ELIAS MAJDALANI,

Grievant,

v. **DOCKET NO. 05-HHR-329**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR BEHAVIORAL HEALTH AND HEALTH FACILITIES/MILDRED MITCHELL-BATEMAN HOSPITAL, and DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievant Elias Majdalani filed this grievance against his employer, the Department of Health and Human Resources (DHHR) on July 18, 2005, claiming an "[i]naccurate classification decision by the Division of Personnel." His stated relief sought is "Recognition of full range of current duties and appropriate classification." At the level three hearing, Grievant clarified that he was seeking to have his position reclassified as an Information Systems Manager 1. The Division of Personnel joined the grievance as a party at level three.

Following denials at all lower levels, a level four hearing was held in the Grievance Board's Charleston office on November 1, 2005. Grievant was self-represented, and Respondent DHHR was represented by counsel, Jennifer Akers, Assistant Attorney General. DOP was represented by Assistant Director Lowell D. Basford. The matter became mature for decision at the conclusion of the hearing, the parties having declined the opportunity to file proposed findings of fact and conclusions of law.

Issues and Arguments

This is a typical misclassification grievance, in which Grievant claims his duties and responsibilities are a better fit in the Information Systems Manager 1 (ISM1) classification than in his current classification of Information Systems Specialist 1 (ISS1). DHHR has articulated no position on the issue, but DOP contends Grievant was recently reclassifiedcorrectly and has evidenced no

significant change in his job since that time. DOP maintains that the Information Systems Manager class series is inappropriate for Grievant's position because that series contemplates responsibility for the Management Information Systems (MIS) function of a state Agency, and Mildred Mitchell-Bateman Hospital is not an Agency.

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

Findings of Fact

1. Grievant is employed by DHHR's Bureau for Behavioral Health and Health Facilities at Mildred Mitchell-Bateman Hospital, as an Information Systems Specialist 1. He is in charge of the facility's MIS operations, and has worked in that capacity since 1992. The position reports to the hospital's Chief Financial Officer, Sherry Hedges. He directly supervises two technicians, classified in the Information Systems Coordinator series.

2. MIS at the hospital comprises the computer hardware and software to support 180 users. This includes 135 computers, 100 printers, an AS-400 minicomputer and two NT networks, as well as various commercial and specialized software applications.

3. In 2003, Grievant's position was reallocated from Information Systems Coordinator 2, as a result of a settlement in a grievance filed by the MIS director at another facility. Grievant did not participate in that grievance, nor did he challenge the reclassification. Grievant received a 15% salary increase at the time, as he went from pay grade 13 to pay grade 17. Information Systems Manager 1 is in pay grade 20. 4. Just prior to the reallocation, in September, 2002, Grievant was instructed to prepare and submit a Position Description (PD) form. In March, 2005, Grievant, on his own initiative, prepared and submitted a revised PD.

5. The DOP reviewed the 2005 PD and determined Grievant's position was properly classified. Grievant appealed the decision to the Director of the DOP, who found the determination to be correct.

6. The DOP classification specification for Grievant's current classification, Information Systems Specialist 1, states in its “Nature of Work” and “Distinguishing Characteristics” sections,

> **Nature of Work**
>
> Under direct supervision, performs entry level technical work in installing, implementing and maintaining multiple platforms and multiple applications and/or assists in the development of a computer literacy curriculum and training for a large agency or multiple agencies. Depending upon the assignment, may specialize

primarily with Local Area Network/Wide Area Networks. Troubleshoots hardware and software problems which occur in various networked micro and mini computer systems. Evaluates overall effectiveness, strengths and weaknesses of software systems and compatibility with the hardware and software of current installations. May specialize in an area of technical expertise such as networking technologies, data communications, hardware support, software support, or training. Performs related work as required.

Distinguishing Characteristics

This is entry level work where the incumbent is given less complex assignments and the work is reviewed regularly. However, as skills are demonstrated, the incumbent advances to less routine assignments and performing independently. This class series is distinguished from the Information Systems Coordinator in that Information Systems Specialist plans, installs and maintains network components for the entire department(s) and provides technical support to network users. NOTE: Promotion from this class may occur only if and when the job duties and responsibilities change significantly enough to make a higher level classification more appropriate. 7. The DOP classification specification for Grievant's desired classification, Information Systems Manager 1, states in its “Nature of Work” and “Distinguishing Characteristics” sections,

Nature of Work

Under administrative direction, performs full-performance level administrative and supervisory duties directing the data processing operations of a smaller agency system or as a first level or specialty function administrator in a large, comprehensive data processing program. Specific unit activities include systems or applications programming, or computer operations in addition to distribution; schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Resolves equipment problems and coordinates system usage by agency personnel. Provides advice and assistance to management. Performs related work as required.

