WILLIAM ASBURY,

Grievant,

v. DOCKET NO. 05-HHR-159

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

Respondents.

DECISION

Grievant William Asbury filed this grievance on April 12, 2005, seeking to be reallocated from Health and Human Resources Specialist (HHRS) to Health and Human Resources Specialist, Senior (HHRS Sr.). The Division of Personnel (DOP) joined the grievance as a party respondent at level three.

A level four hearing was held in the Grievance Board's office on August 1, 2005. Grievant represented himself and Respondent Department of Health and Human Resources was represented by counsel, Jennifer Akers. DOP was represented by Lowell D. Basford, Assistant Director for Classification and Compensation. The matter became mature for decision on September 2, 2005, the deadline for filing of the parties' proposed findings of fact and conclusions of law.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Mr. Asbury works as a State Crisis Response Coordinator in the State Emergency Operations Center (EOC), a branch of the Data Integration and Security Division (DISD) of the Bureau for Behavioral Health and Health Facilities (BHHF) within the Department of Health and Human Resources (DHHR).

2. Mr. Asbury's position is classified as HHRS, and his immediate supervisor, Faith Stuart, is the DISD Director, a position classified as HHRS Sr. Mr. Asbury is effectively the Deputy Director of

DISD, and is in charge when Ms. Stuart is not available.

3. Contrary to Mr. Asbury's belief, he is the first incumbent in his position, and the position has been assigned the HHRS classification since its inception.

4. Mr. Asbury began working in his position on or about March 16, 2004, and submitted a Position Description Form (PD) to the DOP on December 17, 2004, seeking to have the position reclassified. DOP reviewed the PD and determined the position was properly classified as HHRS.

5. The DOP Classification Specification for HHRS states in part:

> **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 latitudein 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.
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> **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*.

(Emphasis Added.)

6. The DOP Classification Specification for HHRS Sr. states in part:

> **Nature of Work:** Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, a statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi program operations. May consult on highly complex individual

> situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.
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> **Distinguishing Characteristics:** The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technicalareas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

7. The Job Description for Grievant's Job, as contained in the Job Posting in December 2003 was:

> Under general supervision will perform at the full performance level by providing development and maintenance of all aspects of statewide WV Community Crisis Response Team (WVCCT) and Trained Crisis Responder (TCR) programs, in order for BHHF to design, implement and test a statewide “All Hazards” disaster response. In addition, will develop associated policy and procedures based on local, state and federal standards and regulations[.] Administrative over-site [sic] of complex technical assistance with both programs. Will assure compliance with federal, state and local regulations governing the programs, while using independent judgment to determine appropriate action taken to achieve desired results. This position will analyze laws and regulations governing both programs and monitor compliance while applying them appropriately to resolve problems; will represent the quality control manager both inter and intra agency; will draft program manuals; will determine need for changes in procedures, guidelines, and formats and devise resolutions and changes and monitor success. Will develop and complete reports and statistical reports, analyze data, and interpret results. Will collaborate with high ranking government officials chief executive officers, public and private volunteer agencies and develop/deliver persuasive oral presentations for both programs.

8. In addition to the WVCCT and the TCR programs, Mr. Asbury is responsible for managing Project Recovery, which is a localized, thirteen-month disaster relief program specific to a particular event, such as flooding or terrorism. More than one Project Recovery can be ongoing at a given time as they are set up as needed. Mr. Asbury has managed Projects Recovery IV, V and VI, which were implemented in response to flooding.

9. In a Position Description Form he completed on December 17, 2004, Grievant described the

general purpose of his job as:

> Develop and organize a formalized statewide volunteer network of trained community crisis responders and coordinate their deployment and operations in the aftermath of a critical incident, disaster or bioterrorism event. Write, secure and monitor Federal Emergency Management Agency (FEMA) Immediate Service Grant (ISG) and Regular Services Grant (RSG) for the purpose of providing a Project Recovery Program, after a disaster or bioterrorism event. Coordinate formal training events, in Critical Incident Stress Management (CISM), for crisis intervention services, following a critical incident. Promote/normalize mental health as an active partner in local and state emergency operation plans, expand collaboration activities and pursue partnerships with expanding post - 9/11/01 stakeholders.

10. In the same PD, Grievant lists his predominant duties as developing and formalizing the CCRT for responding to critical incidents (30%), writing and securing federal grants and monitoring their expenditure for Project Recovery IV, V, and VI (30%), and coordinating crisis intervention training events (20%). He lists filling in for the DISD Director in her absence as 10% of his duties.

