ELIZABETH WEBB,

Grievant,

v.

DOCKET NO. 02-HHR-320

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES/OFFICE OF ACCOUNTS

PAYABLE and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Elizabeth Webb, filed this grievance against her employer, the West Virginia Department of Health and Human Resources ("DHHR"), and the Division of Personnel ("DOP"), on July 16, 2002:

> I was informed (July 8, 2002) that my position description form (CS-579) was reviewed by the Division of Personnel. The decision states that I am properly classified as an Administrative Services Assistant I. I disagree with the review result.
>
> Relief Sought: I feel that I am misclassified as an Administrative Services Assistant I. I perform the functions and duties of an Administrative Services Assistant III or at least Administrative Services Assistant II. Therefore, I should be classified as an Administrative Services Assistant III. I am requesting a job audit by the Classification and Compensation Section of the Division of Personnel. I am also requesting backwages and interest back to ten days prior to my signature on the position description form.

Grievant's immediate supervisor, Fred Elswick, agreed with Grievant that she was misclassified, but denied the grievance based on his lack of authority to offer the relief sought. He advised her to appeal directly to level three, which she did on July 16, 2002. A level three hearing was held on

September 12, 2002, and the grievance was denied by decision dated October 1, 2002. Grievant appealed to level four on October 16, 2002, and a level four hearing was held in the Grievance Board's Charleston, West Virginia, office on December 12, 2002, at which time this matter became mature for decision. Grievant appeared by herself, DHHR was represented by B. Allen Campbell, 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 -

Examples of work.

Ex. 2 -

Position Description Form for Elizabeth Webb, submitted January 23, 2002.

Ex. 3 -

Position Description Form for Jean A. Jones, submitted January 23, 2002.

Ex. 4 -

Position Description Form for Sharon A. Rhyne, submitted January 23, 2002.

Ex. 5 -

Detailed Information on Current Position for Elizabeth A. Webb, prepared September 11, 2002.

Ex. 6 -

Additional Duties Since Last Review by the Division of Personnel, prepared September 11, 2002.

Ex. 7 -

DHHR WVFIMS Procedures, prepared May 14, 2001.

Ex. 8 -

Office of Accounting Form Numbers.

Ex. 9 -

Changes to DHHR WVFIMS Procedure Number 7.

Level Three DOP Exhibit

Ex. 1 -

Position Description Form for Elizabeth A. Webb.

Level Four DHHR Exhibits

Ex. 1 -

Classification Specification for Administrative Services Assistant I.

Ex. 2 -

Classification Specification for Administrative Services Assistant 2.

Ex. 3 -

Classification Specification for Administrative Services Assistant 3.

Testimony

Grievant testified in her own behalf, and presented the testimony of Warren D. Keefer. Respondents presented the testimony of Lowell D. Basford.

Based upon a review of the record in its entirety, I find the following facts have been established by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is currently employed by DHHR as an Administrative Services Assistant I, assigned to the Office of Accounts Payable in Charleston, West Virginia.

2. On May 29, 2001, Grievant submitted a position description form requesting she be reallocated from a Secretary II to an Administrative Services Assistant 3. LIII DOP Ex. 1.

3. DOP reviewed Grievant's request, and in August 2001 reallocated her position to an Administrative Services Assistant I. Grievant did not appeal that decision.

4. In January 2002, Grievant submitted another position description form to DOP, requesting she be reallocated from an Administrative Services Assistant I to an Administrative Services Assistant 3. LIII G. Ex. 2.

5. On March 20, 2002, Lowell D. Basford, Assistant Director, Classification and Compensation, determined Grievant was properly classified as an Administrative Services Assistant I, because she had not demonstrated a significant change in the duties and responsibilities of her position since the August 2001 reallocation.

6. On that same day, DOP reclassified two of Grievant's co-workers from their Supervisor II classifications to Administrative Services Assistant 3s. LIII G. Exs. 3, 4.

7. Since she was last reclassified, Grievant has taken on the additional job duties of coordinating the corporate credit card programs and the car rental access cards used by DHHR personnel; plus, she now assists upper management in providing administrative responsibilities. LIII G. Ex. 2. 8. The distinction between Grievant and her co-workers is that they are primarily responsible for supervising the Accounting Technicians in the Office of Accounts Payable, hence their former classification as Supervisor IIs, while Grievant only supervises Office Assistants, hence her former classification as Secretary II.

