WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHEILA R. FIELDS,

Grievant,

v. **Docket No. 2008-1444-DHHR**

DIVISION OF HEALTH AND HUMAN RESOURCES/
MILDRED MITCHELL-BATEMAN HOSPITAL
AND DIVISION OF PERSONNEL,

Respondents.

DECISION

_____Sheila R. Fields ("Grievant") grieves the decision of the Division of Health and Human Resources/Mildred Mitchell-Bateman Hospital ("DHHR") and the Division of Personnel ("DOP") denying her request for reallocation[1] to the classification of Nutrition Director on or about April 9, 2008.

The Grievant claims her position, Nutritionist Two ("Nutritionist 2"), is misclassified and should properly fall within the Nutrition Director classification. As relief, the Grievant seeks reallocation to the Nutrition Director classification "along with a salary increase commensurate with the position."

This grievance was denied at Level One. A Level Two mediation was unsuccessful. A Level Three evidentiary hearing was held on December 9, 2008, before the undersigned Administrative Law Judge ("ALJ"). At Level Three, Grievant appeared pro se. Respondent DHHR appeared by and through its counsel, B. Allen Cambell,

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[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.

Senior Assistant Attorney General. Respondent DOP appeared by and through its counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on or about January 12, 2009, the date proposed findings of fact and conclusions of law were due. The Grievant and the Respondents have submitted proposed findings of fact and conclusions of law.

Synopsis

Grievant's position is classified in the Nutritionist 2 classification. She asserts that her position is not properly classified and that the Nutrition Director classification is the appropriate classification. Respondents assert that the Nutritionist 2 classification is the "best fit" for the Grievant's position, and the Nutrition Director classification is meant for only those positions that involve "directing nutrition services in a regional public health nutrition program offering a variety of services."

The Grievant's position involves work in a state facility providing dietetic recommendations and hospital administration/supervision. When compared to the Nutrition Director classification, the Nutritionist 2 classification is the "best fit."

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

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

Findings of Fact

1. Grievant holds a position classified as Nutritionist 2 at Mildred Mitchell-Bateman Hospital in Huntington, West Virginia. Mildred Mitchell-Bateman Hospital serves a multi-county population.

2. Grievant serves as the Director of Dietary Services at the hospital. She has been employed at the hospital for approximately thirty-three years.

3. Grievant is a registered and licensed dietician. She has a Bachelor of Science degree in Dietetics and a Master's degree in Home Economics with a specialization in Food & Nutrition.

4. Grievant completed a Position Description Form ("PD Form")[2] on or about June 13, 2007. The DOP reviewed the PD Form and on March 24, 2008, made a determination that the position was properly allocated to the Nutritionist 2 classification. *See* Grievant's Exhibit 1.

5. Grievant "coordinates clinical dietetics component of nutrition care and nutrition education." *Id*. She "reviews the work of clinical dieticians [at Mildred Mitchell-Bateman Hospital] and makes recommendations ... ." Further, Grievant "makes nutrition recommendations to medical staff and coordinates nutrition information with clinical and dietary staff to meet individual patient needs." *Id*. The vast majority of the Grievant's duties are related to the Grievant's responsibilities for the hospital's dietary unit. *Id*.

6. The Grievant supervises a contract clinical dietician, several food service supervisors and an Office Assistant 2. She also supervises any dietary or café staff as the need arises. *Id*. The Grievant's next level supervisor is Jack Clohan, Jr., Acute Care Coordinator. *Id*.

7. Grievant is a member of the management team at Mildred Mitchell-Bateman

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[2] 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.

Hospital. She attends governing meetings, provides additional reports and takes administrative calls on some weekends and evenings. *Id*.

8. The classification specification for the Nutritionist 2 position provides:

Nature of Work
Under limited supervision, performs professional work at the full-performance level by promoting and presenting public health nutrition programs. Performs related work as required. Public contact and travel are required. May be required to supervise.

Distinguishing Characteristics
This is professional, full performance level work in public health nutrition. Performance at this level requires greater technical skills, more independent judgement and work involving planning and organizational skills. Positions with responsibility for the dietary unit at a state facility are typically assigned to this class.

Examples of Work
Provides therapeutic dietary counseling and nutritional assessments for medically high-risk clients, such as in prenatal and pediatric clinics.
Provides nutrition counseling services to Intermediate Care Facilities or other outside agencies. (Must be a Registered Dietician).
Provides nutrition counseling under contract through Medicaid reimbursable Programs. (Must be a Registered Dietician).
Conducts in-services, presentations, and provides consultation on nutrition topics to groups and organizations.
Develops menus for regular and therapeutic diets for patients or residents of a facility.
Conducts staff in-services and training.
Acts as Nutrition Education Liaison responsible for developing, implementing and evaluating the Nutrition Education Program for a multi-county area.
Acts as Breast-feeding Coordinator responsible for developing, implementing and evaluating a multi-county Breast-feeding Promotion Program.

