WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

DONNA K. AKINS,

Grievant,

v. **Docket No. 2008-0258-MAPS**

DIVISION OF JUVENILE

SERVICES/ DAVIS CENTER,

and DIVISION OF PERSONNEL,

Respondents.

DECISION

Donna K. Akins ("Grievant") initiated this proceeding on August 15, 2007, seeking reallocation from her current classification of Office Assistant 2 to Corrections Program Specialist, with associated back wages. Following a level one conference held on August 29, 2007, the grievance was denied on September 19, 2007. The parties elected to waive level two, and a level three hearing was convened in Elkins, West Virginia, on June 18, 2008. Grievant was represented by counsel, Kelly R. Reed; the Division of Juvenile Services ("DJS") was represented by Steven R. Compton, Assistant Attorney General; and the Division of Personnel, joined as a party at level three, was represented by Karen O. Thornton, Assistant Attorney General. This matter became mature for consideration upon receipt of the parties' fact/law proposals on August 18, 2008.

Synopsis

Grievant contends that she is currently misclassified as an Office Assistant 2. She believes she

should be reallocated to Corrections Program Specialist, based uponadditional duties she has been assigned, specifically regarding administration of TAG, the agency's computer records management system.

Evidence established that Grievant's duties are still clerical in nature, focusing upon records management and data input. Accordingly, she is not performing the duties of the Corrections Program Specialist classification, whose focus is upon administration and management of services and/or treatment programs administered to juvenile residents. The grievance is denied.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed at Davis Center, a juvenile detention facility that houses approximately 50 residents. Grievant is classified as an Office Assistant 2 (“OA2") and has been employed at Davis Center since 2001. She is assigned to the Programs Unit at the facility and reports directly to the Unit Manager for Programs.

2. The two main focuses of Grievant's job duties at Davis Center are intake of residents and serving as the administrator for the TAG (See footnote 1) computer system. Grievant's primary responsibility is records management.

3. Grievant's regular work activities include the following:

> As each resident is admitted to the facility, she assembles their information and records it in TAG. This information includes names of parents/guardians, probation officer information, and court documents, such as the commitment order.
>
> Grievant communicates with court system employees, probation officers, and other juvenile facilities to exchange information regarding residents and keep their files updated. She is responsible for constantly updating all information regarding each resident's activities at the facility.
>
> Grievant administers the TAG system for Davis, assisting other employees when problems occur and attending meetings to discuss improvements in the system. She teaches new employees how to use TAG, but she rarely conducts formal training sessions. Grievant attends agency- wide meetings regarding TAG on behalf of her facility.
>
> Grievant assists in compiling reports and correspondence for the Unit Manager.

4. The classification specification for Grievant's current classification of 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 the job title that Grievant seeks, Corrections Program Specialist (“CPS”), provides:

Nature of Work

Under general supervision, performs work at the full-performance level in the implementation and evaluation of and technical assistance for programs/services characteristic of Division of Corrections or the Regional Jail and Correctional Facility Authority. In Prison Industries, serves as a specialist in promoting prison industries products. Serves in a staff specialist or technical assistant role to ensure compliance with federal, state and local regulations relating to the program or service area. Performs the full range of specialized tasks relating to the program area to include analysis and comprehension of program/services regulations, development and implementation of action plans to achieve desired results, coordination and collaboration with inter- and intra- agency personnel, writing program procedure manuals, compilation of regular and special reports on program status and the signing and review of work to support staff or other specialists. Although regulations, methods and procedures in the program area are available, employee may exercise independent judgement and latitude in the work performed. Travel may be required for some positions. Performs related work as required.

6. Since she was first hired in 2001, Grievant's assigned duties have only changed with respect to the addition of computer-related duties and administration of the TAG system for the facility. Otherwise, her duties have remained unchanged, but they have increased in volume.

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 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/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 aclassification 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).

Grievant contends that the additional duties which have been assigned to her, chiefly the administration of the TAG system for her facility, along with training and assisting other employees in that regard, entitle her to reallocation to CPS. However, as explained by DOP's witness at the level three hearing, Grievant's duties simply do not fall within the parameters of the duties of a CPS.

Barbara Jarrell, Senior Personnel Specialist for DOP, testified that a CPS is someone who is a specialist with regard to services or treatment programs provided to the residents, in this case at a juvenile facility. Such an individual would be responsible for implementing and periodically evaluating programs administered by the facility, overseeing the program and determining whether or not it is working, and implementing necessary changes. Ms. Jarrell opined that Grievant's job duties are clerical, even though she has significant computer-related responsibilities. Grievant inputs information into a records management system, which is clerical in nature. Although Grievant has significant duties related to the TAG system, Ms. Jarrell explained that this constitutes electronic input of

information, which still constitutes data input, or clerical duties. This has not changed the scope of Grievant's work, but merely the way it is accomplished. "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." *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). The OA2 class specification contemplates that the employee will “access and update or manipulate data,” which appears to encompass a large portion of Grievant's duties. The simple fact remains that the focus of Grievant's job is records management, which does not entail the implementation and/or management of treatment programs or services provided to the residents of the facility.

Accordingly, the undersigned concludes that Grievant has failed to prove that she is improperly classified as an OA2 or that the CPS classification is the best fit for her current job duties. 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 is improperly classified as an OA2 or that the CPS classification is the best fit for her current job duties.

Accordingly, this grievance is **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 W. Va. 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: September 15, 2008

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The exact name for this acronym was never explained by the parties, but it is apparent that TAG is a computer system used by DJS to record information regarding juveniles who are placed in its custody.