DEBRA McVAY,

Grievant,

v. Docket No. 04-HHR-277

DEPARTMENT OF HEALTH & HUMAN RESOURCES/

WILLIAM R. SHARPE, JR. HOSPITAL, and

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Debra McVay ("Grievant"), employed by the Department of Health & Human Resources ("DHHR") as a Food Service Supervisor at the William R. Sharpe, Jr. Hospital, filed a level one grievance on January 9, 2004, in which she requested reclassification to Supervisor I, with back pay from ten days prior to November 5, 2003, plus interest. Grievant's supervisors lacked authority to grant the relief at level one or level two. The grievance was denied following an evidentiary hearing at level three, and appeal was made to level four on July 22, 2004. Following a series of continued hearings, the parties determined the grievance could be submitted for decision based upon the lower-level record. The grievance became mature for decision at the conclusion of the briefing schedule, on April 1, 2005. (See footnote 1)

The following facts have been derived from a preponderance of the evidence admitted at the level three hearing.

Findings of Fact

1. Grievant is employed by DHHR at the William R. Sharpe, Jr. Hospital, and has been classified as a Food Service Supervisor since April 2001. Grievant has been in charge of the Hospital snack bar at all times pertinent to this grievance.

2. Grievant completed a position description form detailing her duties on November 5, 2003.

3. In December 2003, DOP determined that Grievant was properly classified as a Food Service Supervisor.

4. Grievant is a working supervisor of two other employees. Her duties include

approving sick and annual leave requests, responding to level one grievances, assigning work responsibilities, completing performance evaluations, and imposing discipline when necessary. Grievant is additionally responsible for completing daily cash receipt and bank deposit forms, and a monthly fiscal report for the Hospital trustees. She works with a monthly budget of approximately $15,000.00. Grievant is also responsible for the facilities in that she managed a renovation of the snack bar. Grievant must ensure that any deficiencies noted by the State Health Inspector are corrected. Grievant is also required to account for checks sent in to patient accounts, allowing them a card to use at the snack bar.

Discussion

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 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. 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 DOP classification specification than that under which she is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989). DOP 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. Dep't of Health, Docket No. 90-H-444 (Apr. 22, 1991); See generally, Dollison v. W. Va. Dep't of Empl. Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dep't of Health and Human Res., 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).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W. Va. Div. of Personnel Admin.

Rule, § 4.04(a); Coates v. W. Va. Dep't of Health and Human Res., Docket No. 94-HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. DOP Admin. Rule, § 4.04(d). Finally, DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous.See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

Grievant concedes that she performs all of the duties listed in the job description of Food Service Supervisor, but bases her misclassification claim on her duties involving employee performance evaluations, disciplinary issues, and the grievance procedure. Grievant further offered the testimony of Kathy Marsh, Supervisor 2, and Chip Garrison, Assistant Hospital Administrator, who confirmed that Grievant works independently in completing the duties she described. DOP asserts that Grievant is properly classified. To determine whether Grievant has proven that she is misclassified, her duties must be considered along with the classification specifications at issue:

Supervisor 1

Nature of Work

Under general supervision, performs full performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.

Distinguishing Characteristics

Supervisor 1 is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work

Performs duties that are similar or related to the work performed by subordinates.

Makes work assignments to employees; reviews the work of subordinates to ensure accuracy.

Trains employees in proper work methods.

Ensures that equipment, supplies, and materials are available to complete work.

Inspects work areas to ensure that tasks are completed in a timely manner.

Evaluates employees' performance; counsels employees and recommends corrective action.

Answers inquiries from employees; relays information from management.

Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Food Service Supervisor

Nature of Work

Under general supervision, performs work at the full performance level, planning and directing the preparation and service of food in a state facility. Supervises and assigns duties to cooks, butchers, food service workers and other positions assigned to the area. Schedules worker's shifts. May work under the supervision of a nutritionist. Performs related work as required.

Examples of Work

Assigns work and schedules workers; participates in food preparation.

Inspects kitchen and dining area to determine that sanitation standards are met.

Completes all related paperwork.

Determines types and amounts of food to be prepared.

Supervises the cleaning of kitchen equipment and utensils.

Supervises the cleaning of preparation, service, and dining areas.

Supervises the cooking and serving of food for adherence to health regulations.

Orders foods and supplies and keeps accurate records of what is used.

Oversees dining area and provides assistance to diners and/or workers.

By Grievant's own admission, she performs the duties of a Food Service Supervisor. It also appears that some of the duties she performs are included in the Supervisor 1 classification. This is not unusual, as these specifications are worded very generally, and frequently overlap. In this case, Grievant functions the majority of the time as a Food Service Worker, with approximately twenty percent of her time spent in supervisory activities. While Grievant may perform certain tasks which fall within the somewhat overlapping Supervisor 1 classification, her predominant duties are included in the Food Service Supervisor class specification, and these duties provide the controlling basis for classifying her position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990); Milagros v. Dep't of Health & Human Res. and Div. of Personnel, Docket No. 94-HHR-059 (Mar. 29, 1995); Korntop v. Div. ofCorr./Huttonsville Correctional Center, and Div. of Personnel, Docket No. 01-CORR-390 (Oct. 17, 2001).

The following conclusions of law support the decision reached.

Conclusions of Law

1. 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 DOP classification specification than that under which she iscurrently assigned. See generally, Hayes v. W. Va. Dep't of Natural Res., Docket No. NR- 88-038 (Mar. 28, 1989).

2. The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dep't of Health and Human Res., 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).

3. Grievant has failed to show by a preponderance of the evidence that her duties more closely match those of the Supervisor 1 classification specification, or that DOP's classification determination was 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 grievanceoccurred, 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 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.

DATE: APRIL 22, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievant was represented throughout these proceedings by co-worker Jack Atchison, DHHR was represented at level four by B. Allen Campbell, Senior Assistant Attorney General, and DOP was represented by Lowell Basford, Assistant Director.