9. Grievant does record retention, FOIA requests, coordinates financial web activities for the entire financial section, publishes and maintains a web site, performs special projects, does purchasing for the entire operation, does grants management work, and a multitude of other tasks. Grievant supervisor Office Assistants and later acquired supervisory responsibility over an Accounting Technician. She took the lead role, at her supervisor's request, in developing policies and procedures, she established training for financial staff on various subjects, develops curriculum, and does actual training, and does travel accounting and reporting. Grievant works independently, and only comes to her supervisor with situations that will affect the state or department as a whole.

10. While Grievant's duties may be expanding, it is a case of more of the same duties, as opposed to the addition of different duties.

DISCUSSION

Grievant contends she should be reallocated to an Administrative Services Assistant 3 because her job duties are markedly similar to her co-workers, who were both reclassified as Administrative Services Assistant 3s. Grievant also argues that since she was last reclassified, she has taken on the additional job duties of coordinating the corporate credit card programs and the car rental access cards used by DHHR personnel; plus, she now assists upper management in providing administrative responsibilities. LIII G. Ex. 2. DOP contends Grievant is properly classified as an Administrative Services Assistant I. DOP argues that the distinction between Grievant and her co-workers is that they are primarily responsible for supervising the Accounting Technicians in the Office of Accounts Payable, hence their former classification as Supervisor IIs, while Grievant only supervises Office Assistants, hence her former classification as Secretary II.

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 §§ 4.19 (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 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 thesepurposes, 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 reallocated to, at best, an Administrative Services Assistant 3, but at the least, an Administrative Services Assistant 2. The classification specifications for the pertinent positions at issue are set forth below.

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 thesize 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.

ADMINISTRATIVE SERVICES ASSISTANT 2

Nature of Work Under limited supervision, performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency. Develops policies and procedures for resolving operational problems and for improving administrative services. Supervises the work of office support staff in rendering required services. Work is typically varied and includes extensive inter- and intra governmental and public contact. Has some authority to vary work methods and policy applications and to commit the agency to alternative course of action. Performs related work as required.

Distinguishing Characteristics Positions in this class are distinguished from the Administrative Services Assistant 1 by the supervisory nature of the work performed, by the size of the unit served and by the independence of action granted. Positions in this class are responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a large state agency. Authority to vary work methods and to commit the agency to alternative course of action is granted.

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. Conducts performance surveys and reviews agency methods of operation; devises flowcharts and graphs; may conduct cost analysis studies. 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 agency in the area of assignment in both internal and external meetings. Maintains files of information in hard copy files or

electronic format; runs reports for regular or intermittent review. Determines 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. Writes manuals in the area of assignment; clarifies the wording and describes new procedures accurately. Supervises the work of Office Assistants, Accounting Assistants or other support staff.

ADMINISTRATIVE SERVICES ASSISTANT 3

Nature of Work Under general direction, performs complex administrative and/or supervisory work in providing support services such as fiscal, personnel, payroll or procurement on a statewide basis or serves in a specialty role of a complex support program with extensive federal oversight. Responsible for the development and implementation of policies and procedures for the work unit; for the monitoring and evaluation of the specialized functional area. Works within general statute and regulatory parameters, but has considerable latitude to vary work methods, policy applications to achieve desired results. The work includes supervision of subordinate professional, technical or office support staff. The work is typically complex, varied and requires considerable interaction with local, state and federal agencies and the general public. Performs related work as required.

Distinguishing Characteristics Positions in this class are distinguished from the Administrative Services Assistant 2 by the responsibility for unit operation and results obtained. Positions in this class are typically responsible for a complex, statewide administrative support program or function in a specialized role of considerable difficulty and complexity involving sensitive and controversial issues and the lack of standard procedures and/or precedent for programmatic guidance. Has considerable authority to vary work methods and may be assigned responsibility to commit the agency to alternative courses of action.

