DORIS WATTS,

Grievant,

v.

Docket No. 01-HHR-533

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

Respondents.

D E C I S I O N

Grievant, Doris Watts, filed this grievance against her employer, Respondent, the Department of Health and Human Resources ("HHR"), contesting her classification. Her statement of grievance reads:

> I have become aware of information that causes me to believe the DHHR is applying the classification and pay grade system to employees in the Child Care Regulation Program in such a manner as to be unfair to me. I believe my duties include and surpass the duties of certain Day Care Regulatory staff who are a paygrade of 14, while I am at a pay grade 9.

As relief Grievant sought:

> To have the DHHR apply the pay grade system in a congruent manner which will place me in a fair and equitable pay grade comparable to my duties and responsibilities. An increase to pay grade 13 or 14 and whatever additional relief is deemed just and appropriate.

Grievant is classified as a Social Service Worker II, pay grade 11, not pay grade 9 as is stated in the statement of grievance. At the Level IV hearing, Grievant's counsel clarified that Grievant is seeking to be classified as a Health and Human Resources Specialist ("HHR Specialist"), pay grade 13. (See

footnote 1)

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

FINDINGS OF FACT

1. Grievant is employed by HHR as a Social Service Worker II, “Day Care Worker,” in the Region II Daycare Unit, located in the Cabell County Office. She was awarded this position in 1997, after it was posted as a Social Service Worker II, and she bid on the position. Grievant's duties have not changed significantly since 1997.

2. There are 12 counties in Region II. Grievant works primarily in Cabell and Mason Counties, although she is occasionally asked to assist in other counties where there is a need.

3. Beth Farley is Grievant's supervisor. She is a Social Service Supervisor. She supervises several functions. Ms. Farley's supervisor is Lynn Lorentz, a Community Services Manager. Ms. Lorentz's supervisor is the Region II Regional Director, and he reports to the Deputy Commissioner, who then reports to the Commissioner.

4. Grievant monitors the operations of family day care facilities, which are facilities which care for between 7 and 12 children at a time, family day care homes, which care for 1 to 6 children at a time, legally exempt school age child care programs, informal relative care, and in-home care.

5. Someone who wants to open a family day care facility sends in a letter of intent stating she would like to operate a facility. If the person meets the basic requirements, Ms. Farley sends the person legislative rules to review. The person then sends in a completed application. The assigned Social Service Worker II would then go to the facility with a checklist, and utilizing a standard checklist, note whether the person meets, or can meet, the items on the checklist. If the person meets all the checklist items, the Social Service Worker II sends the person a two-year certificate stating all checklist items have been met. If certain items have not been met, a six-month provisional certificate can be issued by the Worker.

6. A person who wants to be family day care provider submits an application. Ms. Farley assigns the application to a Social Service Worker II, who then makes an appointment to meet with the person, and look at the home. If the person does not meet all the guidelines, the Social Service Worker II issues the person a corrective action plan or denies the application.

7. Grievant reviews paperwork at day care facilities, provides technical assistance to the

person operating the facility or home, determines how much time will be needed for corrective action when a corrective action plan is put in place, and monitors compliance with corrective action plans. She can revoke a certificate and can issue provisional certificates. She represents HHR at hearings to explain the decision to revoke. She works with inspectors and representatives from the state fire marshall's office, local health departments, and other agencies, when necessary. She completes background checks and investigates operators and staff of the facilities for which she has responsibility, taking fingerprints and sending them to the appropriate agency to be checked, and checking HHR records for any history. She investigates reports of illegal operations when 12 or fewer children are involved, making home visits, and checking the facility's records. If she finds a facility is not in compliance with requirements, she is required to evaluate whether the problem is so serious that it presents an immediate risk of harm to children, and if it does, she must take the appropriate action to place the children in a safe situation. Many situations she encounters require the use of independent judgement. She is a mandatory reporter. She refers child care providers to other agencies for assistance, identifies training needs for providers, and assists providers in applying for grants. She participates in case staffing, participates with her co-workers and supervisor in interpreting policy, rules, and regulations, and in suggesting policy changes, and is a member of a regional quality team on a rotating basis with other employees. She does not interpret policy on her own. She completes reports, and enters data on the facilities into the computer.

