CONNIE JOYCE,

Grievant,

v. **Docket No. 02-HHR-373**

DEPARTMENT OF HEALTH and HUMAN SERVICES/BUREAU OF PUBLIC HEALTH and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Connie Joyce, grieves her classification as an Office Assistant III and asserts she should be reallocated as a Secretary I because she performs the duties of that classification. The Division of Personnel ("DOP") argues Grievant is correctly classified, and the Office Assistant III classification is the "best fit" for her duties. The Department of Health and Human Resources ("HHR") defers to DOP in matters dealing with classification.

This grievance was waived at Levels I and II and denied at Level III. Grievant appealed to Level IV, and a hearing was held on March 18, 2003. This case became mature for decision on March 26, 2003, when the transcript for the last day of hearing at Level III was received by the Grievance Board, as the parties elected not to submit proposed findings of fact and conclusions of law.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed as an Office Assistant III by the Department of Health and Human Resources in the Bureau of Public Health.

2. Grievant sought reallocation and to support her request, and she completed a Position Description Form on March 12, 2002.

3. This form reflects that Grievant provides support to the 12 staff members of the Source Water Assessment and Protection Program and the Training and Certification Unit, as well as to the Supervisor of that Unit, Environmental Resources Program Manager II, William Toomey.

4. Grievant spends 45% of her time typing and/or composing letters, reports, tables, forms, etc.; 10% of her time producing presentations for seminars from notes provided by Mr. Toomey; and another approximately 20% of her time maintaining files, forms and records for the unit, such as leave forms, classes taken, summer intern information, and organizational charts.

5. In the last year or so she has become responsible for maintaining a spreadsheet for all P-card purchases and reconciling these purchases. This new activity takes 10% of her time.

6. Grievant prepares routine correspondence for Mr. Toomey's signature.

7. Grievant is seen as the clerical person for all the people in her area, and she assists engineers and others in formatting, proofreading, copying, binding, and mailing materials and reports.

The pertinent sections of the classification specifications at issue are written below:

OFFICE ASSISTANT III

Nature of Work:

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics:

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for

accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

SECRETARY I

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.

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

Grievant asserts her position is misclassified, and she has requested her position be reallocated. DOP's Rule 3.78 defines "Reallocation" as "[r]eassignment by the Director of Personnel 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." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. Kuntz/Wilford v. Dep't of Health and Human Resources, Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." Id. Additionally, 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 another cited Personnel classification specification than the one under 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 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 Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991). 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 Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dep't of Health and Human Resources/Div. of Personnel, 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). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. Mr. Lowell Basford, Assistant Director of Classification and Compensation with DOP, testified at Levels III and IV that Grievant was correctly classified and her position did not warrant reallocation because there had been no significant change in her duties. Mr. Basford stated Office Assistants were distinguished from Secretaries by certain key elements: 1) the job functions performed by the employee; and 2) whether the employees worked directly for one individual. Mr. Basford concluded the Office Assistant III classification was the "best fit" for Grievant because Grievant's duties do not rise to the level of complexity of a Secretary; Grievant does not supervise anyone; and Grievant does not work for only one individual as required by the classification specifications. While Grievant does interpret and apply office procedural rules and regulations in routine settings, and answer questions about policies and procedures, these are expectations for an Office Assistant III. Additionally the new duty, the monitoring of the P-card, is a task usually assigned to an Office Assistant, at the Office Assistant II or III level.

A review of Grievant's Position Description Form and the testimony of the witnesses, including Grievant, indicate she is correctly classified, and Office Assistant III is the best fit for her duties. Grievant only occasionally relieves her supervisor of minor administrative duties, does not assign and direct the work of others, or complete complex procedural assignments. Additionally, she does not work for a specific individual overseeing a section or division. As noted in the testimony of Mr. Basford, the duties Grievant performs fall squarely within the duties identified in her classification specification. Further, Grievant has not demonstrated "a significant change in the kind or level of duties and responsibilities" that would indicate a need to reallocate her position. DOP Rule 3.78.

The above discussion will be supplemented by the following conclusions of law.

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 § 4.19 (2000); Howell v. W. Va. Dep't 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. Grievant has not demonstrated by a preponderance of the evidence that she is misclassified or that the position of Secretary I is the "best fit" for her normal duties, as she only occasionally relieves her supervisor of minor administrative duties, does not direct or delegate the work of others, and does not work for only one individual. Additionally, she duty she recently received is one usually assigned to an Office Assistant.

3. Grievant has not demonstrated by a preponderance of the evidence that her additional duties warrant reallocation.

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 StateEmployees 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 30, 2003