THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

MAUREEN L. CLEMONS,

Grievant,

v. DOCKET NO. 06-DEP-324

DEPARTMENT OF ENVIRONMENTAL

PROTECTION/HOMELAND SECURITY

and EMERGENCY RESPONSE,

Respondent.

DECISION

Grievant, Maureen L. Clemons, filed this grievance on May 16, 2006, stating:

My supervisor, office chief, and agency sought the re-allocation of my position of an Office Assistant III into that of a Secretary II, as I have been suffered to work outside my class since February 2003 when our office was relocated from the DEP Headquarters building in Charleston, WV to a stand-alone field office in Elkview, WV. The West Virginia Division of Personnel denied our request for the re-allocation of my position.

Her stated relief sought is:

I seek to be made whole by my position of an Office Assistant III being re- allocated into that of a Secretary II and the benefits associated with the upgrade in my title from a Pay Grade Seven to a Pay Grade 9.

A level four hearing was held in the Grievance Board's Charleston office on March 1, 2007. Grievant was represented by Fred Tucker, United Mine Workers, Department of Environmental Protection ("DEP") was represented by Ronald Brown, Assistant Attorney General, and the Division of Personnel ("DOP") was represented by Karen Thornton, Assistant Attorney General. The matter became mature for decision on April 2, 2007, the deadline for filing of the parties' proposed findings

of fact and conclusions of law.

Synopsis

Grievant asserts that since her division has moved to a stand-alone facility, her duties have increased substantially, forcing her to work out of her class. DOP avers Grievant is properly classified as an Office Assistant ("OA") 3.

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

Findings of Fact

1. Grievant is employed as an OA 3 by DEP's Homeland Security and Emergency Response Section in the Emergency Response Unit ("ERU") located in Elkview, West Virginia.

2. On February 3, 2003, the ERU was moved to a stand-alone facility in Elkview, West Virginia. The ERU's employees consist of Thomas Blake, Manager and four Environmental Resources Specialists. Grievant is the only clerical support person.

3. In February 2006, Grievant submitted a Position Description Form ("PDF") to DOP requesting reallocation to Secretary 2.

4. On March 10, 2006, Lowell Basford, Assistant Director, DOP determined Grievant's position was properly allocated as an OA 3.

5. Grievant filed a request for reconsideration of the classification determination. Tari M. Crouse, then Acting Director, DOP, upheld the original determination that the position was properly allocated to the OA 3 classification.

6. On the PDF, Grievant listed the majority of her time was spent:

FIMS/State Purchasing Card Management/Accounting: Maintains Purchasing Card receipts for the Homeland Security and Emergency Response Section and codes and enters same into the State's FIMS System. Maintains good recording [sic] keeping of all purchases for the Homeland Security and Emergency Response Section. Codes, prepares receiving reports andprocesses invoices for non-purchasing card orders and change orders. Performs the procurement of necessary office essentials. Maintains the Homeland Security and Emergency Response Section Vendor's list and interacts with vendors. Determines the need for office supplies and equipment and researches the most appropriate vendor and price and acquires same. Original participant in the DEP State Purchasing

Card VISA test program. Makes purchasing card purchases and prepares statement reconciliations for the Homeland Security and Emergency Response Section. Processes all Homeland Security and Emergency Response Section utility bills and monthly statements for payment and maintains a database of all month by month yearly expenditures ensued by the Homeland Security and Emergency Response Section for budgeting consideration.

7. The class specifications for an OA 3 are:

Nature of Work

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

8. The class specifications for a Secretary 2 are:

Nature of Work

Under general supervision, at the full-performance level, provides clerical and administrative relief, exercising discretion and independent judgment. May sign supervisor's name to routine memorandums, correspondence and forms. Attends meeting in the supervisor's absence or on the supervisor's behalf. Necessity for dictation, familiarity with word processor and other special requirements vary depending upon supervisor's preference.

Distinguishing Characteristics

Work at this level is characterized by the level of administrative support performed. Typically, duties such as researching a variety of sources (library, division archives, past-practice documents, outside private sources, etc.), attending meetings for supervisor where interpretation of information gathered is necessary, and coordinating the activities of section, unit, etc., are characteristic of this level.

