WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

CHRISTAL MCLAUGHLIN,

Grievant,

v. **Docket No. 07-HHR-369**

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

Respondents.

DECISION

Christal McLaughlin ("Grievant") initiated this proceeding on February 20, 2007, alleging she has worked out of her assigned classification, entitling her to back pay. After denials at the lower levels of the grievance procedure, Grievant appealed to level four on July 23, 2007. (See footnote 1) A hearing was held in the Grievance Board's office in Charleston, West Virginia, on February 25, 2008, before Thomas Gillooly. Grievant represented herself; the Department of Health and Human Resources ("DHHR") was represented by Assistant Attorney General Jennifer K. Akers; and the Division of Personnel ("DOP") wasrepresented by Assistant Attorney General Karen O. Thornton. The parties submitted fact/law proposals by April 7, 2007. (See footnote 2)

Synopsis

Grievant contends that, while assigned to be a "reader" for a legally blind Economic Service

Worker, she was misclassified as an Office Assistant 2. She believes that, because of the types of duties she was required to perform in order to help the Economic Service Worker read information from the computer, perform financial calculations, and interview clients, she was performing the duties of his classification, rather than her own. However, the evidence revealed that Grievant did not determine eligibility for benefits or make determinations regarding action necessary in any given case, which are the responsibility of the Economic Service Worker. By assisting the Economic Service Worker, she was performing the assigned duties of an Office Assistant 2, and she did not prove misclassification. The grievance is denied.

Findings of Fact

1. At all times pertinent to this grievance, Grievant was employed by DHHR as an Office Assistant 2 ("OA2") in Kanawha County. (See footnote 3) She was hired in this position in February of 2006.

2. Grievant was hired to work as an assistant and "reader" for Leroy Hazelock, an Economic Service Worker ("ESW") who was legally blind and had limited ambulatoryabilities. This meant that any time Mr. Hazelock needed to read information from a computer screen or documents, Grievant read the information to him. She also performed some tasks which would have required Mr. Hazelock to walk.

3. Grievant's daily duties as an OA2 included the following:

> Reads information on the computer screen to a customer during Mr. Hazelock's interview with them, which is conducted to determine whether the individual is eligible for benefits.
>
> Assists the ESW with all work he does, including making copies, ensuring signatures are on appropriate forms, completing forms, and other clerical functions.
>
> Assists the ESW in responding to "alerts" in the computer system, which notify the worker that action needs to be taken in a case. Grievant reads the code and instructions for the alert so that the ESW can take the appropriate action.
>
> Enters numbers into a calculator to make benefit calculations, reading the answers to the ESW, because he does not have a handicap-equipped calculator.

Answers the telephone and answers customer questions regarding their case status, viewing the information entered in the computer.

Verifies client information for the ESW, such as driver's license or other identification verification, and reads the information to the ESW.

Assists the ESW, by being on the phone with him and a service provider, when a utility company must be contacted to verify termination of service and provide necessary information to have utility service continued for the client.

4. The classification specification for OA2 provides, in pertinent part:

Nature of Work

Under general supervision, performs full performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the understanding of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

5. The classification specification for ESW provides, in pertinent part:

Nature of Work

Under general supervision, performs at the full-performance level in taking applications, determining eligibility for and managing a caseload for a variety of

> economic assistance programs. Responsible for conducting personal interviews with clients, evaluating and verifying personal, financial and social information, determining eligibility for services, maintaining a client caseload, and referring clients to other social service and community service agencies when appropriate. May obtain repayment from clients who have been issued economic assistance erroneously. Transportation must be available as travel is required. Must possess a valid driver's license. Performs related work as required.

6. While Grievant assisted Mr. Hazelock, she did not determine whether clients were eligible for benefits, and she did not have security access to enter information into the computer system. Mr. Hazelock made these decisions and performed the functions of his position with Grievant's assistance.

Discussion

In order for an employee 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 currentlyassigned. *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/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). 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).

W. Va. Code § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR which utilize such positions, must adhere to that plan in making their employees' assignments. *Toney v. W. Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994). When an employee believes they are performing the duties of a classification other than the one to which they are assigned, it must be determined whether reallocation is appropriate. DOP's Rule 3.78 defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to

a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." An increase innumber of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96- HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." *Id*.

Grievant contends that, for the entire time she was assigned to assist Mr. Hazelock, she was performing the duties of an ESW and is entitled to back pay for working out of her classification. She testified that, because Mr. Hazelock “didn't know how to do his job,” she had to do his work for him. Grievant contends that, on a regular basis, she “interviewed clients,” “calculated benefits,” and “worked alerts” in the computer system, all of which are the designated job duties of the ESW classification.

However, as Respondent counters and as becomes clear upon review of the entirety of the record in this case, it was actually Mr. Hazelock who performed the ESW duties, with Grievant's assistance as his reader. As set forth in the Findings of Fact above, Grievant would read pertinent information to the ESW, whether on the computer screen or from printed documents, which he would use to accomplish his assigned duties of determining eligibility for benefits and generally managing his client caseload. For example, while Grievant contends that *she* interviewed clients, she actually *assisted* Mr. Hazelock by reading information to him while he conducted the interview. Similarly, while Grievant has stated that she “worked alerts” which notify an ESW that some action needs taken on a case, Grievant actually *assisted* Mr. Hazelock by reading the information on the screen to him, and he would then make the decision to take the appropriate action. Clearly, Grievant's “reader” position was unique. However, as explained by Bruce Cottrill, Personnel Specialist with DOP, despite the unique nature of her assignment, all of Grievant's job duties involved “assistance” and are encompassed within the purpose of the OA2 position. As Mr. Cottrill noted, and Grievant herself admitted, she does not determine eligibility or make judgments regarding the information collected for and provided to Mr. Hazelock. She assists Mr. Hazelock in obtaining the required information, and he makes the decisions and determines what action to take, if any. Therefore, Grievant has not

demonstrated that the ESW classification was the best fit for the duties she performed while working as Mr. Hazelock's assistant. Moreover, there was no evidence of a “significant change” in Grievant's duties during the entirety of her tenure as an OA2, so reallocation would not be appropriate in this case.

The following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In order for an employee 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).

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. The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Department of Environmental Protection,* Docket No. 06-DEP-307 (Apr. 20, 2007)*; Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96-HHR-301(Mar. 26, 1997); *See Siler v. Div. of Juvenile Serv.*, Docket No. 06-DJS-331 (May 29, 2007).

4. Grievant has failed to prove that she was improperly classified as an OA2 or that the ESW classification was the best fit for her job duties.

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. *See* W. Va. Code § 29-6A-7 *(repealed*, *See footnote 1, supra*). Neither the West 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 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: September 26, 2008

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

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 repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.

Footnote: 2

The grievance was reassigned because Mr. Gillooly is no longer an employee of the Grievance Board.

Footnote: 3

After this grievance was filed, Grievant successfully bid upon an Economic Service Worker vacancy, so she is only seeking back pay for the time period prior to being placed in the new position.