Knowledge, Skills and Abilities
Knowledge of the principles and practices of dietetics and nutrition, as related to public health.
Knowledge of the organization of public health services, food services, food assistance and nutritional education resources.
Knowledge of developments in the field of public health as related to nutrition.
Skill in interviewing medically high-risk clients, assessing their nutritional status and counseling them concerning nutrition.
Skill in program management and coordination.
Skill in conducting training in-services.
Ability to establish and maintain effective working relationships with both professional and advocate or constituent groups.
Ability to collect, analyze and evaluate data and technical information.

Ability to communicate effectively, both orally and in writing.
Ability to write goals and objectives in planning and developing broad range nutrition programs.

Minimum Qualifications
Training:
Graduation from an accredited four-year college or university with a bachelor's degree in foods and nutrition, dietetics or public health nutrition; or a bachelor's degree in a related field with 12 hours in nutrition.
Experience:
One year of full-time or equivalent part-time paid employment as:
dietician or nutritionist employed by a health or welfare agency, food clinic, hospital, child development center, school system, nutrition council; teacher of foods or nutrition in an accredited school or college; agent or food and nutrition specialist in the Agricultural Extension Service; or research worker in foods or nutrition.
Substitution:
Graduation from a Coordinated Undergraduate Program in dietetics, completion of an AP4 Program in nutrition or dietetic internship approved by the American Dietetic Association, or a graduate degree from an accredited college or university in a related field may be substituted for the required year of experience.
Note: Preference in hiring may be given to an applicant who has current Registered Dietician status with the American Dietetic Association.

9. The classification specification of Nutrition Director provides:

Nature of Work
Under administrative direction, performs complex administrative work at the advanced level, directing nutrition services in a regional public health nutrition program offering a variety of services. Plans, organizes and directs nutrition programs and is responsible for the quality of nutrition services delivered in the assigned area. Work is broad in its scope of responsibility. Performs related work as required.

Distinguishing Characteristics
Work at this level involves a high level of individual responsibility and independence under the general direction of multi-county or regional health directors. Work is distinguished by the direction of professional staff generally through subordinate supervisors. This is the highest management and policy making nutrition position, responsible for a comprehensive nutrition services program on a regional basis. Major functions of this position include: planning/evaluation, policy making, fiscal control, management and supervision.

Examples of Work
Plans, directs and implements a complex public health nutrition program and nutrition education programs.
Manages a large caseload of clients such as in a WIC Program in a regional setting.
Authorizes personnel actions for the nutrition staff; recruits and interviews nutrition applicants.
Determines needs of nutrition department or public health program for personnel, supplies and equipment.

Develops and implements plans for meeting staffing and facility needs.
Develops staffing patterns and assures an adequate level of nutrition care.
Participates in the agency's strategic and operational planning, identifying programs and services which should have a nutrition component and integrates nutrition services into the overall agency health plan and budget.
Assesses nutrition and diet-related health problems and available resources to determine present and forecast future needs.
Prepares, justifies and manages the nutrition program budget and administers the expenditure of allocated funds.
Prepares grant proposals and contracts to obtain external funding to expand nutrition services.
Serves as a member of the agency management team.
Participates in the design and implementation of agency management information systems and utilizes data to document, monitor and evaluate nutrition services on a regional basis.
Analyzes and summarizes data and publishes program accomplishments for the agency's management staff and governing board through regular oral and written reports.
Advises and collaborates with the agency health director, health officer, senior program directors and legislators who have a significant impact on the mission, programs and policies of the agency.
Participates in developing agency health policy and assuring that food and nutrition-related issues are included.
Reviews and comments on proposed regulations, legislation, guidelines and standards promulgated by federal, state and local legislative bodies and national organizations affecting nutrition services.
Participates in developing, implementing, and monitoring standards for nutrition services on a regional basis.
Makes long-range plans and regularly reviews staff activities and services being delivered regionally.
Provides for staff development including orientation, in-service training, and continuing education for all levels of staff in the program.
Conducts regular conferences and meetings with supervisory and other staff to interpret program policies, communicate changes in procedures, discuss problems, and to develop long and short range plans.

Knowledge, Skills and Abilities

Knowledge of the principles and practices of dietetics and nutrition as related to public health.
Knowledge of the organization of public health services, food assistance and nutritional education resources.
Knowledge of developments in the field of public health as related to nutrition.
Knowledge of current state and federal regulations related to public health nutrition programs.
Ability to manage programs.
Ability to work with various mass media.
Ability to prepare and execute program budgets.
Ability to develop and evaluate nutrition education programs.

Ability to plan, organize and evaluate public health nutrition programs.
Ability to supervise professional and support staff.
Ability to establish and maintain effective working relationships with both professional and lay groups.
Ability to collect, analyze and evaluate data and technical information.
Ability to communicate effectively, both orally and in writing.
Ability to create and develop educational and instructional materials.

Minimum Qualifications

Training:

Graduation from a four-year college or university with a bachelor's degree in foods and nutrition, dietetics or public health nutrition; or a bachelor's degree in a related field with 12 hours in nutrition.

