MELINDA BENDER, et al.,

Grievants,

v.

Docket No. 00-HHR-305

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILD SUPPORT ENFORCEMENT
and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

This grievance was filed by Grievants, Melinda Bender, Steve McClung, Patricia Fitzgerald, Bruce Carney, Andy Ventura, and Susie Marion, against their employer, Respondent, Department of Health and Human Resources ("HHR"). Grievants initially sought to have position description forms which they had completed in August of 1999, and which were submitted by their supervisor on September 26, 1999, to the next step in the process, forwarded to the Division of Personnel ("Personnel"), as months had passed and the documents had not been forwarded. After the position description forms were forwarded to Personnel, and Personnel found the Grievants to be properly classified, the parties agreed to convert the grievance to a challenge to Grievants' classification as Health and Human Resources Specialists ("HHR Specialists"). Personnel was joined as a party at Level III. As relief Grievants sought classification as Health and Human Resources Specialist, Seniors ("HHR Specialist, Seniors"), and back pay from September 26, 1999. (See footnote 1)

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 as HHR Specialists. Except for Grievant McClung, Grievants work in the Training Unit of the Bureau of Child Support Enforcement ("BCSE"). Grievant Fitzgerald

transferred from the HELP Desk Unit to the Training Unit on or about June 19, 2000. Grievant McClung transferred into the HELP Desk Unit from the Training Unit on that same date. (See footnote 2)

2. Grievants' supervisor, Danny Craghead, is classified as an HHR Specialist, Senior. He is responsible for the Training Unit.

3. Grievants train employees in policy and how to use the OSCAR computer system (See footnote 3) to perform tasks, such as, how to generate forms from the system and how to usethose forms. They spend nearly half their time researching and developing training, and delivering training. In addition, they coordinate with different administrative departments within HHR, and other agencies, in making changes or improvements to the OSCAR computer system; develop standards and evaluate those standards; act as liaisons between departments and agencies; come up with ideas to solve a problem, whether brought to their attention by their supervisor, or discovered while preparing training, and follow through with those ideas from start to finish, developing or contributing to the development of policy which complies with the law and with the OSCAR computer system; interpret policy; develop procedures where lacking; work with attorneys and other legal experts on complex legal issues; work with programmers to convert policy into computer codes, and test the programming; and attend meetings with other agencies and groups, providing input on BCSE's role. Grievants, at times, work as a team on projects.

4. Grievants do not supervise any other employee, nor do they direct the work of any other employee or prepare annual performance evaluations.

5. The HHR Specialist and HHR Specialist, Senior classifications are part of a class series. As such there is substantial overlap in the classification specifications, and there is little distinction between the two by design.

6. HHR Specialists and HHR Specialist, Seniors develop and deliver training as part of their job duties.

7. Personnel did not contact Grievants' supervisor, or conduct a desk audit prior to determining Grievants were properly classified. Personnel does not generally conduct a desk audit, nor does the person reviewing the position description form contact the supervisor unless an organizational chart is needed, or the position description form is incomplete or unclear.

DISCUSSION

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 their employees. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994).

In order for a grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of the Work" section of a classification specification is its most critical section. See generally, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the 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 unlessclearly wrong. See, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting his classification with a substantial obstacle to overcome in attempting to establish that he is misclassified.

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 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 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 required training 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.

Note: Appointment above the entry rate may be made at 5% for each 6 months of successfully completed work as an intern in a practicum placement with Department of Health and Human Resources for the Master of Social Work degree.

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 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 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.

Grievants argued it was clearly wrong for Personnel not to conduct a desk audit, or to otherwise

conduct any activity “to seek out information” on Grievants' duties. The employee has the opportunity to accurately and completely describe his duties on the position description form he completes. Lowell D. Basford, Personnel's Assistant Director of the Classification and Compensation Section, explained that it is this form, as well as the organizational chart, which Personnel uses to review classification requests. He explained that the manager of the unit, or director, is contacted by Personnel only if an organizational chart is needed, or the position description form is incomplete or unclear. He stated it is not standard practice to conduct a desk audit, nor is it generally necessary. He testified that a desk audit is generally conducted only if Personnel does not understand the position description form. Grievants pointed to no requirement that a desk audit isrequired, nor did they contend that their position description forms were unclear or incomplete. Grievants did not demonstrate that Personnel was required to complete a desk audit of their positions, or that it was necessary to do so.

Mr. Basford testified the HHR Specialist is part of a class series, and the HHR Specialist and HHR Specialist, Senior classification specifications overlap, and they are intended to overlap quite a bit. He pointed out that, as is stated in the Distinguishing Characteristics of the classification specifications, in order to be classified as an HHR Specialist, Senior, an employee must either function as a lead worker, or be in charge of “the entire operational system of a, a program or system.” Grievants argued they are responsible for conceptualization and development of the OSCAR computer system.

Mr. Basford explained that each Grievant does not have responsibility for the operations of the training unit. That is Mr. Craghead's responsibility. He stated that the unit as a whole is responsible for developing training programs. Each Grievant does not have the same level of responsibility as the unit as a whole. He also testified that developing training is not equivalent to being in charge of a major complex program. He stated that in making classification determinations, Personnel views a program within HHR as a self-contained sub-system of the agency's mission, with the smallest level being a unit.

