CAROL LEMON,

Grievant,

v.

Docket No. 02-HHR-313

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/BUREAU FOR CHILD SUPPORT

ENFORCEMENT and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Carol Lemon, 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 been working as a Health and Human Resource Specialist since January 2001. I have been supervising and training one Legal Assistant and two Office Assistants in addition to managing the Employer Relations Program for the State of West Virginia as well as acting backup supervisor for Tom Bodkins. I was assured that my position would be upgraded to Health and Human Resource Specialist by my immediate supervisor and the Director of Central Services. But to date the position has not been upgraded. My position as Legal Assistant (pay grade 10) is the same as Legal Assistants in regional Child Support offices which I have trained as well as the ones I supervise.

As relief Grievant sought:

> I am requesting my position be upgraded to Health and Human Resource Specialist back to the date I began performing the duties of Health and Human Resource Specialist on January 1, 2001 and that I receive back compensation to that date. (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 Child Advocate Legal Assistant in the Bureau for Child Support Enforcement. She is assigned to the employer relations unit.

2. The employer relations unit notifies employers that they are to withhold child support payments from employee paychecks, and works with workers' compensation and the Lottery Commission to collect child support from workers' compensation payments to non-custodial parents and from lottery proceeds won by non-custodial parents. It maintains a hotline for employers to call when they have questions after they are notified that they are to withhold child support payments from an employee's paycheck. The unit also assists Legal Assistants in the field, making sure they do what is required to collect child support payments from workers' compensation and from lottery winnings.

3. Constance White, Administrative Service Manager, is responsible for supervising the employees in the employer relations unit, including Grievant, and she has formal responsibility for the operations of the unit.

4. Grievant is the expert about the operations of the unit, and workers' compensation, and is the primary contact person in the unit. She answers questions forthe other employees in her unit, and for the Legal Assistants in the field. Grievant assigns work to the employees in her unit, explains what the employees must do to correct problems, listens to the answers they provide to employers on the telephone to make sure they are providing the correct answers, and answers the employee's questions, but she has no formal supervisory responsibilities, nor does she have formal responsibility for the operations of the employer relations unit. Grievant also helps Legal Assistants in the field when they cannot determine how to correct a workers' compensation problem. Grievant acts as a lead worker and resource person.

5. Grievant's supervisor depends on her to bring problems in the unit to her attention, and Grievant assists her supervisor in the formulation of policies and procedures applicable to the unit's work. Grievant is not responsible for the formulation of policies and procedures, nor does she have any formal responsibility for the successful operation of the unit.

6. In October 2001, Grievant completed a position description form which was submitted to the Division of Personnel (“Personnel”). That form lists Grievant's duties and the percentage of time she spends on each as follows:

25% Communicate in writing and verbally with Employer Relations program internal and external customers to insure compliance of program policy and procedure by answering customer concerns received on the nationwide toll free numbers designed for employer service inquiries.

15% Instruct, direct and act as backup supervisor to the Child Advocate Administrative Assistant and make determinations of appropriate actions needed to complete assignments according to BCSE policy and actions necessary to clear customer concerns by overseeing and monitoring the Employer Relations program.

15% Manage, analyze and correct problems with cases, compile statistical reports and present written reports to management weekly. Advise management of program problems and make recommendations for improvement.

15% Analyze and interpret policy, federal and state laws, regulations and guidelines governing the Employer Relations program, income withholding and other areas for the Employment Relations program.

10% Work closely with Child Advocate Administrative Assistant in scheduling, developing and administering training, and supervising all Employer Relations program employees.

10% Consult with Employer Relations program staff, state agencies, banking staff, out of state agencies, Bureau For Child Support Enforcement field staff and General Counsel for needed program changes and revisions.

10% Monitor changes in laws and regulations governing the Employer Relations program in order to determine approaches to solve problems within the West Virginia Employer Relations program.

Personnel determined that Grievant was properly classified.

7. Grievant interprets policy in answering questions, as long as the policy is not too complex. She consults the policy manual about once a week, and the West Virginia Code about once a month.

8. Although Grievant's position description form states that she monitors changes in laws and regulations, she testified that she does not monitor changes in the law, rather she monitors the work of the unit to suggest changes.