Experience:
Four years of full-time or equivalent part-time paid employment as: dietitian or nutritionist employed by a health or welfare agency, food clinic, hospital, child development center, school system or nutrition council; teacher of foods or nutrition in an accredited school or college; agent or food and nutrition specialist in the Agricultural Extension Service; or research worker in foods or nutrition.
Two years of qualifying experience must have been in public health nutrition.

Substitution:
Graduation from a Coordinated Undergraduate Program in dietetics, completion of an AP4 Program in nutrition or dietetic internship approved by the American Dietetic Association, or a graduate degree from an accredited college or university in a related field may be substituted for one year of the required experience.

Note: Preference in hiring may be given to an applicant who has current Registered Dietitian status.

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 DHHR, 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. 156 C.S.R. 1 § 3

(2008). 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 whether Grievant's current classification of Nutritionist 2 constitutes the "best fit" for her position's required duties. *See Simmons 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. Dep't 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).

Upon consideration of the Grievant's duties, the Nutritionist 2 classification is the "best fit." The Grievant's duties generally concern supervising dietetic workers at Mildred Mitchell-Bateman Hospital and making dietary recommendations. *See* Finding of Facts 5 and 6, *supra*. Hence, the duties of the Grievant's position involve "promoting and presenting public health nutrition programs." She completes these tasks within the confines of the Hospital. As indicated within the language of the classification specification "[p]ositions with responsibility for the dietary unit at a *state facility* are typically assigned to this class." (Emphasis added).

In contrast, the Nutrition Director classification is *not* the best fit for the Grievant's duties. Upon review of the Nutrition Director classification specification, it provides that this classification involves "directing nutrition services in a regional public health nutrition program offering a variety of services." This classification indicates that the position is typically working on a broad level and scope typically outside the setting of a state facility. This position is "[t]he highest management and policy making nutrition position, responsible for a comprehensive nutrition services program on a regional basis." Upon consideration of the predominate duties of the Grievant's position and the two classification specifications in issue, it cannot be said that her position fits within the Nutrition Director classification.

Barbara Jarrell, Senior Personnel Specialist, with the Classification and Compensation section of the DOP, testified at the Level Three hearing. Ms. Jarrell

testified that DOP believes without question Grievant's position was properly allocated to the Nutritionist 2 classification. Ms. Jarrell testified that the Grievant's position cannot be classified as a Nutrition Director because the position is not responsible for a regional public health nutrition program as is required by the Nature of Work section of the classification specification for the Nutrition Director. Furthermore, Ms. Jarrell pointed out that the Distinguishing Characteristics section of the Nutritionist 2 classification specification specifically states that positions, such as the one Grievant occupies, are typically assigned to this classification.

The Grievant raises several ancillary arguments outside the scope of the "best fit" analysis. First, she indicates that the DOP classification scheme is designed with a built-in career ladder and as an employee's career progresses, he or she should accordingly advance in classification.[3] Generally, this ALJ agrees with the postulate that "career ladders" are built into the Classification and Compensation Plan. *See* Level Three, Grievant's Exhibit 6 (DOP's FAQ Internet webpage).

Secondly, Grievant directs attention to the classification specification utilized prior to 1981 and argues that the intent of the current classification scheme is to differentiate between clinical dietetics and administrative or managerial dietetics. She posits this differentiation is found in the distinction between the two current classifications of Nutritionist 2 and Nutrition Director and the position she occupies at Mildred Mitchell-

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[3] Neither the Grievant nor the Respondent maintain that the Nutritionist 3 classification is the "best fit" for the Grievant's position. Accordingly, this ALJ does not pass upon this issue. Assuming *arguendo* Grievant's ladder theory is correct, it logically follows that Nutritionist 3 is the next rung, not Nutrition Director.

Bateman Hospital is of managerial nature.

Lastly, the Grievant advances an argument based upon wage and hour law[4] and avers that her "position description verifies that I [Grievant] function as an exempt employee while my classification is nonexempt." Grievant's December 15, 2008, letter to the undersigned ALJ (citing DHHR Policy Memorandum 2102, 6, 22). *See also* Grievant's Level Three Exhibit 5.[5] It is recognized that there is some conceptual overlap when determining distinction between exempt/non-exempt employees and determining the "best fit" for the purpose of state employee classification; however, these are two separate and distinct determinations.

The Grievant's arguments are unpersuasive and outside of the appropriate considerations this ALJ may examine in classification grievances. Career ladders, old classification specifications and distinctions under wage and hour law, are not germane to the determination of the appropriate classification in this grievance. As aforementioned, the linchpin of the analysis is the "best fit" within the confines of the Grievant's duties and the classification specifications at issue. *Broaddus*, *supra*. 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" for the Grievant's position is the Nutritionist 2 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

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[4] *See* W.VA. CODE § 21-5C-1 *et seq*. and 29 U.S.C. 201 § 3(e)(2)(c).

[5] Beyond this general statement, the Grievant does not explain or address how these two determinations are legally related.

clearly erroneous. *See W. Va. Dep't 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. Dep't 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. Dep't 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. Dep't 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. Dep't 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 Nutrition Director 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: January 29, 2009

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Mark Barney
Administrative Law Judge