 6. Grievants do not perform entry level professional accounting/auditing work in general accounting, internal auditing, external auditing, budgeting/administration, or financial analysis. Therefore, the Accountant/Auditor I classification is not the “best fit” for Grievants' duties.

7. Grievants do not maintain responsibility for carrying out complex technical functions necessary for the operation of a statewide Health or Human Resources program. Therefore, the Health and Human Resource Associate classification is not the “best fit” for Grievants' duties.

8. Grievants do not perform advanced accounting support duties, nor do they serve as lead workers or review others' work. Therefore, the Accounting Technician IV classification is not the “best fit” for Grievants' duties.

9. Grievants do perform entry level accounting support duties as outlined in the classification specification. Therefore, the Accounting Technician II classification is the “best fit” for Grievants' duties.

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 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 § 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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MARY JO SWARTZ

Administrative Law Judge

Dated: April 5, 2001

Footnote: 1

The Division of Personnel is currently evaluating all of the classifications within the BCSE. A preliminary report has been completed by DOP and submitted to DHHR.