Discussion

In a misclassification grievance, Mr. Asbury must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one his is currently in, (See footnote 1) by showing that his duties for the relevant period more closely match another cited DOP classification specification than that under which he is currently assigned. (See footnote 2) DOP classification 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 moregeneral/more critical to the more specific/less critical. (See footnote 3) For these purposes, the "Nature of Work" section of a classification specification is its most critical section. *(See footnote 4)* DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *(See footnote 5)*

This case is substantially about whether Grievant's duties fall within the ambit of the following part of the HHRS Classification Specification:

> 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.

It is undisputed that Grievant only supervises one Office Assistant 3, and these supervisory duties

are not a significant part of the reason for his position. Therefore, the focus must shift to the programmatic component of his duties and responsibilities. With that focus, one dispute is whether Grievant runs “projects,” as DOP contends, or whether he runs “programs,” as he contends. Another aspect of the same question is whether Grievant is actually responsible for the programs, or whether he has just been delegated high-level duties related to the programs from his supervisor, who is the responsible administrator. Here, the problem does not seem to be with DOP's interpretation of its class specification, because DOP appears to be applying the specification correctly consistent with its understanding of Grievant's job as derived from the initial job description and later from Grievant's PD. The question is, then, whether DOP has a correct understanding of what it is Grievant does and what he is responsible for. In this, DOP may not be the best judge of what Grievant does, (See footnote 6) but Grievant bears the burden of submitting enough evidence that bears on the question to disprove DOP's position.

DOP has reviewed Grievant's position twice, both times concluding HHRS was the “best fit” for the duties and responsibilities assigned to the job. The first time was when the position was first proposed, before it was posted, and the second time was after Grievant submitted his self-authored PD form for review. Mr. Asbury contends additional duties have been added to the job and others have expanded, and that he has more responsibility than DOP gives him credit for. However, his contention that the position existed as an HHRS Sr. before he was hired, even if it had been proven correct, is immaterial as there is no evidence the prior position had been properly classified or that it had exactly the same duties and responsibilities as Grievant has now.

“Responsibility for development and management of statewide program” is clarified in the “Distinguishing Characteristics” section of the HHRS Sr. specification, by narrowing the scope of the term, “responsibility” to a management function “related to entireprogrammatic or operational systems.” Mr. Asbury's position does not fit within this narrowed distinction. Mr. Asbury does not have responsibility for the conceptualization and development of any major complex programs or operational systems. Instead, his role is one of implementation and logistics in carrying out the functions of some of the programs his division is responsible for. While Mr. Asbury assists his supervisor, Ms. Stuart, in grant writing for existing programs, he has no signature authority and is not an appointing authority for any of the programs he oversees.

Mr. Asbury does exactly the type of complex programmatic work contemplated by the HHRS

classification specification, but he cannot claim to have the “responsibility related to entire programmatic or operational systems” that distinguishes HHRS from HHRS Sr., since that responsibility is vested with his division director. DOP has accurately applied its specification to Mr. Asbury's position, and correctly determined that HHRS is the best fit.

The following conclusions of law support this discussion:

Conclusions of Law

1. In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match another cited DOP classification specification than that under which they are 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).

3. 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).

4. Grievant has not met his burden of proving erroneous DOP's determination that his position is properly classified.

For the foregoing reasons, this grievance is hereby **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, and such appeal must be filed within thirty days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). Neither the Education and State Employees Grievance Board nor the Administrative Law Judge is a party to such appeal and neither should be so named. 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.

September 20, 2005

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M. Paul Marteney

Administrative Law Judge

Footnote: 1

See Hayes v. W. Va. Dep't of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989); Oiler v. W. Va. Dep't of Health and Human Res./Bureau for Child Support Enforcement, Docket No. 00-HHR-361 (Apr. 5, 2001).

Footnote: 2

See generally, Hayes, supra.

Footnote: 3

Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991).

Footnote: 4

Atchison v. W. Va. Dep't of Health, Docket No. 90-H-444 (Apr. 22, 1991).

Footnote: 5

See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

Footnote: 6

It should be mentioned that this grievance serves as a de novo review of Grievant's classification, and no judgment is made on whether DOP correctly classified Grievant's position based on the limited information it had, such as Grievant's PD form, when it made its previous determinations. The clarification and expatiation Grievant provided as evidence in this case are therefore the lynchpins of his challenge.