DEBRA CARROLL,

Grievant,

v. **Docket No. 04-HHR-245**

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES/BUREAU
FOR PUBLIC HEALTH and DIVISION
OF PERSONNEL,

Respondents.

DECISION

The grievant, Debra Carroll ("Carroll") grieves her classification as an Office Assistant 2, claiming that an increased work load should result in her position being reallocated to Office Assistant 3. Upon review of a Position Description Form prepared by Carroll, respondent Division of Personnel ("Personnel") determined that Office Assistant 2 remains the classification that best fits the duties Carroll performs as an employee of respondent Department of Health and Human Resources ("DHHR").

This grievance was filed at Level I on April 20, 2004. As relief, Carroll requested reallocation to Office Assistant 3, with back pay. The grievance evaluators at Levels I and II lacked the authority to grant the relief requested. Therefore, the matter was brought to Level III, where Personnel was joined as an indispensable party. A Level III hearing was held on June 3, 2004. A decision denying the grievance was served on June 10, 2004.

Carroll's Level IV appeal was received by the West Virginia Education and State Employees Grievance Board ("the Grievance Board") on June 23, 2004. A Level IVhearing was conducted at the Charleston office of the Grievance Board on August 17, 2004. At the Level IV hearing, Carroll represented herself. Personnel was represented by Lowell D. Basford. DHHR was represented by

Robert Miller, Assistant Attorney General. The deadline for post-hearing submissions (See footnote 1) was September 17, 2004, at which time the grievance matured for decision.

Upon review of the entire record, the undersigned finds that the following pertinent facts were proven by a preponderance of the credible and relevant evidence:

Findings of Fact

1 1. Carroll is employed by DHHR as an Office Assistant 2 assigned to the Office of Nutrition Services in the Bureau for Public Health.

2 2. Carroll's immediate supervisor, Heather Venoy, supported Carroll's request for reallocation to Office Assistant III based upon recent increases in Carroll's workload. Grievant's Exhibit 1 at Level IV.

3 3. Carroll prepared a Position Description Form, which was submitted to Personnel on or about December 17, 2003. Grievant's Exhibit 1 at Level III.

4 4. Upon review of Carroll's Position Description Form, Personnel determined that Carroll's position was properly classified as an Office Assistant II. See the January 19, 2004, notation on Grievant's Exhibit 1 at Level III.

5 5. Under Personnel's classification system, the nature of the work performed by an Office Assistant 2 is as follows:

> Under general supervision, performs full performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

6 6. Under Personnel's classification system, the distinguishing characteristics of the position of Office Assistant 2 are as follows:

> Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.
>
> At this level, the predominant tasks require the under standing [sic] of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The

> steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

7 7. Under Personnel's classification system, the nature of the work performed by an Office Assistant 3 is as follows:

> 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.

8 8. Under Personnel's classification system, the distinguishing characteristics of the position of Office Assistant 3 are as follows:

> 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 communicateagency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

9 9. Personnel considers that the “advanced level complex, clerical work” attributable to an Office Assistant 3 is characterized by an absence of routine procedures, “where a significant part of the work is atypical[.]” Level III Transcript at 21.

10 10. Carroll's Position Description Form reflects that she expends half of her time processing orders for the WIC program and keeping a running inventory of WIC supplies. Approximately 15 percent of her time is devoted to processing large shipments of materials for the WIC program. This entails travel to a new warehouse in Parkersburg once a week. Another 15 percent of Carroll's time is devoted to special projects involving bulk mailings.

11 11. Carroll does not supervise any employees. Personal contacts outside of the agency are “for the purpose of explaining procedures to process or provide services.” Grievant's Exhibit 1 at Level III at #22.

12 12. Carroll also acts as a second back-up for the secretary in terms of telephone duties and sorting the mail. Although the Position Description Form reflects that these duties take up 5 percent of her time, Carroll testified at Level IV that this percentage should be increased. However, she was unable to estimate what percentage of her time is now attributable to telephone duties.

13 13. The work performed by Carroll, while important to DHHR, is fairly routine.

Discussion

Personnel is, by statute, vested with responsibility for establishing a classification scheme for positions in the classified service. W. Va. Code § 29-6-10. A grievant claiming that her position is misclassified must prove, by a preponderance of the evidence, that herduties are a better match for a classification that is different from her current one. *Lemley v. Dep't of Health & Human Res*., Docket No. 04-HHR-159 (Aug. 27, 2004). In this case, Carroll argues that her duties most closely align with the description for an Office Assistant 3, rather than the description for her current classification of Office Assistant 2. The question is whether the evidence adduced by Carroll supports this assertion.

