KIRISSA D. SILER,

Grievant,

v. **Docket No. 02-CORR-044**

DIVISION OF CORRECTIONS/
HUTTONSVILLE CORRECTIONAL
CENTER and DIVISION OF PERSONNEL,

Respondents.

DECISION

Kirissa Siler ("Grievant") initiated this proceeding on November 20, 2001, alleging entitlement to promotion to Correctional Officer II ("COII"). The grievance was denied at level one on November 22, 2001. A level two conference was held on November 29, 2001, and the grievance was denied at that level on December 3, 2001. A level three hearing was conducted on January 29, 2002, followed by a decision denying the grievance dated February 6, 2002. Grievant appealed to level four on February 15, 2002. After numerous continuances were granted for good cause shown, a hearing was held in the Grievance Board's office in Elkins, West Virginia, on September 25, 2002. Grievant was represented by counsel, Thomas M. Regan; the Division of Corrections ("DOC") was represented by Assistant Attorney General Heather A. Connolly; and the Division of Personnel ("DOP") was represented by Assistant Director Lowell D. Basford. Pursuant to a briefing schedule agreed upon by the parties, DOC submitted fact/law proposals on February 3, 2003. This matter became mature for consideration on March 5, 2003, the deadline for responsive briefs. (See footnote 1) The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant began employment with DOC on May 1, 2001, as a Correctional Officer I (CO I).
2. Grievant obtained a Bachelor of Science degree in Criminal Justice prior to her employment

with DOC.

3. DOP's classification specification for CO II provides, in pertinent part:

Nature of Work: Under direct supervision, performs full-performance, journey level Correctional Officer work in enforcing rules, regulations and state law necessary for control and management of offenders and the maintenance of public safety. Employee may be assigned as a lead officer within a unit or shift or as an officer assigned to a post or a position requiring special technical skills. Performs related work as required.

Distinguishing Characteristics: This is the first full-performance level worker within the Correctional Officer class series. The employee may function as a field training officer, but most officers are assigned to a specific unit to oversee and direct the activities of inmates.

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Minimum Qualifications

Training: Graduation from a standard high school or the equivalent, plus successful completion of a fundamental training course for correctional officer, police officer, military police officer, probation/parole officer, or related area **AND** the Correctional Officer Apprenticeship Program.

OR

Graduation from a standard high school or the equivalent plus successful completion of a fundamental training course as described above **AND** four years of full-time or equivalent part-time paid experience as a correctional officer, police officer, military police officer, probation/parole officer, or in criminal justice or related field.

Substitution: Successfully completed study from an accredited college or university in corrections, criminal justice or related field with a minimum of two semester hours in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

Note for the Division of Corrections only: All appointees must successfully complete the Correctional Officer Apprenticeship Program within two years of appointment.

4. Effective December 1, 1999, DOC adopted Policy Directive 145, which addresses the

administration and management of the Officer Apprenticeship Program ("OAP"). It provides that completion of the OAP is mandatory for all correctional officers and is a condition of continuing employment with DOC. Officers are required to complete the program within two years after entering enrollment, with the program consisting of 400 hours of on-the-job training and 400 hours of related studies.

5. Policy Directive 145 states that, once the OAP is completed, "the Certificate of Completion shall be the basis for initiating the process to reallocate the Correctional Officer to the appropriate classification."

6. Policy Directive 145 cancelled and replaced Policy Directive 442, which provided that reallocation or promotion could not take effect without a certificate of completion of the OAP and final approval of a Personnel Action Form (WV-11).

7. Grievant is currently participating in the OAP and will complete it on or about May 1, 2003.

8. In September of 2001, Grievant wrote to DOP, requesting that she be reclassified as a CO II, based upon her qualifications. In response, DOP placed her on the active register for CO II, effective October 9, 2001. She was also notified by letter dated November 9, 2001, from James Bateman, Senior Personnel Specialist for DOP, that shewas placed on the register for CO II job openings, and that "[a]pplicants who have a bachelor's degree in criminal justice meet all requirements for this [CO II] job class."

9. Grievant has not completed a position description form to be reallocated to CO II. She had inquired of her supervisors how to obtain the form, and they did not know what it was.

10. Grievant currently works alone on a unit, supervising all inmate activities and performing related duties for her shift. She also sometimes works the control room alone and testifies in court proceedings.

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears 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); See W. Va. Code § 29-6A-6. Grievant contends that, pursuant to the classification specification for CO II, she is entitled to reallocation to that classification, effective at the end of her six-month probationary period. She disputes DOC's

contention that completion fo the OAP is a prerequisite to her reallocation.

