WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

REBECCA J. HART,
Grievant,

v. **Docket No. 2008-0641-DHHR**

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES/
BUREAU OF CHILD SUPPORT ENFORCEMENT
AND DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant Rebecca J. Hart is employed as an Office Assistant 2 with the Department of Health and Human Resources' Bureau of Child Support Enforcement ("Bureau"). Grievant works in the Bureau's Region Seven Office which is located in Oak Hill, West Virginia. On October 12, 2007, Rebecca Hart filed a grievance seeking to be reallocated to the Office Assistant 3 classification.[1] As relief Grievant requests to be made whole, including reallocation from an Office Assistant 2 to an Office Assistant 3. The parties waived a level one hearing and a level two mediation. A level three hearing was held before the undersigned Administrative Law Judge in Beckley, West Virginia, on January 14, 2009. Grievant was present at the hearing and was represented by Gordon Simmons

---

[1] On her grievance form Grievant actually asked for a "reclassification" to Office Assistant 3. The term "reallocation" more accurately describes what Grievant seeks. It is defined in the Division of Personnel Administrative Rules as follows:

> Reallocation**:** Reassignment 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 (2007).

of UE Local 170, West Virginia Public Workers Union. The Division of Personnel ("DOP") was represented by Karen O'Sullivan Thornton, Assistant Attorney General, and the Bureau was represented by Jennifer Akers, Assistant Attorney General, and David Alter, Esquire. The parties declined to submit Proposed Findings of Fact and Conclusions of Law and the grievance became mature for decision at the conclusion of the hearing.

Synopsis

Grievant is an Office Assistant 2 but she is performing the same duties as a co-worker who is classified as an Office Assistant 3. Grievant argues that she should be reallocated to the Office Assistant 3 classification because she and her co-worker are performing duties and responsibilities that best fit in that classification. Respondents correctly point out that the issue is not whether Grievant is performing the same duties of her co-worker but whether the duties and responsibilities of her position best fit the Office Assistant 3 classification. Grievant was unable to prove that the Office Assistant 3 classification was the best fit for her position and the grievance must be denied.

The following findings of fact are based upon a thorough review of the record in this grievance.

Findings of Fact

1. Grievant Hart is employed by the Bureau in the Region Seven Office located in Oak Hill, West Virginia, in Fayette County. Her position is classified as an Office Assistant 2 ("OA 2"). Grievant has been employed in that office and that position for approximately two years.

2. The OA 2 position Grievant now holds was posted on November 21, 2005. Grievant was employed in that position in February 2006. *See* Respondents' Exhibit 5.

3. Arvella Fruit is also employed by the Bureau and is assigned to the same office as Grievant. Ms. Fruit has worked in that office for thirteen years and her position was originally classified as an OA 2.

4. On October 13, 1999, Ms. Fruit applied for and received a posted position in the Office Assistant 3 ("OA 3") classification. Since that time she has been employed in the OA 3 classification, in the Bureau's Region Seven Office.

5. Grievant and Ms. Fruit do exactly the same jobs and have the same duties and responsibilities. They both maintain case files for the Bureau, with Grievant handling files with names starting with the letters A through K and Ms. Fruit handling files with names starting with the letters L through Z.

6. Ms. Fruit does not perform a large number of the advanced level duties that were listed in the OA 3 position posting that she successfully applied for in 1999. Listed duties she does not perform include the following:

- Calculate support arrears;
- Perform audits on calculated support arrearages;
- Evaluate financial data using several computer systems;
- Schedule and reschedule appointments for attorneys;
- Generate various reports from raw data;
- Team leader duties regarding supervision of other staff members within the same classification series.[2]

---

[2] Respondents' Exhibit 1 is the job posting for the position Ms. Fruit now holds. She testified that she has never performed the foregoing duties that are listed in that job posting.

7. On February 26, 2007, Grievant submitted to the Division of Personnel ("DOP"), a Position Description Form[3] ("PDF") listing the duties and responsibilities included in her position and requesting that her position be reallocated to the OA 3 classification. *See* Respondents' Exhibit 2.

