WEST VIRGINIA PUBLIC

EMPLOYEES GRIEVANCE BOARD

BARBARA RENNER,

Grievant,

v.

Docket No. 2008-0076-MAPS

DIVISION OF CORRECTIONS/

ST. MARYS CORRECTIONAL CENTER

AND DIVISION OF PERSONNEL,

Respondents.

DECISION

___Barbara Renner ("Grievant") grieves the decision of the Division of Corrections/St. Marys Correctional Center ("DOC") and the Division of Personnel ("DOP") denying her request for reallocation to the classification of Librarian on or about March 14, 2007.

The Grievant generally seeks to be reallocated (See footnote 1) from the classification of Administrative Services Assistant I ("ASA 1") to the Librarian classification. (See footnote 2) Grievant was originally classified as a Paralegal; however, the position was reallocated when it was recognized that she was not working under the authority of an attorney or administrative superior. Grievant agrees that she should not be classified as a Paralegal. She arguesthe Librarian classification is the "best fit." As relief, the Grievant seeks reallocation to the Librarian classification, back pay and interest.

This grievance was denied at all lower levels. A Level Three evidentiary hearing was held on October 8, 2008, before the undersigned Administrative Law Judge ("ALJ"). (See footnote 3) At Level Three, Grievant appeared *pro se*. Respondent DOC appeared by and through its counsel, Charles P.

Houdyschell, Jr. Respondent DOP appeared by and through its counsel, Karen O'Sullivan Thornton. This matter became mature for decision on or about November 12, 2008, the date findings of fact and conclusions of law were due. The Grievant and Respondent DOP have submitted proposed findings of fact and conclusions of law.

Synopsis

Grievant's position is classified in the ASA 1 classification. She asserts that her position is not properly classified and that the Librarian classification is the appropriate classification. Respondent DOP asserts that the ASA 1 classification is the “best fit” for the Grievant's position, and the Librarian classification is meant for only those positions that require “professional” library work.

The Grievant's position involves photocopying, supervising inmates, assisting inmates in legal research and ordering reading material. Her position is administrative in nature. When compared to the other classification at issue, the ASA 1 classification is the“best fit.”

For the reasons set forth below, this grievance is denied.

Based upon a detailed review of the record in its entirety, the undersigned makes the following findings of fact:

Findings of Fact

1. Grievant is currently employed as an ASA 1, paygrade 10, assigned to St. Marys Correctional Center.

2. On or about July 28, 2006, the DOC was informed by the West Virginia State Bar Unlawful Practice Committee that a paralegal can only work under the direct supervision of a licensed practicing attorney. *See* Respondents' Exhibit 1.

3. Prior to January of 2007, Grievant's position was classified in the Paralegal classification at paygrade 10. Grievant was not supervised by an attorney and does not perform her duties under the direction of an attorney.

4. In an effort to comply with the directives of the West Virginia State Bar, meetings and discussions were held between the DOP and the DOC. The DOP reviewed and considered the Position Description Form (“PD Form”) the DOC completed for all of its positions classified as Paralegal. (See footnote 4) Additionally, the DOP conducted job audits for a number of the paralegal positions in DOC. The DOP did not do an individualized job audit for the Grievant's position at St. Marys Correctional Center. 5. In January of 2007, Grievant was notified her position was being

reallocated from the Paralegal classification to the classification of ASA 1. All DOC paralegal positions were reallocated to the ASA 1 classification.

6. St. Marys Correctional Facility has two rooms, each the size of a large conference room, that it refers to as “libraries.” One room, the “reading library” contains general reading material, while the other room, the “legal library,” contains legal reading material. Books are contained in shelves that are against the wall from the floor to the ceiling.

7. Grievant's position was administrative in nature and her office was located in the facilities administrative office approximately 200 yards from the “library.” However, many of the Grievant's duties related to the “library.” Grievant's job duties included:

1 * making copies of legal documents; (See footnote 5)

2 * providing legal forms to inmates and staff;

3 * gathering and presenting information to the Warden concerning inmate grievances; (See footnote 6)

4 * assisting the Attorney General's office in obtaining information and preparing documents; (See footnote 7)

5 * ordering supplies, books and periodicals;

6 * providing supplies to inmates;

7 * assisting inmates with legal research;

8 * supervising inmates (See footnote 8) who worked within the reading and the law libraries; and

9 * ensuring books and periodicals were returned.