Examples of Work Develops technical procedures for the effective implementation of the work of the unit, to include forms, operating procedures, and proposed policies; confers with unit management and other staff regarding revisions to budgetary, purchasing, and other administrative services, policies, and procedures. Develops operating manuals necessary for the instruction and training of unit staff, agency officials, and other state officials; conducts periodic training sessions for new

initiatives and procedures in the area of responsibility. Analyzes the budget document and appropriate enabling legislation to determine the need for revised operational procedures for the budgetary cycle. Prepares or supervises the preparation of required fiscal and budgetary reports in the area of responsibility. Monitors the expenditures of state agencies and higher education systems to ensure compliance with budgeted appropriations; confers with state officials and budget specialists in the resolution of expenditure level problems; advises on the transfer and reallocation of funds to resolve such problems; briefs management on potential areas of appropriation level difficulties. Prepares or assists in the appropriation of grant proposals and budgetary recommendations for the agency; monitors the execution of appropriations throughout the fiscal year. Develops procedures, forms, and controls necessary for the effective operation of the unit. Within State Purchasing Rules and Regulations, examines purchasing requests for conformity to specifications and budgeted amounts; may negotiate contracts and agreements for the procurement of equipment, supplies and services. Supervises other professional, technical and clerical employees in the unit.

Although the positions are similar in some respects, the Distinguishing Characteristics differentiate them. The Administrative Services Assistant I is distinguished from the 2 by the “size of the unit served and by the independence of action granted.” Conversely, the 3 is distinguished from the 2 by the “responsibility for unit operation and results obtained.”

Warren Keefer, Director for the Office of Accounting, testified that the Administrative Services Assistant 3 position was the best fit for Grievant because she performs comparable duties to the other two employees in the Office of Accounts Payable who were recently reclassified as 3s from a Supervisor II classification. As Grievant's supervisor, Mr.Keefer also noted that he believes Grievant performs job duties that are more varied and complex in nature than the two employees classified as 3s.

Mr. Keefer testified Grievant does record retention, FOIA requests, coordinates financial web activities for the entire financial section, publishes and maintains a web site, performs special projects, does purchasing for the entire operation, does grant management work, and a multitude of other tasks. Grievant supervises Office Assistants and later acquired supervisory responsibility over an Accounting Technician. She took the lead role, at his request, in developing their policies and procedures, she established training for financial staff on various subjects, develops curriculum, does

actual training, and does travel accounting and reporting. He testified Grievant works independently, and only comes to him with situations that will affect the state or department as a whole.

Grievant testified her duties have expanded and become more complex since she was reallocated to Administrative Services Assistant I. Moreover, two other employees were reclassified to Administrative Services Assistants 3s, and she knew then that she was incorrectly classified as a I, because she performs similar job duties.

Mr. Basford testified the Administrative Services Assistant I position is the best fit for Grievant because the predominant amount of her duties has not changed since the time she was reallocated from a Secretary II in May 2001. Furthermore, Mr. Basford stated Grievant's supervisory element has not changed since her reallocation in 2001.

Mr. Basford testified about the two employees who were reallocated to the 3 position on the same day Grievant was denied her reallocation request. He distinguished their job duties from Grievant's based on their level of supervision of Accounting Technician staff within the Office of Accounts Payable. Mr. Basford compared Grievant's January 2002 position description form with the one she submitted in March 2001, and pointed out they were almost verbatim. Mr. Basford also reviewed the Additional Duties statement Grievant provided, and concluded there had been no significant change in her duties and responsibilities. Ms. Basford testified the Administrative Services Assistant 3 classification provides advanced level administrative support in a complex, difficult, and non-standard work situation. He testified Grievant's work is routine, and the work of the Office Assistants she supervises is structured and repetitive. Finally, Mr. Basford noted that, even if Grievant's duties are expanding, it is a case of more of the same duties, as opposed to the addition of different duties, which does not render her misclassified. Kuntz v. Dept. of Health and Human Resources, Docket No. 96-HHR-301 (Mar. 26, 1997).

The incremental changes in Grievant's job duties as evident in her two position description forms are not significant enough to justify her reallocation to either an Administrative Services Assistant 2 or 3. Despite the fact Grievant's job duties are similar to that of her two co-workers, Blankenship and subsequent cases have placed a difficult burden for the grievant to overcome in a classification case. A review of the class specifications reveals that Mr. Basford's interpretation that Grievant is properly classified is not arbitrary and capricious, nor is it clearly wrong.

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. 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'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).

4. Grievant has failed to prove by a preponderance of the evidence that DOP's determination that the Administrative Services Assistant 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.

MARY JO SWARTZ

Administrative Law Judge

Dated: February 10, 2003