THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LINDA KAY RICHMOND,
Grievant,

v. **DOCKET NO. 2008-0144-DOT**

DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS and DIVISION
OF PERSONNEL,
Respondents.

DECISION

Grievant, Linda Kay Richmond, filed a grievance against her employer, the Division of Highways, on July 20, 2007, alleging she was misclassified as an Office Assistant 2. As relief, Grievant sought to be, "[r]eallocated to the position of Of Asst. 3 and receive back pay as of 8-01-06." The grievance was not resolved at level one, and level two was waived. Grievant appealed to level three on October 15, 2007. A level three hearing was held before the undersigned Administrative Law Judge on May 21, 2008, in the Grievance Board's Westover office. Grievant represented herself, the Division of Highways was represented by Robert Miller, Attorney, Legal Division, and the Division of Personnel was represented by Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law, on June 24, 2008.

Synopsis

Grievant believes her position should be classified as an Office Assistant 3, rather than an Office Assistant 2. Grievant's position cannot be reallocated because the nature of Grievant's job has not changed, and her duties have not changed significantly. The Office Assistant 2 classification remains the best fit for Grievant's position.

The following Findings of Fact are made based upon the evidence presented at the level three hearing.

Findings of Fact

1. Grievant is employed by the Division of Highways ("DOH") as an Office Assistant 2 ("OA2"), in Marshall County, in the District 6 Headquarters. She has been in her current position since December 2004.

2. Grievant's supervisor is Shelley Gorby, Administrative Services Manager I, in the District 6 Headquarters.

3. The purpose of Grievant's position, as stated on the most recent Position Description Form ("PDF") submitted by Grievant to the Division of Personnel ("Personnel") for review in April 2007, is:

> 1.) Office Assistant to Administrative Manager - Responsible for administering all D6 Workers Compensation Claims, and all D6 Employee Evaluations. Review and perform data entry of all applications for Summer Workers Program. Administer Leave Donation Program. Analyzes and acts upon monthly Status Reviews. Prepare, check and correct new employee paperwork, maintain DOT and DOH Policies and Procedure books and distribute revisions.
>
> 2.) District Switchboard Operator - Operating main switchboard for all of District Six.

3.) Mailroom Clerk - Processing all incoming and outgoing mail for District Six, Charleston, and U.S. Mail.

Joint Exhibit B.

4. Grievant answers the telephone at the District 6 Headquarters, and greets visitors as they arrive at the Headquarters throughout the day. Grievant spends 25% of her time answering the telephone, taking messages and complaints, greeting and directing visitors, reporting telephone problems, sorting and distributing mail, preparing outgoing mail, ordering mailroom and copier supplies, operating office equipment, and updating and distributing the phone number list, and another 5% of her time training other clerical staff on the switchboard and mailroom operation;14% of her time tracking evaluations to make sure they are completed by supervisors when due, checking evaluation forms for completeness, entering data from these forms, and copying and transmitting them to Human Resources, and reviewing monthly status reviews for temporary and probationary employees for completeness and distributing them to the appropriate organization; 13% of her time distributing employment applications and examination announcements, explaining regular and summer employment to applicants, reviewing summer employment applications for completeness and entering the data from these applications, preparing paperwork associated with summer employees and directing them to the correct work location, and generating summer logs and reports;10% of her time preparing and processing new employee paperwork and maintaining associated files, maintaining manuals and distributing policies and procedures regarding personnel, insurance, and payroll, and filing personnel documents; 8% of her time preparing and processing Workers Compensation forms and maintaining these files for all District 6 employees, reviewing

these forms prepared by others for completeness and accuracy, and training other employees on these forms and answering their questions; 8% of her time preparing documents associated with the leave donation program; 7% of her time processing time sheets and entering the data from them, recording and logging associated daily lists, and entering meter readings for vehicles; 5% of her time assisting in collecting and transmitting insurance premiums for employees on leaves of absence; and 5% of her time assisting with personnel issues in the absence of the Personnel Specialist. In addition, Grievant assists with open enrollment once a year. Joint Exhibit B.

5. The work Grievant does preparing and processing Workers' Compensation forms was added to her duties in 2005. Sometime after 2004, Grievant also began assisting with personnel matters in the absence of the Personnel Specialist, including assisting with open enrollment and collecting insurance premiums. However, at the time Grievant applied for this position, the job posting included in the statement of duties: "[w]ill perform necessary duties in the absence of the Personnel Specialist."

6. The primary purpose of Grievant's job has not changed since she began working in this position.

7. The OA2 and Office Assistant 3 ("OA3") classifications are part of a class series, with the first step in the series being the Office Assistant 1, and the last step being the OA3. The difference from one step in the series to the next is in the level of work, that is, the difficulty and complexity of the work performed. The OA3 performs work at the advanced level, while the OA2 performs work at the full performance level. An OA3 typically would be responsible for the development and adoption of non-standard

procedures, while an OA2 would typically be applying existing, standard procedures. An OA3 is typically a lead worker.