At this level, the work requires the application of specific knowledge necessary to complete complex procedural or unusual assignments. Incumbent determines appropriate procedures from among various and variable methods, resources, and processes, or devises innovative methods to accomplish assignment. Incumbent is responsible for his/her own work, and may assign, direct, or supervise the work of others. Although some tasks are defined and self-explanatory, the incumbent works closely with supervisor to set objectives, priorities, and deadlines; may independently set goals and time frames for individual work assignments. Work is typically reviewed randomly upon completion for adherence to guidelines. Contacts at this level are frequent, typically varied and non-routine. Incumbent answers procedural or program inquiries, whenever possible, or refers. Contacts are frequently of a confidential or sensitive nature and require tact.

Examples of Work

Coordinates activities associated with the functions of the division/section/unit, planning and implementing office procedures.

Researches basic statistical work in the compilation of reports involving the activities of the division/section/unit.Responds to inquiries where considerable knowledge of unit policy, procedures, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Signs, as directed, supervisor's name to routine correspondence, requisitions, and other documents.

Attends meetings with or on behalf of supervisor to take notes or deliver basic information.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports requiring judgment and originality.

Gathers, requests, and/or provides factual information, requiring reference to a variety of sources.

Types, using standard typewriter or word processing equipment, reports, manuscripts, and correspondence; proofreads and corrects to finished form.

May delegate routine typing, filing, and posting duties to subordinate clerical personnel.

May maintain bookkeeping records for grants, contract or state appropriated funds or related departmental accounts.

May prepare payrolls, keep sick and annual leave records, act as receptionist, and perform other clerical duties as needed.

May assign and review the work of others.

9. Some additional clerical duties have been added to Grievant's responsibilities since the ERU moved to the Elkview.

10. Grievant's predominant duties are clerical in nature.

Discussion

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/morecritical 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).

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, 143 W. Va. CSR 1; *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. W. Va. Div. of Personnel Admin. Rule, 143 W. Va. CSR 1. Finally, DOP's interpretation and explanation of the classification specifications at issue, if said language is determined not to be ambiguous, 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 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 she is currently in. *See Hayes, supra; Oiler v. W. Va. Dep't of Heatlh and Human Resources/Bureau for Child Support Enforcement*, Docket No. 00-HHR- 361 (Apr. 5, 2001).

Grievant asserts that since her organization moved to a stand-alone facility, her duties have increased. She testified she had taken on additional duties including accounting, building maintenance, building safety, building security, computermaintenance, Freedom of Information Act inquiries, spill line coordinator duties, and time and leave coordinator.

After a review of Grievant's PDF, DOP argues her duties are not secretarial in nature, but instead her predominant duties are clerical. Mr. Basford testified that Grievant's position as an OA 3 is consistent with the classification of other positions in government which function as the sole clerical support for a stand-alone facility.

The key in seeking reallocation is to demonstrate a significant change in the kind or level of duties and responsibilities. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar.

26, 1997). The additional duties added to Grievant are predominately clerical in nature and do not add any greater difficulty or complexity to the position. Some of the additions, however, are not clerical in nature, but are duties performed by positions classified at an equal or lower pay grade than the OA 3 classification.

Grievant is a valued employee who works diligently to assist those in her agency. Her duties are clerical in nature, and as a result she is properly classified as an OA 3. The following conclusions of law support this discussion:

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 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., fromtop 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).

2. 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, 143 W. Va. CSR 1; *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. W. Va. Div. of Personnel Admin. Rule, 143 W. Va. CSR 1.

3. DOP's interpretation and explanation of the classification specifications at issue, if said language is determined not to be ambiguous, 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. 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 she is

currently in. *See Hayes, supra; Oiler v. W. Va. Dep't of Health and Human Res./Bureau for Child Support Enforcement*, Docket No. 00-HHR- 361 (Apr. 5, 2001). 5. The key in seeking reallocation is to demonstrate a significant change in the kind or level of duties and responsibilities. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301 (Mar. 26, 1997).

6. Grievant failed to prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one she is currently in.

For the foregoing reasons, this grievance is hereby **DENIED**.

This decision is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the decision. This decision is not automatically stayed pending the outcome of the appeal. W. Va. Code § 6C-2-5(c). Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named.

DATE: **April 20,2007**

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Wendy A. Campbell

Administrative Law Judge