Distinguishing Characteristics

Information Systems Manager 1 is distinguished from Information Systems Manager 2 by the specific unit activities in the State's central data facility; work is in an area with a discrete function. In a state agency, the Information Systems Manager I is responsible for overseeing the work of a staff involved in programming, computer operations, or support services including LAN management, network support, and personal computer support (both hardware and software).

8. Grievant is the top-level information systems manager at MMBH. His immediate supervisor, the Chief Financial Officer, does not perform any MIS-related duties.

9. The duty statements listed in Grievant's most recent PD are as follows:

30%	All aspects of management and supervision of two technical staffs [sic] and IT processes in the MMB facility. This includes interviewing to fill positions, daily and project-type work assignments and prioritization of effort, administrative tasks, quality reviews of IT support activities, and performance planning and performance reviews. Meet with upper management on a regular basis to maintain alignment between IT and the mission and goals of the facility management.

15%	Supervise system operations including: software and hardware installation and updates; application development, coding, testing, installation, training and support; system maintenance task such as routine system backups, system patching, vulnerability testing and remediation, disaster planning and plan testing. Perform analysis on infrastructure and computing capacity and make recommendations for upgrading as required, sets standards for equipment maintenance, authorization and troubleshooting.
15%	Analyze manual methods used to complete processes with the goal of determining where automation can be employed to improve quality or productivity. Directs the design, development and implementation of new systems and applications (example: automation of scheduling for physical plant preventive maintenance (PM) implemented at our facility, automation of the Time clock management built and customized for HR department and others..).[sic]
15%	Research best practices in hospital IT. Interface with external entities (MIS, other DHHR facilities, educational institutions) to exchange information and strategies for improved operations, efficiency of service delivery, and more secure computing. Recommends and develops specifications for technical equipment or systems of equipment and software.
10%	Develops training materials, documents processes, performs training, reviews system performance and tunes for optimization when possible. Set up Internet and Intranet information delivery and Hospital web page.
15%	Function as the facility's IT security practitioner and HIPAA security officer, working with the DHHR information security office to enhance awareness, incorporate security best practices, and ensure compliance with security policies and procedures.

Discussion

Grievant 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) DOP specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the differentsections to be considered as going from the more general/more critical to the more specific/less critical. (See footnote 2) For these purposes, the "Nature of Work" section of a classification specification is its most critical section. (See footnote 3) DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. (See footnote 4) DOP points out that it must interpret the classification specifications within the confines of its statutory authority and its own rules. In that context, it argues that it is not so much the nature of the duties of Grievant's position that makes a difference here, but the organizational structure in which he performs them _ the classification he seeks is intended for managers of the MIS function for an “Agency,” and MMBH is not considered an agency. An “Agency” is “Any administrative department of state government, including any authority, board, bureau, commission, committee, council, division, section, office.”

(See footnote 5)

The “Nature of Work” section of the Information Systems Manager 1 classification specification puts the classification in context. It informs that the positions in this classification are responsible for “directing the data processing operations of a smaller agency system or as a first level or specialty function administrator in a large, comprehensive data processing program.” At its smallest scope, therefore, the specification requires employment by “a smaller agency,” but MMBH does not fall within even that narrow scope. To get a better idea of the organizational size contemplated bythat term, the Bureau for Behavioral Health and Health Facilities, of which MMBH is a part, would qualify, but that agency also covers six other hospitals, as well as several other behavioral health service programs.

Grievant attempts to show that DOP's interpretation is clearly erroneous, by reference to a prior Grievance Board decision, in the matter of *Mullens v. W. Va. Department of Health and Human Resources and W. Va. Division of Personnel.* (See footnote 6) In that case the grievant, an Office Automation Coordinator 1 at Welch Emergency Hospital, prevailed in showing that her position should be classified as a Data Processing Manager 1. Both classifications, the one DOP contended was the best fit, and the one the grievant sought, were described as performing work for an “Agency.” The “Nature of Work” for the Data Processing Manager 1 is an almost verbatim copy of that for Information Systems Manager 1. Overlooked by Grievant appears to be that fact that the *Mullens* decision specifically finds that Welch Emergency Hospital is not an “Agency,” but the determination was made on other grounds.