8. Grievant has not graduated from a four-year college or university. She has not had any courses in library science. Grievant has two business degrees: a medical assistant associate degree and a paralegal degree.

Discussion

West Virginia Code § 29-6-10 authorizes the West Virginia Division of Personnel to establish and

maintain a position classification plan for all positions in the classified services. State agencies which utilize these positions, such as the DOC, must adhere to that plan in making assignments to its employees. *Toney v. W. Va. Dep't of Health & Human Resources*, Docket No. 93-HHR- 460 (June 17, 1994).

In a grievance which does not involve a disciplinary matter, the grievant has the burden of proving her grievance by a preponderance of the evidence. *Payne v. W. Va. Dept. of Energy*, Docket No. ENGY-88-015 (Nov. 2, 1988); *Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996). In this misclassification grievance, the focus is upon whether the Grievant's duties for the relevant period of time more closely match those of another cited classification specification than the classification to which she is currently assigned. *See generally Hayes v. W. Va. Dep't of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989). The key to the analysis is to whether Grievant's current classification of ASA 1 constitutes the “best fit” for her position's required duties. *SeeSimmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H- 433 (Mar. 28, 1991). The predominate duties of the position in question are controlling. *Broaddus v. W. V. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Moreover, class specifications are descriptive only and are not meant to be restrictive. The mention of one duty or requirement does not preclude others. 143 C.S.R. 1 § 4.4(a); *Coates v. W. Va. Dept. of Health and Human Resources*, Docket No. 94-HHR- 041 (Aug. 29, 1994).

Analysis of the “best fit” for the Grievant's position begins with consideration of the two job classification specifications at issue. The duties of the Grievant's position must be compared to the DOP job specifications. Generally, personnel job specifications contain five sections as follows: first is the “Nature of Work” section; second, “Distinguishing Characteristics”; third, the “Examples of Work” section; fourth, the “Knowledge, Skills and Abilities” section; and finally, the “Minimum Qualifications” section. These 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 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 the purpose of position comparison, the “Nature of Work” section of a classification specification is its most critical section. *See generally Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

First, the classification specification for the ASA 1 position provides:

Nature of Work Under general supervision, performs administrative work in providing support services such as fiscal, personnel, payroll or procurement in a small division or equivalent organization level. May function in an assist role or in a specialized capacity in a large agency ordepartment. Develops or assists in developing and implements plans/procedures for resolving operational problems and in improving administrative services. Work is typically varied and includes inter- and intra-governmental and public contact. Performs related work as required.

Distinguishing Characteristics Positions in this class are distinguished from the Administrative Services Assistant 2 by the size of the unit served and by the independence of action granted. Positions in a small agency or division may be responsible for a significant administrative component; other positions assist an administrative supervisor in a large state agency. Authority to vary work methods or policy applications or to commit the agency to alternative course of action is limited.

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. 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 supervisor or unit in the area of assignment at in-house meetings. Maintains files of information in hard copy files or electronic format; runs reports for regular or intermittent review. Assists in determining 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. Assists in the writing of manuals in the area of assignment; clarifies the wording and describes new procedures accurately.

Knowledge, Skills and Abilities Knowledge of regulations, processes and procedures in the area of assignment. Knowledge of general office practices and procedures. Knowledge of state and federal laws and regulations related to the area of assignment. Ability to collect and compile accurate information. Ability to conceptualize the nature of service difficulties and devise appropriate work methods, tools, and configurations to correct the problem. Ability to prepare flowcharts, graphs and status reports. Ability to communicate with a wide variety of people, both orally and in writing. Ability to perform basic arithmetic.

Minimum Qualifications

Training: Graduation from an accredited college or university. Preference may be given to

candidates with a major in the area of public or business administration, accounting, industrial relations, communications or related field.