8. Grievant is not a lead worker.

Discussion

Grievant has the burden of proving her grievance by a preponderance of the evidence. *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 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 which utilize such positions must adhere to that plan in making assignments to their employees. *Toney v. W. Va. Dep't of Health & Human Resources,* Docket No. 93-HHR-460 (June 17, 1994).

In a misclassification grievance, the focus is upon the grievant's duties for the relevant period, and whether they 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). Personnel job specifications generally 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 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. *See generally, Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the employee's current classification constitutes the "best fit" for her required duties. *Simmons v. W. Va. Dep't of Health and Human Resources*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.,* Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See, W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

This grievance must first be evaluated pursuant to the Division of Personnel's Rule on reallocation. 143 C.S.R. 1 § 3.75 defines "Reallocation" as "[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." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't 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). An increase in the number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford, supra.* "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 is classified as an OA2. She believes the proper classification for her position is an OA3. The relevant portions of the classification specifications for these two positions are as follows.

OFFICE ASSISTANT 2

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.

Examples of Work
Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations

(addition, subtraction, division or multiplication); corrects errors if the answer is readily available or easily determined.
Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; reviews files for data and collects information or statistics such as materials used or attendance information.
Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.
Receives, sorts and distributes incoming and outgoing mail.
Operates office equipment such as adding machine, calculator, copying machine or other machines requiring no special previous training.
Types a variety of documents from verbal instruction, written or voice recorded dictation.
Collects, receipts, counts and deposits money.
Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.
Posts records of transactions, attendance, etc., and writes reports.
May compile records and reports for supervisor.
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.

OFFICE ASSISTANT 3

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.

Grievant also argued for the first time at the level three hearing that she should be classified as an Administrative Services Assistant 1. The relevant portions of that classification specification for that classification are as follows:

ADMINISTRATIVE SERVICES ASSISTANT 1

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 or department. Develops or assists in developing and implements plans/procedures for resolving operational problems and in improving administra tive 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.

The work performed by Grievant bears no resemblance to the Administrative Services Assistant 1 classification specification, and Grievant did not attempt in her testimony to explain why she thought this classification would be a better fit for her duties.

Likewise, Grievant has not demonstrated that her position should be placed in the OA3 classification. First, the nature of Grievant's job has not changed, and her duties have not changed significantly. Grievant's position cannot be reallocated.

Lowell D. Basford, former Assistant Director of the Division of Personnel's Classification and Compensation Section for many years, now retired, explained that the predominant duties of Grievant's position are answering the telephone and greeting visitors, and those precise duties serve as a benchmark OA 2 position for the Division of Personnel. Grievant does this all day, everyday. Mr. Basford acknowledged that Grievant has certainly taken on some additional duties, and that some of her duties may be at the advanced performance level. However, these duties take up only a small percentage of Grievant's time, and she performs these duties so infrequently that they cannot be class controlling. He pointed out that most of Grievant's job duties are process driven, and procedurally fairly simple. While Grievant used the word "analyze" on her Position Description Form, to describe some of her duties, in reality, what she is doing is reviewing for accuracy and completeness, not analyzing. He noted that some of Grievant's job duties are duties that may be performed by an Office Assistant 1. Mr. Basford stated in

conclusion that the predominant duties of the position must be such that they match the higher classification sought, and in this case, they do not.

Grievant has not demonstrated that the OA3 classification is a better fit for her duties. While Grievant obviously is a very capable employee, who is able to multi-task, and is willing to do whatever is asked of her, those duties which she has taken on which are at the advanced performance level make up only a small part of her job. The primary purpose of her job is to answer the telephone and greet and direct visitors. In addition, most of her other duties are standard clerical duties. She does a lot of proofreading, distributing forms, explaining standard procedures, data entry, copying, and filing. Grievant's duties do not rise to the level of OA 3.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. In a misclassification grievance, the focus is upon whether the grievant's duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. *See generally, Hayes v. W. Va. Dep't of Natural Resources,* Docket No. NR-88-038 (Mar. 28, 1989).

3. The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his required duties. *Simmons v. W. Va. Dep't of*

Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.,* Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. *See, W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. 143 C.S.R. 1 § 3.75 defines "Reallocation" as "[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." The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." *Keys v. Dep't 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).

5. An increase in the number of duties and the number of employees supervised does not necessarily establish a need for reallocation. *Kuntz/Wilford, supra.* "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.*

6. Because Grievant's duties have not changed significantly, reallocation of Grievant's position would be in violation of the Division of Personnel's Rules.

7. Neither the Office Assistant 3 classification nor the Administrative Services Assistant 1 classification is a better fit for Grievant's duties than the Office Assistant 2 classification.

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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: February 27, 2009