Mr. Basford testified at level four that Grievant is, in fact, minimally qualified for the CO II classification, but did not specifically address the alleged OAP completion requirement. Rather, he addressed the difference between reallocation and promotion. DOP's Administrative Rule (2000) defines reallocation in § 3.78 as “reassignment . . . of a position from one classification to a different classification on the basis of a significant change in the kind of level of duties and responsibilities assigned to the position.” AlthoughGrievant was somewhat confused regarding the difference between reallocation and promotion during the lower level proceedings of this grievance, she now asserts that she is seeking reallocation based upon her qualifications and actual performance of the duties of the CO II classification. Promotion would not be at issue here, because Grievant is not seeking to be placed into a vacant CO II position. See DOP Administrative Rule §§ 3.76 and 11.

DOC contends that its policy clearly requires completion of the OAP as a minimum requirement for reallocation to CO II. However, for unknown reasons, Respondent has based its argument on the provisions of its previous Policy Directive 442, which was clearly cancelled by the adoption of Policy Directive 145--by its own terms--on December 1, 1999. There can be no dispute that the new policy would govern Grievant, who was not employed by DOC until May 1, 2001.

This Grievance Board has dealt with the issue of the application of Policy Directive 145, but only with regard to employees' requests for promotions. In Hunter/Rose v. West Virginia Division of Corrections, Docket No. 01-CORR-032 (June 11, 2001), the undersigned administrative law judge held that the grievants in that case had failed to establish entitlement to promotion to CO II, based upon the provisions of DOC Policy Directive 132.02, which specifically addresses the promotion process. It was observed in Footnote 4 of that decision that DOC's “unwritten practice” of requiring completion of the OAP prior to promotion to CO II should probably be placed in writing. However, the outcome of that decision was based upon Grievants' failure to provide sufficient evidenceregarding their promotion requests, and reallocation due to performance of CO II duties was not at issue.

The key in seeking reallocation is to demonstrate “a significant change in the kind or level of duties and responsibilities.” 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). DOP 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 her required duties. Simmons v. W. Va. Dep't of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, DOP's interpretation andexplanation 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, 348, 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.

In the instant case, it is abundantly clear that Grievant is, in fact, performing the duties of a CO II. Since she completed her initial correctional officer training, she has been assigned to shifts and posts alone, and is the lead officer for that particular shift or post, as described in the nature of work section of the class specification. Moreover, DOP does not dispute that Grievant meets all qualifications for the class.

As to DOC's argument that the OAP is a minimum requirement for any employee who wants reallocated to CO II, the class specification clearly contradicts this claim. In the minimum qualifications section, the only portion which mentions the OAP as a minimum requirement is the first section for individuals who have only completed high school or equivalent and fundamental training; these persons must also complete the OAP to be minimally qualified. For employees who have completed high school or equivalent and fundamental training, and additionally have either four years of specified experience or a college degree, there is no requirement that the OAP be completed as a

minimum qualification. Rather, the class specification notes that "all appointees must successfully complete the [OAP] within two years of appointment." Clearly, these individuals may be appointed to a CO II position and complete the OAP after that appointment. The provisions of Policy Directive 145 are consistent with the CO II class specification. The portion stating that the certificate of completion of the OAP is the basis for initiating the reallocation process to the "appropriate classification" clearly applies to employees who have only completed high school and the fundamental training course, but who do not possess the required experience or college degree. Accordingly, the undersigned finds that Grievant was entitled to reallocation to CO II after her completion of initial training and her probationary period, effective November 1, 2001, plus all applicable back pay and associated benefits.

The following conclusions of law support the decision reached.

Conclusions of Law

1. Grievant bears 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); See W. Va. Code § 29-6A-6.

2. Reallocation is the "reassignment . . . of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." Division of Personnel Administrative Rule § 3.78 (2000).

3. 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).

4. DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

5. Personnel's classification specification for Correctional Officer II states that individuals who have completed high school or equivalent, a fundamental training course, and either have four years of experience or a specified college degree are minimally qualified for that classification.

6. Grievant was minimally qualified and performing the duties of a Correctional Officer II as of

November 1, 2001, and is entitled to reallocation to that classification.

Accordingly, this grievance is **GRANTED**, and Respondents are directed to reallocate Grievant's position to Correctional Officer II, effective November 1, 2001.

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, and such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). Neither the West Virginia Education and State EmployeesGrievance Board nor any of its administrative law judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: March 27, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

No proposals were submitted on Grievant's behalf.