Substitution: Additional qualifying experience as described below may be substituted on a year-for-year basis for the required training.

Experience: One year of full-time or equivalent part-time paid employment in a technical or advanced clerical position providing administrative services such as accounting, budgeting, project monitoring and reporting, personnel, or procurement and property. Experience must have been at the Office Assistant 3 or Accounting Assistant 3 level or higher.

Substitution: Successful completion of graduate study in an accredited college or university in one of the above fields may be substituted for the required experience on a year for-year basis.

Next the classification specification of Librarian must be considered. This classification specification provides:

Nature of Work Under general direction, performs professional (See footnote 9) library work in cataloging and classifying materials and reference tools and assists in developing archival and library collections. May oversee and direct the work of technical and clerical assistants. Performs related work as required.

Examples of Work Classifies books and archival documents and assigns accessional and call numbers. Routes materials to technical and cataloging employees for further processing. Collects patron and circulation statistics for use in evaluation of library services and resources. Selects books, pamphlets, periodicals and media material; places order on approval of archives and history director or chief librarian. Provides technical and professional assistance to patrons in the selection of reading materials, reference materials and in the overall use of the library and archives. Prepares displays, reading lists and other materials designed to stimulate interest in West Virginia history. May assign and review the work of technical and clerical assistants.

Knowledge, Skills and Abilities Knowledge of library procedures, policies and operations. Knowledge of reference tools and sources and also those unique to the particular subjectarea in which employed. Knowledge of the operation of standard library equipment. Knowledge of standard library methods and principles in bibliography, cataloging, classification, circulation and reference services. Ability to work with and communicate effectively with others. Ability to direct the work of

others.

Minimum Qualifications

Training: Graduation from an accredited four-year college or university with at least fifteen (15) semester hours credit in library science courses.

Substitution:

Six (6) months of paid employment in professional library work may be substituted for the required fifteen (15) semester hours of library science courses. Additional professional library experience may be substituted for the required college training on a year-for-year basis.

Upon consideration of the Grievant's duties, the ASA 1 classification is the "best fit." Grievant's position provides administrative support that "facilitates the service program of the agency." *See* Respondents' Exhibit 6. Grievant's duties generally relate to the following: making copies; supervising inmates; and ensuring inmate access to books, legal documents and supplies. *See supra* Finding of Fact 7. The position is administrative in nature. (See footnote 10)

The Librarian classification is not the best fit for the Grievant's duties. Grievant's duties do not concern the application of library science principles. No evidence was presented establishing that the Grievant catalogs or classifies library materials. Nor is there any indication that the two "libraries" at St. Marys Correctional Center undertook anyarchival or collection management activities. The Grievant does not supervise or oversee the work of any library clerical or technical support employee. (See footnote 11) There is no indication that the Grievant's position performs "professional library work" as the term is used in the Librarian classification specification.

Insofar as some of the Grievant's duties could be reasonably construed as falling within the Librarian classification specification, it still must be found that the ASA 1 classification is the "best fit." E mployees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *See generally Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their classification. *See generally Graham v. Nicholas County Bd. of Educ.*, Docket No. 93- 34-224 (Jan. 6, 1994).

This ALJ understands and appreciates the Grievant's frustration. As the Grievant stated at Level

Three, she worked very hard to obtain her paralegal degree. She believes, even though she did not receive a reduction in pay, a switch in titles from Paralegal to ASA 1, is a demotion. It must be emphasized that it is the position being considered in this grievance, not the person who holds said position. This ALJ is bound to analyze this issue in light of the nature of the duties and must maintain fidelity to the law. In this grievance, the “best fit” is the ASA 1, classification. DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The clearly wrong standard requires the reviewing authority to presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W.Va. Dept. Of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001); *Powell v. Paine*, 221 W.Va. 485, 655 S.E.2d 204 (2007); *Bennet v. Insurance Comm'n and the Div. Of Personnel*, Docket No. 07-INS-299 (June 27, 2008). In this instance, it cannot be said that the DOP's interpretation is clearly wrong.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that her duties for the relevant period of time more closely match those of another cited classification specification than the classification to which she is currently assigned. *See generally Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

2. DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The clearly wrong standard requires the reviewing authority to presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W.Va. Dept. of Educ.*, 210 W.Va. 105, 556 S.E.2d 72 (2001);*Powell v. Paine*, 221 W.Va. 485, 655 S.E.2d 204 (2007); *Bennet v. Insurance Comm'n and the Div. of Personnel*, Docket No. 07-INS-299 (June 27, 2008).