The Administrative Law Judge instead found in *Mullens* that the Data Processing Manager 1 to be a “better fit” based on a comparison of the supervisory duties encompassed by both classifications. As such, that case is not particularly instructive on the issue at hand, except to show that, at one time, an employee worked in a non-agency under a specification meant for an agency. “When a grievant compares himself to others who are employed in a higher classification and are performing similar work, but the others are misclassified, the remedy is not to similarly misclassify the grievant. *Akers v. W. Va.Dep't of Tax and Revenue*, 194 W. Va. 456, 460 S.E.2d 702 (1995); *Kunzler v. Dep't of Health and Human Serv.*, Docket No. 97 HHR-287 (Jan. 18, 1996).” *Weaver v. Preston County Bd. of Educ.*, Docket No. 03-39-129 (Aug. 28, 2003).

Nevertheless, DOP's proposed interpretation entirely ignores a major part of the “Nature of Work”

section of the ISS1 classification that it contends is the better fit. Like the ISM1, the ISS1 is specified as being employed by “a large agency or multiple agencies.” DOP attempts to explain away this anomaly by pointing out that Information Systems Coordinator 3 (ISC3), pay grade 15, is actually the best fit for Grievant's duties, but that classification was not in existence at the time of Grievant's reallocation. (See footnote 7) DOP raised this issue for the first time at the level four hearing. Unfortunately for that argument, the new specification was fully-developed and in effect when Grievant submitted his second PD, the one giving rise to this grievance, but DOP nevertheless found Grievant's position was not properly classified as an ISC3.

Read giving DOP's language its plain meaning, the ISM1 specification appears to contemplate a major role in a minor agency, while the ISS1 specification speaks to a minor role in a major agency. Despite DOP's assertion that the focus should be on the use of the term “Agency,” its actions in placing Grievant's position in a classification that also uses that term downplays the importance of the distinction, and then its failure to apply a specification that does not use that term, the ISC3, obviates the distinction altogether. Even less persuasive is DOP's arguments about the “domino effect”of classifying one position in a given class, when similarly-situated employees find out about it and also want to be reclassified. The undersigned can find nothing in the DOP rules that allows it to consider this as part of its mission to correctly classify positions. Instead, it should ensure all similarly-situated employees are properly classified whether or not they complain about their positions. DOP also argued that Grievant would be “double dipping” because he received a raise of fifteen percent when he was previously reallocated, and he would get another raise if he went to the classification he is seeking. Again, whether DOP believes a given employee “deserves” a raise is not a part of classifying positions. As the saying goes, DOP classifies positions, not people.

The level three decision denying this grievance was based in part on the following language in the ISS1 specification: “Promotion from this class may occur only if and when the job duties and responsibilities change significantly enough to make a higher level classification more appropriate.” As that decision correctly pointed out, Grievant's duties have hardly changed at all since his last reallocation. However, that point does not address the Grievant's contention that he is improperly classified in the first place. He is not seeking a “promotion,” he is seeking to be properly placed within the universe of possible classifications, specifically under the ISM1 classification.

So now we have at issue a decision made by DOP in which it ignored the class specification it

now argues is really the best fit for the position, and instead denied Grievant's request for the ISM1 classification on the grounds that Grievant is not employed by an agency and the classification he seeks is reserved for a smaller Agency. DOP then placed the position in the ISS1 classification, which is expressly intended for a largerAgency. Those actions appear to be indefensibly arbitrary and capricious, and at the very list render the “agency” distinction weightless.

No classification determination would be complete without an analysis of the duties assigned to the position in question as they relate to the possible classifications. It is notable that neither DHHR nor DOP takes issue with the duties and responsibilities listed in Grievant's PD, except to the extent that they are not significantly different than those listed in his previous PD. Also, the context in which these duties and responsibilities must be read bears repeating: In a misclassification grievance, the Grievant 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 8) In other words, there need not be a perfect fit, as long as one proposed classification is a closer match than the current classification. Although the “Agency” issue renders the ISS1 and ISM1 classifications imperfectly suited to this position, the ISM1 is a “better” fit. The ISC3 specification, while it is also a good fit for Grievant's duties, was rejected by DOP when it made its last classification decision, and it would be unfair to allow it to now argue it applies.