9. Grievant developed training on workers' compensation and lottery withholdings, and a desk

guide, and she has delivered this training to workers in the field. The training involves showing the workers the screen they will be using to update the database, what information to provide to an employer on withholding limits, and the requirements of the agreement with the Lottery Commission to withhold child support on lottery winnings.

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, 398, 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. The pertinent sections of the classification specifications for the classifications at issue are as follows:

CHILD ADVOCATE LEGAL ASSISTANT

Nature of Work

Under general supervision, assists an attorney in the rendition of professional services in connection with the establishment and enforcement of paternity and support. Assists the attorney with research of legal resource material, including reported decisions and opinions, statutes, rules and regulations, with the preparation and drafting of pleadings or other documents, and with the review and assessment of case files by preparing summaries and reports of pertinent facts, and by compiling information as directed. Develops necessary information to implement methods of child support enforcement. Supports and assists in publicizing the Child Advocate program throughout communities to which assigned, and may assist in delivering services on an as-needed basis in more than one regional office. Performs related work as required.

Examples of Work

Completes applications, explains agency regulations as they relate to provision of services of the Child Advocate Office.

Locates obligors and employers of absent parents by all appropriate means available. Investigates absent parent resources to determine ability to pay.

Reviews child support cases for the purpose of making referrals to state and federal tax agencies for interception of tax returns for the purpose of offsetting arrearages owed for child support.

Prepares and maintains proper documentation on cases.

Writes abstracts of evidence presented to the Family Law Master or Circuit Court hearings and summaries of information on hearings or claims.

May direct clerical personnel in the typing and preparation of briefs, pleadings, and other documents.

Maintains records of all cases before counsel including briefs submitted, rulings and opinions, and all cases appealed to the Supreme Court of Appeals.

Attends hearings before the Family Law Master, Circuit Court, or the Supreme Court of Appeals, with

attorney, to assist as appropriate.

Keeps abreast of changes in agency or departmental laws, rules and regulations as well as state, federal and local laws relating to the area of assignment.

Reviews and assesses case files, under the guidance of an attorney, to assist in determining the legal remedies, if any, appropriate for that case and to assist in preparing the case for legal action.

Compiles such information as may be needed to develop the case, by inquiries and referrals to appropriate agency personnel, interviews, conferences with obligees, obligors, or others, review of public records, or development of other sources.

Prepares summaries and reports of pertinent facts and information.

Utilizes the public records of the Circuit Court, the county commission, and other sources.

Files legal documents at the direction of an attorney, including abstracts of judgments.

Composes routine correspondence.

Knowledge, Skills and Abilities

Knowledge of Child Support Enforcement Program guidelines and procedures and state and federal laws governing the program.Knowledge of the broad principles and application of law, evidence, pleadings, and judicial procedures in West Virginia.

Skill in the preparation of legal documents.

Ability to complete required forms and documents needed to establish and enforce child support.

Ability to maintain financial records and other necessary documentation for resolution of nonsupport cases.

Ability to investigate social and financial background of clients and to locate absent parents.

Ability to perform fundamental mathematical calculations.

Ability to gather and interpret pertinent statutory and regulatory provisions and case law, and present findings in a logical and persuasive written form.

Ability to communicate well with others and to compile and assess information from many sources.

Ability to analyze and organize facts and present such materials in a clear and logical form.

Ability to supervise personnel engaged in clerical duties.

Ability to understand and follow government organizational and operational policies.

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.

Lowell Basford, Personnel's Assistant Director in charge of classification and compensation, explained that the Child Advocate Legal Assistant was considered the benchmark position for Personnel's classification study of the Bureau for Child Support Enforcement, because the Legal Assistants have ownership of the cases, and everything else derives from the work of the Legal Assistants. Mr. Basford saw Grievant's job as a support function to the Legal Assistants in the field. He acknowledged that Grievant does not perform the same duties as the Legal Assistants in the field,

but saw Grievant's duties as similar to those of the Legal Assistants in the field. He testified there are now two groups of Child Advocate Legal Assistants: those in the field offices, and those in the central office. He explained that the Legal Assistants in the central office provide support to those in the field, and do the specialized work, as Grievant does. He pointed out that all Legal Assistants are called upon to answer the questions of the public they serve. Mr. Basford explained that Grievant is not responsible for the development of a program and associated policies and procedures. Rather, she brings issues to the attention of those who have such responsibility, and assists them in the development of policies and procedures. He noted that every employee is supposed to be on the lookout for problems and bring them to the attention of their supervisor. He explained that when he is looking at whether someone assures compliance, he is looking for formalized procedures that catch, or cause to be exposed, errors or problems in the daily operations of the program. He did not believe that Grievant's role amounted to assuring compliance. He further noted that monitoring and evaluation of a program means the individual is responsible for setting up systems or procedures for monitoring the operation of the entire program, not that the individual monitors individual cases.

