THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

LISA BRIGHTWELL,

Grievant,

v.

DOCKET NO. 06-HHR-058

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

Respondents.

DECISION

Grievant Lisa Brightwell filed a grievance on January 5, 2006, seeking to be reallocated from Accounting Technician 4 to Administrative Services Assistant 2, “starting with date of hire, March 1, 2005.” The Division of Personnel (DOP) was joined as a party at level three. A level four hearing was held in the Grievance Board's Charleston office on April 11, 2006. Grievant presented her own case, and Respondent Department of Health and Human Resources (DHHR) was represented by counsel, B. Allen Campbell, Senior Assistant Attorney General, and Respondent DOP was represented by Lowell Basford, Assistant Director for Classification and Compensation.

Issues and Arguments

Grievant asserts she performs similar duties as other staff in her office, but is classified differently. Respondents contend Grievant's position is classified consistent with the duties and responsibilities assigned to it. Based on a preponderance of the evidenceadduced at the hearing and contained in the record, I find the following material facts have been proven:

Findings of Fact

1. Grievant is employed by DHHR's Bureau for Public Health, Office of Epidemiology and Health Promotion, Division of Surveillance and Disease Control, as an Accounting Technician 4 (AT4).

2. The position Grievant holds was posted as a new position in October 2004, and the posting specified the classification as an Accounting Technician 4. DHHR had planned to post the position as an Administrative Services Assistant 2, but when the draft Position Description Form was reviewed by DOP, the position was determined to be an Accounting Technician 4.

3. Grievant applied for the job as it was posted, and accepted the Accounting Technician 4 job. In December 2005, Grievant submitted a new Position Description Form to her supervisor, who forwarded it to DOP for review. DOP again determined the position best fit the Accounting Technician 4 classification specification.

4. The classification specification for Accounting Technician 4, which is in pay grade 9, lists the following characteristics of the job:

Nature of Work

Under general supervision, performs advanced accounting support duties. The incumbent is responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is advanced level paraprofessional accounting work. Job duties include performing complex balancing and reconciling of multiple accounts. Employees in this class are responsible for accuracy of accounts for others and require little supervision. Responsibilities may also include being a lead worker.

Examples of Work

Classifies/codes a variety of transactions which may require considerable knowledge.

Transfers funds and balances multiple accounts such as hospital billing.

Examines accounting records to assure adherence to accounting laws and regulations; verifies calculations and ensures accuracy and validity of transactions.

Prepares and illustrates specialized statements and reports which reflect the relationships among accounts and which require steady searching and analysis.

Makes complex journal entries and other transactions which require use of specialized accounting procedures.

Maintains accounting records; gathers data and prepares complex financial statements and reports from records maintained.

Assists supervisor in preparing budget by compiling data, preparing summaries and requests, and/or developing cost projections.

Contacts associates, administrators, and general public in order to obtain information, discuss changes in documents, or resolve problems with more complex accounts.

Makes recommendations on the development or revision of agency policies and procedures.

May assign account/department codes.

May train Accounting Technicians and subordinate staff.

May lead and review work of other Accounting Technicians.

6. The classification specification for Administrative Services Assistant 2, which is in pay grade 11, lists the following characteristics:

Nature of Work

Under limited supervision, performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll orprocurement 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. 7. Grievant's December 2, 2005 Position Description Form lists as 90% of her duties:

Providing fiscal support for the various programs administered from the Office of Epidemiology and Health Promotion - Division of Surveillance and Disease Control (OEHP-DSDC) which includes preparation, processing, and monitoring of approximately 120 sub-recipient agreements. A general knowledge of the content of OMB Circulars is vital to this position to ensure that sub-recipients of federal funds are operating within federal guidelines. The job duties require extensive interaction with entities outside of state government as well as other government organizations including Federal Agencies (Department of Health and Human Resources, Centers for Disease Control and Prevention).

Discussion

In a misclassification grievance, the grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one her position is currently in. (See footnote 1) DOP correctly argues it would be improper to compare Grievant's duties to another person's duties, instead of to the classification specifications, when determining whether Grievant's duties match those of the specification. The class specifications are the standard, not the duties assigned to another person. The other person or persons could be misclassified through changes in their assigned duties since they were originally, presumably correctly, classified. (See footnote 2) Although DOP also argues Grievant may not be reallocated because there has been no significant change in her duties, this argument would require a presumption Grievant's position was properly classified from thebeginning. Grievant's complaint has always been that the original set of duties assigned to her position were devised by DHHR to fit the higher classification, and that DOP erred in originally approving the lower classification for the position.

DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. (See footnote 3) DOP points out that Grievant seeks a position in an entirely different class series, instead of a different classification in the same series. Different class series indicate the positions have different kinds of work, rather than different levels of the same kind of work. For grievant to prevail, she would need to show her predominate duties are a different kind of work than those specified for the Accounting Technician series.

DOP's explanation cannot in this case be considered clearly erroneous. While the ASA series may be assigned to a fiscal unit such as the one in which Grievant works, the applicability to her job ends there. The ASA2 specification starts out, in its most specific statement, that the position "performs administrtative and supervisory work." Grievant does not supervise any subordinates, and "administrative" is defined in DOP's Glossary of Classification Terms (See footnote 4) as "work activities relating to planning, organizing, directing, controlling, supervising and budgeting of an agency or unit operation, programs or mission." The posting for Grievant's job did state that the person filling it would "cross-train to provide back-up coverage for two administrative service assistant positions." However, her self-reported position description does not indicate these "back-up" duties are a significant part of her primary job function. Grievant's primary job functions, which she describes as taking up 90% of her time, are "Providing fiscal support for the various programs . . . which includes preparation, processing, and monitoring of approximately 120 sub-recipient agreements." The AT4 classification specification begins, "Under general supervision, performs advanced accounting support duties[.]" Grievant's job is by far a closer match to this description than to the ASA description.

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. (See footnote 5) For these purposes, the "Nature of Work" section of a classification specification is its most critical section. (See footnote 6) Grievant bases much of her argument on her perception that the "Examples of Work" section of the ASA specification lists several examples that closely match what she does, while the AT4 examples are less obviously comparable. However, this section of the specifications is the least specific and least defining _ the Nature of Work sections better distinguish the two jobs.

The following Conclusions of Law support this decision:

Conclusions of Law

1. In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one her position 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 Heath and Human Res./Bureau for Child Support Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

2. 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).

3. 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).

4. Grievant has not met her burden of proving that DOP's interpretation of its class specification as applied to the duties assigned to her position is clearly erroneous.

5. Grievant has not met her burden of proving her job duties are a better fit within the ASA2 classification specification. For the foregoing reasons, 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, 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 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.

June 8, 2006

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M. Paul Marteney

Administrative Law Judge

Footnote: 1

Oiler v. W. Va. Dep't of Health and Human Res., Docket No. 00-HHR-361 (Apr. 5, 2001).

Footnote: 2

See Akers and Boggs v. State Tax Department, 194 W. Va. 456; 460 S.E.2d 702 (1995).

Footnote: 3

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

Footnote: 4

Online at http://www.state.wv.us/admin/personnel/clascomp/Docs/define.htm.

Footnote: 5

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

Footnote: 6

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