A comparison of the “Nature of Work” sections of each classification makes the above finding readily apparent. First, both specifications mention prominently the level of supervision under which the class operates: “direct” supervision for ISS1, “administrative” supervision for ISM1. Grievant's position is not directly supervised _ he is supervised by an administrator outside any of the information management class series. Next the ISS1 performs “entry level technical work” compared to the ISM1's description of “full-performance level administrative and supervisory duties.” The undersigned takes notice of the DOP's Glossary of Classification Terms, (See footnote 9) part of which was admitted as evidence at level three as Grievant's Exhibit A. The following terms are defined therein:

> **Administrative** - work activities relating to planning, organizing, directing, controlling, supervising and budgeting of agency or unit operation, programs and mission.

> **Entry Level** - this level can be both in a training capacity or work of limited complexity, **relative to the work in the class series**, with little or no latitude to vary methods or

> procedures. Work is usually performed under close supervision. Work is frequently of a basic and recurring nature.

> **Full-Performance Level** - this level can be characterized by the performance of a full range of duties **relative to the work in the class series**. Incumbent has some latitude for independent judgment and may vary work methods and procedures, but usually within prescribed parameters. Work is usually performed under general supervision. Work is frequently of some variety and incumbent may set priorities.

The nature of Grievant's work is clearly administrative. As he pointed out, the entry-level, hands-on technical work such as that described in the IS1 specification is like unto that he assigns to his subordinates. His work is at the full-performance level, rather than at the entry level relative to the series he is in.

The ISM1 specification also appears to describe work with a broader scope of systems responsibility, like Grievant's position has. The ISS1, on the other hand, mentions “specialization” prominently in the Nature of Work and even the series title. The “Agency” distinction DOP urges is meaningless, given both specifications indicate it. While neitheris a perfect fit, the ISM1 specification is a better fit, as Grievant has met his burden of proving.

DOP's point, that Grievant's duties have not changed significantly since his last reallocation, is well taken. However, Grievant never advanced that basis as a justification for his request. Instead, he is arguing he was misclassified in the first place, and is simply seeking proper placement.

The following conclusions of law support this discussion:

Conclusions of Law

1. In a misclassification grievance, the Grievant 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 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).

2. 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. "'Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.' *Syllabus Point 4, Security National Bank &Trust Co. v. First W. Va. Bancorp.*, Inc., 166 W. Va. 775, 277 S.E.2d 613 (1981), appeal dismissed, 454 U.S. 1131, 102 S.Ct. 986, 71 L.Ed.2d 284." Syllabus Point 1, Dillon v. Bd. of Ed. of County of Mingo, 171 W. Va. 631, 301 S.E.2d 588 (1983). Therefore, 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. An "Agency" is "Any administrative department of state government, including any authority, board, bureau, commission, committee, council, division, section, office." W. Va. Code § 29-6-2 (b). The DOP Administrative Rule similarly defines the term, except that it adds, "or any county health department." 143 C.S.R. 1 § 3.4.

5. Mildred Mitchell-Bateman Hospital is not an Agency.

6. Grievant has met his burden of proving the ISM1 classification is a better fit for his position than the ISS1 classification.

For the foregoing reasons, this grievance is hereby **GRANTED**. Respondents are ordered to reallocate Grievant's position to the ISM1 classification. Since this action is intended to correct Grievant's prior reallocation, and he already received the maximum required pay increase upon promotion, he is not entitled to a further pay increase.

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 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 appealpetition 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.

November 15, 2005

_____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

See Hayes v. W. Va. Dept. of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989).

Footnote: 2

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

Footnote: 3

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

Footnote: 4

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

Footnote: 5

W. Va. Code § 29-6-2 (b). The DOP Administrative Rule similarly defines the term, except that it adds, "or any county health department." 143 C.S.R. 1 § 3.4.

Footnote: 6

Docket No. 96-HHR-226 (July 31, 1997).

Footnote: 7

The undersigned takes notice that specification for Information Systems Coordinator 3 posted on DOP's website, http://www.state.wv.us/admin/personnel/clascomp/specs/8270.htm, carries an effective date of June 1, 2005.

Footnote: 8

Hayes, supra.

Footnote: 9

Accessed online at http://www.state.wv.us/admin/personnel/clascomp/Docs/define.htm (Nov. 9, 2005).