3. The Grievant has not established, by a preponderance of the evidence, that the Librarian classification is the “best fit” for her position.

Accordingly, this grievance is hereby **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. Va. Code § 6C-2-5. 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. However, the appealing party is required by West Virginia Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: December 18, 2008

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Mark Barney

Administrative Law Judge

Footnote: 1

Reallocation is the "[r]eassignment by the Director of Personnel 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." 143 C.S.R. 1 § 3.75.

Footnote: 2

In her original statement of grievance the Grievant raised a multitude of different claims relating to her previous employer, who is not a party to this grievance. Additionally, the Grievant raised a variety of charges against the Respondents. The issue before this tribunal is the classification of the Grievant's position. Indeed, each and every claim raised by the Grievant relates to this underlying issue. At the Level Three hearing, it was made clear that the sole issue was classification. Alternatively, insofar as these issues were not made clear, Grievant abandoned such claims by not presenting any admissible evidence at the Level Three hearing. See Church v. McDowell County Bd. of Educ., Docket No. 33- 87-214 (Nov. 30, 1987)(recognizing that allegations not pursued or developed are considered abandoned).

Footnote: 3

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W.Va. Code §§ 18-29-1 to 18-29-11 and W.Va. Code §§ 29-6A-1 to 29-6A-12 were replaced by W.Va. Code §§ 6C-2-1 to 6C-2-7 and W.Va. Code §§ 6C-3-1 to 6C-3-6 (2007). Because this grievance has been transferred to the new procedure, it is being decided pursuant to the provisions of W.Va. Code §§ 6C-2-1 to 6C-2-7 (2008).

Footnote: 4

The DOC requested all of its paralegals submit PD Forms. Upon receipt of the PD Forms, the DOC, in turn, combined the generalities of all DOC paralegal position descriptions into one PD Form. Pursuant to 143 C.S.R. 1 § 4.5, the PD Form is the official document utilized by the DOP to allocate a position to the proper classification within the Classification and Compensation Plan.

Footnote: 5

Inmates are limited in the number of copies they can receive. In certain scenarios, inmates are required to fill out forms so documents can be photocopied. The PD Form indicates that the Grievant spent approximately twenty-four hours per week performing "library" related functions. See Grievant's Exhibit 11. These listed "library" functions include photocopying documents and providing forms and supplies to inmates.

Footnote: 6

Grievant's PD Form indicates she spent approximately ten hours per week completing this tasks.

Footnote: 7

Grievant's PD Form indicates she spent approximately four hours per week performing this tasks.

Footnote: 8

The Grievant supervises thirteen inmates. One inmate serves as a legal representative for inmates. Six inmates work in the "law library" while six other inmates work in the "reading library." The Grievant does not supervise any regular state employees.

Footnote: 9

The DOP defines "professional" as "work which requires the application of theories, principles and methods typically acquired through completion of a baccalaureate degree or higher or comparable experience; requires the consistent exercise of discretion and judgement in the research, analysis, interpretation and application of acquired theories, principles and methods to work product." See Respondents' Exhibit 6 (glossary of classification terms).

Footnote: 10

The procedure and policy to be followed in the "libraries" are captured in a five and one-half page operational procedure. See Grievant's Exhibit 1. There is no indication that independent discretion, based upon library science theory or practice, was required for the Grievant's position.

Footnote: 11

Upon review of the qualification requirements, the Grievant has not graduated from a four-year college or university. Nor does she possess fifteen credit hours in library science.