As succinctly discussed in *Lemley*,

> [t]he key to the analysis is to ascertain whether a grievant's current classification constitutes the “best fit” for her required duties. *Simmons v. W. Va. Dep't of Health and Human Res./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 , 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).*

Personnel has determined that the Office Assistant 2 classification constitutes the best fit for Carroll's position. As reflected above, this determination is entitled to great weight unless it can be considered “clearly erroneous.”

As reflected in her testimony at Level III and in her Position Description Form, the predominant duties performed by Carroll are routine functions relating to maintaining inventory and processing orders for the various WIC offices. To do her job well, she needs to pay careful attention to the stocks of inventory and the in-coming orders. However, there is nothing particularly sophisticated about the tasks she performs. Carroll's duties do not include the “complex clerical tasks of a complicated nature” that characterize the work of an Office Assistant 3. Nor does Carroll enjoy the “latitude of action tocommunicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public,” that is vested in an Office Assistant 3.

Carroll's predominant duties with respect to processing orders and maintaining inventory are “multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations.” Carroll informally, orally reports to the various individuals who are responsible for

ordering materials when stocks of various items need to be replenished. Under Personnel's classification scheme, work of this nature falls within the purview of the Office Assistant 2 classification.

When tested against Personnel's descriptions for Office Assistant 2 and Office Assistant 3, Carroll's duties most closely align with the work expected of an Office Assistant 2. Therefore, Personnel's conclusion that Office Assistant 2 constitutes the “best fit” for Carroll's predominant duties is well-founded and could not be considered erroneous. Carroll's immediate supervisor, Heather Venoy, supports Carroll's request for reallocation based on an increase in the volume of work performed by Carroll. In undated correspondence, Ms. Venoy reported that, when one of two secretarial slots became vacant, the Office of Nutrition Services decided not to fill that position. She noted that Carroll was helping to fill the void by acting as a back-up to the remaining secretary, which means that “[s]he is now answering the phones more than before.” In conclusion, Ms. Venoy expressed her hope that her explanation for the increase in Carroll's workload would “justify the need” to reallocate Carroll's position from an “Office Assistant II to an Office Assistant III.” Grievant's Exhibit 1 at Level IV.

Additional duties or an increase in workload do not give rise to a legitimate claim of misclassification. *Lemley v. Dep't of Health & Human Res*., Docket No. 04-HHR-159 (Aug.27, 2004)(citing *Kuntz v. Dep't of Health & Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997)). As noted above, it is the nature of the employee's predominant duties, rather than the volume of the work assigned to the employee, that controls classification. *Broaddus v. Div. of Human Serv*., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Telephone duties are included in examples of the work Personnel would expect an Office Assistant 2 to perform. (See footnote 2) Therefore, Carroll's assumption of additional responsibility for answering the telephone does not create entitlement to be upgraded to Office Assistant 3. To the contrary, the fact that she is spending more time on such relatively simple tasks as backing up the secretary on the telephone undercuts her claim of entitlement to be classified as an Office Assistant 3.

Based upon the foregoing, a review of the applicable law, and the arguments of the parties, the undersigned hereby concludes as follows:

Conclusions of Law

1 1. To prevail upon a claim of misclassification, a grievant must prove, by a preponderance of the evidence, that a cited Personnel classification specification matches the grievant's duties more closely than the Personnel classification currently assigned to such grievant. *Lemley v. Dep't of Health & Human Res*., Docket No. 04-HHR-159 (Aug. 27, 2004) (citing *Hayes v. Dep't of Natural Res*., Docket No. NR-88-038 (Mar. 28, 1989)). 2 2. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

3 3. Carroll has not demonstrated by a preponderance of the evidence that the Office Assistant 3 classification is the "best fit" for her position.

4 4. The increases in Carroll's workload, which do not alter the nature of her predominant duties, do not support her request for reallocation. *Kuntz v. Dep't of Health & Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997).

5 5. Carroll has failed to prove a violation of any law, rule, regulation or policy upon which to challenge Personnel's decision that her position is properly classified as an Office Assistant 2.

6 6. Carroll has failed to meet her burden in this grievance.

Accordingly, this grievance is **DENIED**.

Any party 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 West Virginia Code section 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:

November 24, 2004

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JACQUELYN I. CUSTER

Administrative Law Judge

Footnote: 1

DHHR was the only party who submitted proposed findings of fact and conclusions of law.

Footnote: 2

"Answers telephone, screens calls, takes messages and complaints, gives general information to callers when possible, and specific information whenever possible."