ELISSA L. EAVENSON, et al.,

Grievants,

v. **Docket No. 05-HHR-309**

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

Respondent.

DECISION

Ellissa Eavenson, Jenny Sodomick, and Jeffrey Drost ("Grievants") initiated separate grievances in July of 2005, which were consolidated for hearing and decision. After denials at the lower levels, Grievants appealed separately to level four on or about August 31, 2005, at which time the grievances were again consolidated. (See footnote 1) After several continuances granted for good cause shown, a hearing was conducted in Westover, West Virginia, on May 31, 2006. Grievants represented themselves; the Department of Health and Human Resources ("DHHR") was represented by Landon Brown, Senior Assistant Attorney General; and the Division of Personnel ("DOP") was represented by Assistant Director Lowell Basford. The parties having declined to submit post-hearing arguments, this matter became mature for consideration at the conclusion of the level four hearing.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievants are employed by DHHR as Social Service Worker 2s ("SSW 2"). 2. Grievants' predominant job duties involve programs which provide care, health benefits, and financial assistance for adult clients of DHHR. Grievants maintain a caseload of adult guardianship and healthcare surrogate clients, for whom Grievants provide counseling and

assistance. Grievants are given the responsibility of the care for their incapacitated adult clients, including sometimes making end of life and medical/surgical decisions. They also make decisions and provide counseling regarding adult family care, such as placement in personal care homes or nursing homes.

3. Grievants sometimes address adult protective service issues, which include any allegations of abuse, neglect, or exploitation of an incapacitated adult. However, their role in adult protective services is to take the information and submit a referral for services to a Social Service Worker 3 ("SSW 3"), and provide assistance to the SSW 3, if needed.

4. Pertinent portions of the classification specification for SSW 2 state as follows:

> **Nature of Work** Under general supervision performs full performance level social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.
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> **Distinguishing Characteristics** All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker 2 provides these services in one or more of the following areas: nursing home placement, adult family care, pre- institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

5. Grievants seek to be classified as SSW 3s, the class specification for which provides:

> **Nature of Work** Under general supervision, performs advanced level professional social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.
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> **Distinguishing Characteristics** All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker 3 provides these services in one or more of the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, Hartley program, Medley program, Medical Waiver Project, licensing specialist or other services at this level. This class may also be used for positions in certain geographic areas performing professional social work in a variety of program areas such as day care, generic social services, foster care and protective services, and differs from the generic Social Service Worker 2 in that the positions involve a significant, but not predominant, amount of protective services work.

6. SSW 2s and SSW 3s perform many similar services, but their classification is determined by

the program areas to which they are assigned. SSW 2s work mostly with adult services, while SSW 3s work in children's programs, such as adoption.

Discussion

In a misclassification grievance, the Grievants must prove by a preponderance of the evidence that the work they are doing is a better fit in a different classification than the one to which they are assigned. *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).

DOP class 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).

"'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).

In this case, Grievants contend that they are performing the same work as SSW 3s, so they should be placed in that classification. Although SSW 3s are in one higher pay grade than SSW 2s, Grievants contend that they are not requesting this reallocation (See footnote 2) "to get a raise." They believe that the work they perform with regard to their adult clients, such as making extremely difficult medical and end-of-life decisions, is just as critical and important as the services that SSW 3s perform for children. Grievants also contend that they are performing a significant amount of protective services work, which, pursuant to the terms of the class specification, distinguishes the SSW 3 from the SSW 2. As explained by Mr. Basford, the distinctions between the two

classifications have nothing to do with the importance or significance of their work, but only the program areas to which they are assigned. There is no question that Grievants are making terribly difficult, life-changing decisions for some of their clients, but the duties they perform are clearly encompassed by their current job classification. As to protective service work, all the witnesses presented at level four testified that Grievants' work in that area was “limited,” or that they only deal with the referrals for those services, which are then given to the SSW 3s for actual investigation and decisions as to whether abuse or neglect has occurred. Indeed, the services Grievants provide are encompassed with the SSW 2 “Distinguishing Characteristics” section, which includes nursing home placement and pre- institutionalization services.

The testimony offered at level four from several social service supervisors made it very clear that, while these individuals feel that their SSW 2s should be classified as SSW 3s, it was not because these employees are working out of classification. Rather, in the words of these supervisors, they feel that the decisions their SSW 2s are just as difficult and just as important as those made by SSW 3s, so they should not be in a lower classification. However, as set forth above, in reallocation cases, the issue is whether or not the duties the employee performs are encompassed within his assigned classification and whether it is the best fit for his or her duties. In this case, Grievants are performing all of the adult care services described in the SSW 2 specification, so they have failed to prove they should reclassified.

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 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. Grievants have failed to prove by a preponderance of the evidence that they are misclassified.

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 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 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: July 7, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The Division of Personnel was also joined as an indispensable party at level four.

Footnote: 2

"Reallocation" is defined as "reassignment . . . of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position. DOP Administrative Rule § 3.78.