SHARON FRANKLIN,

Grievant,

v v.

DOCKET NO. 02-HHR-316

WEST VIRGINIA DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/SHARPE HOSPITAL and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Sharon Franklin, filed this grievance against her employer, the West Virginia Department of Health and Human Resources ("DHHR"), on June 21, 2002:

> I strongly disagree with the decision of DOP review of my position description and determination that I am correctly classified as Secretary. I am firmly convinced I should be reclassed to Adm. Serv. Assistant I per the description of the Civil Service jobs.
>
> Relief sought: To be reclassed to Administrative Serv. Assistant I which reflects my job duties more accurately. To receive back pay from April 10, 2001 at the time I was first denied. 10% interest in accordance with WV Code and to be made whole in every other way.

The grievance was denied at level one by Peg Collette, CFO, on June 26, 2002, and at level two by Terry Small on July 24, 2002. A level three hearing was held on August 6, 2002, at which time the Division of Personnel ("DOP") was joined as a party, and the grievance denied by Victoria Parlier, Deputy Commissioner, Bureau for Behavioral Health and Health Facilities, on September 23, 2002. Grievant appealed to level four onSeptember 30, 2002, and a level four hearing was held in the

Grievance Board's Elkins, West Virginia, office on December 16, 2002. This matter became mature for decision on January 16, 2003, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant appeared in person and was represented by Jack Atchison, DHHR was represented by Darlene Ratliff-Thomas, Esq., Assistant Attorney General, and DOP was represented by Karen O'Sullivan Thornton, Esq., Assistant Attorney General.

SUMMARY OF EVIDENCE

Level Three Grievant's Exhibits

Ex. 1 -

April 10, 2001 memorandum from Sharon Stalnaker to Sharon Franklin re: classification review.

Ex. 2 -

Position Description Form for Sharon Franklin, submitted October 3, 2001.

Ex. 3 -

February 22, 2002 memorandum from Sharon Franklin to Lowell Basford.

Ex. 4 -

February 27, 2002 memorandum from Margaret “Peg” Collette to Debby Cook.

Ex. 5 -

June 4, 2002 memorandum from Nichelle D. Perkins to Debbie Cook.

Ex. 6 -

Classification Specification for Secretary I.

Ex. 7 -

Classification Specification for Administrative Secretary.

Ex. 8 -

Classification Specification for Executive Secretary.

Ex. 9 -

Classification Specification for Administrative Services Assistant I.

Ex. 10 -

DOP definition of class-controlling.

Level Four Exhibits

None.

Testimony

Grievant testified in her own behalf, and presented the testimony of Ginny Fitzwater and Margaret Collette. DHHR presented the testimony of Ginny Fitzwater.

Based upon a review of the testimony and evidence of record, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is employed as a Secretary I by DHHR at William R. Sharpe, Jr. Hospital in Weston, West Virginia. Grievant has been employed in this position since April 2001.

2. Grievant's immediate supervisor is Margaret “Peg” Collette, Assistant Hospital Administration and Chief Financial Officer.

3. In March of 2001, Grievant submitted a position description form to DOP for a review of her classification.

4. On April 10, 2001, Grievant was notified by Sharon Stalnaker that DOP had determined her position should be classified as Secretary I.

5. On October 2, 2001, Grievant submitted a revised position description form to DOP for review.

6. On January 16, 2002, Lowell D. Basford, Assistant Director for Classification and Compensation for DOP, determined Grievant's position was properly classified as Secretary I.

7. Nichelle Perkins, Director of DOP, reviewed Grievant's appeal and, on June 4, 2002, concurred with Mr. Basford's decision, stating that “the predominant duties of the positions (grievant's) are class controlling and are well within the scope of those intended for the Secretary I

classification."

8. Grievant works under the direct supervision of Ms. Collette, but also does work for other senior managers at Sharpe Hospital, including Information Management Director, Clinical Director, and the Chief Executive Officer. Grievant maintains basic bookkeeping records for grants, contracts and State appropriated funds; coordinatespatient grievance activity; maintains policy and procedures manual as part of Policy Review Committee; prepares for Joint Accreditation Commission of Healthcare Organizations ("JACHO") visits; writes specifications for contracts; gathers documentation for litigation; tracks Pharmacy invoices; represents Ms. Collette in supervisor's meetings and Utilization Review Committee; and has daily contact with officials in the Charleston Department of Health and Human Resources office, vendors, and attorneys.

DISCUSSION

Grievant alleges her duties and responsibilities more closely fit the classification specification for Administrative Services Assistant I, and that DOP's determination that her position is a Secretary I is arbitrary and capricious, and clearly wrong. Respondents assert Grievant's position is properly classified as Secretary I.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving the elements of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2000); Howell v. W. Va. Dept. of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code §§ 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

In order for 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. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain fivesections 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. Dept. 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. Dept. 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. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (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 alleges she should be reclassified to an Administrative Services Assistant I. The classification specifications for the pertinent positions at issue are set forth below.