Comparing the HHR Specialist and the HHR Specialist, Senior classification specifications, the undersigned concludes that Grievants' duties and level of responsibility are encompassed within the HHR Specialist classification. Grievants pointed to the fact that training is found within the Examples of Work of the HHR Specialist, Senior classification specification. While this is true, the Nature of Work Section of the HHR Specialist classification specification states, “[d]evelops and delivers

training programs related to assigned program or component." The Nature of Work Section of the HHR Specialist, Senior classification specification states, "[h]as responsibility for developmentand 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." Obviously, both the HHR Specialist and the HHR Specialist, Senior have training responsibilities. The level of training responsibility is not a distinguishing characteristic, and is part of the overlap in the class series.

The Nature of Work Section of the HHR Specialist classification specification also refers to exercising independent judgement, monitoring and evaluating the operation of an assigned program or program component, and exercising considerable latitude in problem solving, and clearly contemplates that the employee will have a significant level of responsibility and be required to evaluate a situation and use his mental abilities to come up with solutions to problems. This is a good characterization of what Grievants do. The HHR Specialist and HHR Specialist, Senior are part of a class series. As such, there is not much to distinguish the two classifications, and Personnel did not intend for there to be much distinction. As was noted in the recent decision involving the HELP Desk Unit,

> While [Grievants] each have responsibility to perform the complex tasks assigned to them, and to make sure their projects are carried to fruition, and there is no doubt that they take this responsibility very seriously, and they make these projects their own, Grievants do not individually have responsibility for conceptualizing and developing an entire program or operational system. They each represent one person, albeit a key person, in a large group responsible for making OSCAR work.

Loudermilk, et al., v. Department of Health and Human Resources, Docket No. 00-HHR- 304 (Dec. 29, 2000). Grievants' duties are not supervisory in nature, nor do they have responsibility for a major complex program or system. They have not demonstrated that the HHR Specialist, Senior classification is the best fit for their duties.

Grievants presented testimony that other HHR employees whose predominant duties involve developing and presenting training on a computer system, the RAPIDS system, are classified as HHR Specialist, Seniors. Mr. Basford testified, however, that those positions were classified by Personnel in 1994 based upon their duties at the timethe RAPIDS system was first put in place, the organizational structure at the time, and the need to fill the positions. He explained that those

individuals who were in charge of the groups which were developing and implementing the RAPIDS system, were classified as HHR Specialist, Seniors. He stated this process took several years, and when the job duties of these positions changed, so that these employees were just developing and providing training, Personnel was not informed of this.

Grievants presented the testimony of another HHR employee who trains employees in policy and procedure, Al Boyd, who was placed in the HHR Specialist, Senior classification in January 2000. Grievants read into the record at Level III portions of a document which indicated that it was Personnel who placed this employee in the HHR Specialist, Senior classification, but that document was not made a part of the record in its entirety. Mr. Basford believed that Mr. Boyd had been placed in the HHR Specialist, Senior classification as a result of a Level III decision.

The RAPIDS trainers may now be misclassified, although it would require a detailed review of their job duties, position in the organization, and responsibilities to make such a determination, given the overlap in the two classifications at issue. The same is true with regard to Mr. Boyd. As noted above, the fact that another employee delivers training, however, is not determinative in these two classifications. Nonetheless, “[t]he 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, 460S.E.2d 702 (1995).” Myers v. Dep't of Health and Human Resources, Docket No. 00-HHR-392D (Mar. 30, 2001). The key here, however, is not to compare Grievants' training duties to the training duties of other employees, but to compare all of Grievants' duties and responsibilities, and their positions in the organizational structure, to the classification specifications at issue, utilizing the clearly wrong standard. The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. In order to prevail in a misclassification claim, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. 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).

3. In order to be classified as an HHR Specialist, Senior, an employee must either have supervisory or lead worker responsibilities, or have responsibility for a major complex program and/or operational system.

4. Grievants are not supervisors, they do not lead other workers in their unit on a regular, recurring basis, and they do not each have responsibility for a major complex program or operational system.

5. Personnel's determination that Grievants are HHR Specialists is not clearly wrong.

6. The HHR Specialist, Senior classification specification is not a better fit for Grievants' duties than the HHR Specialist.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: April 26, 2001

Footnote: 1

This grievance was filed on February 8, 2000. The parties agreed to waive Levels I and II of the grievance procedure, proceeding directly to Level III. This grievance was consolidated with a grievance filed by employees in the HELP Desk Unit, and a Level III hearing was held on May 19 and July 7, 2000. The grievance was denied at Level III on September

11, 2000, and Grievants appealed to Level IV on September 19, 2000. The parties then asked that the two grievances which had been consolidated at Level III not be heard together at Level IV, and this request was granted. The Level IV hearing was held on December 6, 2000. Grievant McClung represented himself, and the remaining Grievants were represented by Mark W. Carbone, Esquire. Respondent HHR was represented by B. Allen Campbell, Esquire, and Respondent Division of Personnel ("Personnel") was represented at the Level IV hearing by Donald L. Darling, Esquire, and subsequently by Robert Williams, Esquire. This matter became mature for decision upon receipt of the last of the parties' post-hearing written arguments on March 19, 2001.

Footnote: 2

Grievants Fitzgerald and McClung were also Grievants in Loudermilk, et al., v. Department of Health and Human Resources/Bureau for Child Support Enforcement, and Division of Personnel, Docket No. 00-HHR-304, which was also a misclassification grievance, with the remaining Grievants in that grievance being employees in the HELP Desk Unit.

Footnote: 3

OSCAR is an acronym for On-line Support Collection and Reporting. OSCAR is the mainframe computer system which supports the BCSE.