8. In 1996, the Division of Personnel ("Personnel") was conducting a classification study of the Office of Social Services, as the Office was being reorganized. Judith Curry, Child Care Program Coordinator, was an HHR Specialist in 1996. She prepared a position description form to be submitted to Personnel for purposes of classifying the Day Care Workers. When the position description form was returned to HHR, it had been assigned to the HHR Specialist classification. Tom Strawderman, who at that time was the Director of Planning in the Office of Social Services, was concerned with the impact this classification would have on the licensing specialists, which he believed was a more difficult job. This was also the first time this classification had been used for someone who was not working out of a statewide office. Mr. Strawderman forwarded this information to Acting Commissioner Scott Boileau, as he believed others would also be concerned with this classification assignment. Margaret Waybright, Deputy Commissioner of the Bureau for Children and Families, who was the Director of Region IV in 1996, was also concerned that this classification

assignment would have a negative impact on those who were in licensing, as there was a belief that those positions were more complex, and should be in a higher classification.

9. Lowell Basford, Personnel's Assistant Director in charge of the classification and compensation section, was responsible for assigning the Day Care Worker position description form to the HHR Specialist classification in 1996. This initial assignment was based upon a mistake of fact, and a cursory review of the position description form, and was an error which he corrected almost immediately. Mr. Basford was expecting a position description form from Lucy Eates, who supervised the state licensing staff, and he had been waiting on the form for several weeks. When the position description form for the Day Care Worker arrived, he assumed it was the one he had been waiting for, and that it was for the licensing staff. Shortly after he returned the form to HHR, he received a telephone call from Ron Nestor, who was a Manager at that time, telling him he thought the classification assignment was a problem. Mr. Basford met with Mr. Nestor and Mary Jo Thomas, who explained that the Day Care Worker was not involved in licensing, and was not located in the state Office of Social Services. Mr. Basford reviewed the position description form more thoroughly, and also telephoned a Day Care Worker and did a telephone audit. He had misjudged the position description form, and the level of responsibility for the position was not what he thought it was when he at first reviewed the form. He corrected his error, and assigned the Day Care Worker to the Social Service Worker II classification.

10. The Social Service Worker II classification is in pay grade 11, and the salary range for that pay grade is $19,764.00 to $34,452.00 per year. The HHR Specialist classification is in pay grade 13, and the salary range for that pay grade is $22,644.00 to $39,120.00 per year.

11. The licensing specialists are now classified as HHR Specialist, Seniors, after prevailing in a grievance at Level III. They had previously been classified as HHR Specialists.

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, she must prove by a

preponderance of the evidence that her duties for the relevant period more closely match those of another cited classification specification than the classification to which she 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 holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting her classification with a substantial obstacle to overcome in attempting to establish that she is misclassified.

Grievant attempted to compare her duties to those of the licensing specialists. This comparison was not useful, as the issue is whether Personnel's classification specification for the HHR Specialist better describes what Grievant does than the classification specification for the position to which her position is assigned. Further, while the licensing specialists were at one time assigned to the HHR Specialist classification, they filed a group grievance, and prevailed at Level III, and were placed in the HHR Specialist, Senior classification. Grievant's Level IV Exhibit 10, Level III decision dated October 14, 1999.

The pertinent sections of the classification specifications for the two classifications at issue are reproduced below.

SOCIAL SERVICE WORKER 2

Nature of Work

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

Distinguishing Characteristics

All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker 2 provides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

Examples of Work

Maintains a caseload for programs and services at this level.
Takes, evaluates and approves client applications for services; explains services and eligibility criteria.
Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of provider facilities and services.
Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.
Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education and counseling and guidance to assess client's needs and provide appropriate services.
Counsels clients/families in achieving goals of client service plan.
Speaks before community organizations and groups regarding services available and to develop community resources.
Writes report on case findings and summaries of client social and financial circumstances.

Knowledge, Skills and Abilities

Knowledge of theories and practices in social work.

Knowledge of federal and state laws, regulations and programs in social services.

Ability to assess social, educational and economic circum stances of clients to determine need for social services.

Ability to develop client service plan to habilitate and rehabilitate client and assist client in attaining social, educational and vocational goals.

Ability to evaluate social service providers according to established guidelines.