SECRETARY 1

Nature of Work Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.

Distinguishing Characteristics This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor. At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others.

Although some tasks are defined and self- explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Examples of Work Responds to inquiries where knowledge of unit policy, procedure, and guidelines is required. Answers telephone, screens calls, and places outgoing calls. Screens mail and responds to routine correspondence. Signs, as directed, supervisor's name to routine correspondence, requisitions, and other documents. Schedules appointments and makes travel arrangements and reservations for supervisor. Takes and transcribes dictation, or transcribes from dictation equipment. Composes form letters, routine correspondence, and factual reports. Types reports, manuscripts, and correspondence using standard typewriter or word processing equipment; proofreads and corrects to finished form. Gathers, requests, and/or provides factual information, requiring reference to variety of sources. May delegate routine typing, filing, and posting duties to subordinate clerical personnel. May maintain basic bookkeeping records for grants, contract or state appropriated funds. May prepare payrolls, keep sick and annual leave records, act as receptionist and perform other clerical duties as needed. May attend meetings take notes and relay information; typically would not interpret information or speak on behalf of supervisor.

ADMINISTRATIVE SERVICES ASSISTANT 1

Nature of Work Under general supervision, performs administrative work in providing support services such as fiscal, personnel, payroll or procurement in a small division or equivalent organization level. May function in an assist role or in a specialized capacity in a large agency or department. Develops or assists in developing and implements plans/procedures for resolving operational problems and in improving administrative services. Work is typically varied and includes inter- and intra-governmental and public contact. Performs related work as required.

Distinguishing Characteristics Positions in this class are distinguished from the Administrative Services Assistant 2 by the size of the unit served and by the independence of

action granted. Positions in a small agency or division may be responsible for a significant administrative component; other positions assist an administrative supervisor in a large state agency. Authority to vary work methods or policy applications or to commit the agency to alternative course of action is limited.

Examples of Work Confers with inter- and intra-agency personnel to transact business, gather information, or discuss information; may be in a position with public or federal government contact. Gathers and compiles information for state records; writes reports, balances tally sheets, and monitors inventories, purchases, and sales. Updates records and contacts employees to gather information; represents the supervisor or unit in the area of assignment at in-house meetings. Maintains files of information in hard copy files or electronic format; runs reports for regular or intermittent review. Assists in determining the need for changes in procedures, guidelines and formats; devises a solution; monitors the success of solutions by devising quantitative/qualitative measures to document the improvement of services. Assists in the writing of manuals in the area of assignment; clarifies the wording and describes new procedures accurately.

Grievant works under the direct supervision of Ms. Collette, but also does work for other senior managers at Sharpe Hospital, including the Information Management Director, Clinical Director, and the Chief Executive Officer. Grievant maintains basic bookkeeping records for grants, contracts and State appropriated funds; coordinates patient grievance activity; maintains policy and procedures manual as part of Policy Review Committee;prepares for Joint Accreditation Commission of Healthcare Organizations ("JACHO") visits; writes specifications for contracts; gathers documentation for litigation; tracks Pharmacy invoices; represents Ms. Collette in supervisor's meetings and Utilization Review Committee; and has daily contact with officials in the Charleston Department of Health and Human Resources office, vendors, and attorneys.

Grievant relied heavily on her position description form as evidence that the best fit for her position is Administrative Services Assistant I. However, as Ms. Fitzwater pointed out, the description of duties performed section is copied almost verbatim from the Nature of Work section in the Administrative Services Assistant I classification specification. Ms. Fitzwater

testified that DOP preferred employees to fill out the position description form in their own words, giving a more accurate description of their duties. Ms. Fitzwater testified she did not place much emphasis on Grievant's position description form because it was clear it was copied from the classification specification.

Grievant is responsible for many tasks and activities at Sharpe Hospital, and has been given a lot of latitude by Ms. Collette in the performance of her duties. However, it is the position, not the person, that is classified, and the position Grievant occupies at Sharpe Hospital is that of a Secretary I. That position is intended to provide support services to the Assistant Hospital Administrator. Grievant placed a great deal of emphasis on the fact that she does not screen calls, or act as a receptionist, nor does she take dictation or make travel arrangements for her supervisor. While the classification specification for Secretary I lists these activities as examples of work, it also specifies those types of duties will vary depending upon the supervisor's preference. Here, Ms. Collettedoes not demand those duties, which in turn frees Grievant up to take on more administrative-type duties.

It is a tough burden for a grievant to establish by a preponderance of the evidence that DOP's determination of classification is clearly wrong or arbitrary and capricious. Here, Grievant has not met that burden.

CONCLUSIONS OF LAW

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2000); Howell v. W. Va. Dept. of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code §§ 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. In order for 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. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. 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. Dept. 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'sinterpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

4. Grievant has failed to prove by a preponderance of the evidence that DOP's determination that the Secretary I classification is the best fit for her assigned job duties and responsibilities is arbitrary and capricious, or 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 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: February 18, 2003