Finally, Mr. Basford explained that when applying the Nature of Work section of the Child Advocate Legal Assistant classification specification he looked beyond the language which states that the employee works with an attorney. He testified that this classification specification had been developed in 1992 when most Legal Assistants were in the field. He stated that a new classification specification has been developed and is in draft form which gives a more current picture of the Child Advocate Legal Assistant. He testified that in reviewing Grievant's position description form he looked to see what classifications were available for Grievant's position, and there were limited possibilities. He pointed out that one of the things he looked at was the relative complexity and difficulty of Grievant's duties to see if they rose to the next level, and he determined that Grievant's duties were no more complex or difficult than the duties of other Legal Assistants, such as working with a custodial parent or attorney, developing a case, or going to court.

Grievant certainly performs an important role, and obviously is the person everyone goes to when they have questions about the correct procedure to follow to make sure child support payments are withheld from workers' compensation payments and lottery winnings. She is quite capable of making sure her unit functions well, and her supervisor does not have to devote much time to that unit because Grievant is such a capable and dedicated employee. Grievant has expertise in workers'

compensation that other Legal Assistants do not have, and they come to her for guidance. It is understandable that Grievant would believe this should qualify her for a pay grade and classification which is somewhat above that of the Legal Assistants to whom she is providing guidance. While Grievant certainly plays a key role in making sure her unit operates smoothly, she is not responsible for the operations of the unit or a program. This Grievance Board has previously noted that the HHR Specialist classification envisions responsibility for the operations of a program:

> 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.

Watts v. Dep't of Health and Human Resources, Docket No. 01-HHR-533 (July 24, 2002).

> Although Grievants are an integral part of the program they work within, they simply are not charged with the significant level of responsibility assigned to HHR Specialists, who exercise considerable latitude and independent judgment, rather than referring problems to others. In addition, HHR Specialists are responsible for monitoring and evaluating the operation of their assigned program or program component, which Grievants are not. See Loudermilk v. Dep't of Health & Human Resources, Docket No. 00-HHR- 304 (Dec. 29, 2000). Grievants have repeatedly emphasized the complex laws, policies and regulations they must apply and interpret in order to complete their duties. However, Grievants's use and knowledge of policies and regulations does not equate to actual oversight. An HHR Specialist is required to monitor their assigned area to ensure that applicable laws, policies, etc., are being followed. Similarly, although grievants have input into the problem-solving process, it is not their responsibility to consult with employees throughout the agency to make sure the program is running properly.

Garretson, et al., v. W. Va. Dep't of Health and Human Resources, Docket No. 00-HHR- 374 (Mar. 14, 2001). The ALJ noted in Garretson that the Grievants also were not responsible for developing and delivering training. Grievant pointed out that she does develop and deliver training. However, her position description form shows this as a minor part of her duties.

Grievant has not demonstrated that the HHR Specialist is a better fit for her duties than the Child Advocate Legal Assistant classification.

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, 398, 431 S.E.2d 681, 687 (1993).

3. Grievant has not demonstrated that she has the level of responsibility for the operations of a program as is envisioned by the HHR Specialist classification.

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: March 27, 2003

Footnote: 1

This grievance was filed on July 23, 2002. Grievant's supervisor responded on July 25, 2002, that the grievance was denied, as she was unable to grant any relief at Level I. Grievant appealed to Level II, where the grievance was denied on August 1, 2002, as the second level supervisor had no authority to grant the relief requested. Grievant appealed to Level III, where the Division of Personnel was joined as a party. A Level III hearing was held on September 4, 2002, and the grievance was denied at Level III on October 7, 2002. Grievant appealed to Level IV on October 11, 2002. A Level IV hearing was held on January 7, 2003. Grievant represented herself, HHR was represented by B. Allen Campbell, Esquire, and Personnel was represented by Karen O'Sullivan Thornton, Esquire. This matter became mature for decision upon receipt of Respondents' post- hearing written argument on February 3, 2003.