Ability to work effectively with other professionals and social service agencies in providing social services.

Ability to listen effectively to others.

Ability to prepare written reports of case findings.

Ability to add, subtract, multiply and divide.

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.

As pointed out by HHR, this Grievance Board has previously addressed the issue of whether employees performing the same work as Grievant are misclassified as Social Service Worker II's, and whether such employees should be classified as HHR Specialists. Brown v. W. Va. Dep't of Health and Human Resources, Docket No. 00-HHR-277 (May 10, 2001), and Toney and Hampton v. W. Va. Dep't of Health and Human Resources, Docket No. 00-HHR-347 (May 10, 2001), found the grievants were properly classified as Social Service Worker II's. In Brown, the grievant's duties were as follows: “registers and monitors day care facilities, serves as a member of a child care quality team, answers policy questions for day care providers, and assists child care facilities in applying for grants. She is also a member of the Governor's Cabinet for Children and Families.” In Toney and Hampton, the grievants' duties were to “certify and register child care homes and facilities to enforce statewide rules & regulations designed to protect the health, safety, and well-being of children. They investigate homes, facilities, and persons responsible for the care of children, to ascertain compliance with rules & regulations. Their work includes regular monitoring, visits to facilities, and to family homes.”

Lowell Basford pointed out that Grievant is not responsible for the development of any programs; rather, she is responsible for implementing the programs developed by others. Grievant is a regional employee, not an employee of a statewide office as are the licensing specialists, and she is responsible only for particular assignments in two counties.

Grievant's duties are quite adequately described by the Social Service Worker II classification

specification. Grievant is not responsible for the development of a statewide program, or for providing administrative oversight, as is envisioned by the HHR Specialist classification specification. Further, while Grievant must apply regulations, she has no personal responsibility for the interpretation of policy, rules, and regulations. She is a participant with her co-workers and her supervisor in deciding how to apply policy, rules, and regulations, and when Grievant's supervisor is not sure about how to apply a policy, rule, or regulation, she seeks guidance from her supervisor. This is much different from being responsible for the interpretation of policy, rules, and regulations. The HHR Specialist classification is not a better fit for Grievant's duties than the Social Service Worker II classification. Brown, supra; Toney and Hampton, supra.

Finally, during the course of the Level IV hearing, Grievant's counsel argued the proper procedure was not utilized in classifying the Day Care Worker position; however, exactly what the alleged improper procedures were was not made clear during the hearing, and no written argument was submitted to clarify this issue. It is obvious that all or part of this argument centered around the fact that when the position description form for the Day Care Worker was first submitted to Personnel, the position was assigned to the HHR Specialist classification. It appears that part of the argument also has to do with whether the position description form was being maintained in the proper file by HHR personnel. The undersigned fails to see how HHR's filing procedures have any relevance to whether the Social Service Worker II classification is a better fit for Grievant's duties and responsibilities than the HHR Specialist classification. As to the initial classification made by Personnel, Mr. Basford's explanation that he was not paying close attention, and made a mistake in the initial assignment of the classification is credible. Mr. Basford is entitled to make mistakes just like every other human being. The issue here is whether Grievant has demonstrated her duties better fit the HHR Specialist classification. She did not demonstrate that they do.

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 her duties for the relevant period more closely match those of another cited classification specification than the classification to which she 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. Grievant has not demonstrated the HHR Specialist classification is the best fit for her duties.

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 24, 2002

Footnote: 1

This grievance was filed on March 17, 2001. Grievant's supervisor responded on March 30, 2001, that she was unable to grant any relief at Level I. Grievant appealed to Level II, where the grievance was denied on April 13, 2001. Grievant appealed to Level III, and a Level III hearing was held on June 27, 2001. The grievance was denied at Level III on September 28, 2001, and Grievant appealed to Level IV on October 5, 2001. Two days of hearing were held at Level IV, on March 15 and May 20, 2002. Grievant was represented by Charles W. Peoples, Jr., HHR

was represented by Jon R. Blevins, Esquire, and Personnel was represented by Robert D. Williams, Esquire. This matter became mature for decision upon receipt of HHR's post-hearing written arguments on July 1, 2002. Neither Grievant nor Personnel submitted written argument.