8. On July 11, 2007, the Classification and Compensation Section of DOP determined that Grievant's position best fit in the OA 2 classification and denied Grievant's request for reallocation.

9. On July 24, 2007, Grievant appealed the denial of her reallocation request and filed a new PDF ("appeal PDF") in support of that appeal.

10. The only new duty listed in the appeal PDF was that Grievant provided training to new Office Assistants in the Bureau's Raleigh County Regional Office, relating to maintaining and archiving agency files. That training took approximately one and one half days and the new employees occasionally call Grievant with follow-up questions.

11. Twice each month[4] Grievant spends most of one day in the county courthouse performing the following duties:

- Take documents to be filed in court files;
- Check court files for court orders, liens, releases, and abstracts of judgements, related to selected child support cases;
- Make copies of the legal documents found and bring the copies to the office for use by a lawyer or paralegal;

---

[3] The Position Description Form is a document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. 143 C.S.R. 1 § 3.70 (2007).

[4] This activity is sometimes performed more frequently but as a general rule it is done every other week.

12. By memorandum dated September 27, 2007, then Acting Director of DOP, Theresa M. Crouse, denied Grievant's appeal from the decision not to reallocate her position to the OA 3 classification. The reason for the denial of the appeal was that the new responsibilities listed in the appeal PDF were "not significant enough or more difficult and complex than the primary duties of the position." *See* Respondents' Exhibit 4.

13. To determine if reallocation is appropriate, the staff of the DOP Classification and Compensation Section compare the original job duties, as reflected in the original job posting, with the job duties listed in the new PDF, to see if there has been a substantial change in the duties and responsibilities permanently assigned to the position.[5]

14. The duties listed in Grievant's original job posting for the OA 2 classification are substantially the same as the duties listed in her PDF and appeal PDF. The original posting included filing legal documents in the courthouse, but did not include the duties related to identifying and copying court orders, liens, leases and abstracts of judgements. The original job posting did not include training of other staff members.

15. In the PDF submitted in February 2007, the courthouse related work made up ten percent of the duties and responsibilities of the Grievants' position. The remainder of her duties fit into the "full performance" level of clerical tasks set out in the OA 2 classification. In the appeal PDF, the courthouse duties were increased to twenty-five percent of the duties and responsibilities of Grievant's position. The remainder of the duties continued to fit the "full performance" level of clerical tasks set out in the OA 2 classification.

---

[5] *See* 143 C.S.R. 1 § 4.7 (2007).

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). 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). Grievant Hart believes that her position should be reallocated to the OA 3 classification. In support of her reallocation, Grievant points out that she performs exactly the same job as her co-worker who is in the OA 3 classification. Grievant also alleges that her duties constitute advanced clerical tasks that are consistent with the OA 3 classification.

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 Health and Human Resources, 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 she is performing the duties of a classification other than the one to which she is assigned, DOP must determine whether reallocation is appropriate. To qualify for a reallocation, one must demonstrate "a significant change in the kind or level of duties and responsibilities." The performing of a duty not previously done, but identified within the class specification does not require reallocation." *Id; McLaughlin v. W. Va. Dep't of Health & Human*

Res/Bureau for Children and Families and Div of Personnel, Docket No. 07-HHR-369 (Sept. 26, 2008).

The DOP compared Grievant's PDF with the original job posting, which was classified as an OA 2. The nature of the duties are substantially the same, and those that may be new fall within the OA 2 classification. Grievant contends that her duties at the courthouse are new and constitute an advanced level of performance consistent with an OA 3. Grievant characterizes the collection and copying of legal documents from case files as "research." Lowell Basford,[6] a consultant with DOP, testified regarding these duties. Mr. Basford noted that Grievant does not have to make any independent evaluation or analysis of the documents. Rather, she is required to identify them and copy them. This activity does not constitute "research" as that term is used in the classification context. In that professional context, Mr. Basford defined "research" as "applying formal training and standards to data inquiry to guide one to a conclusion from the information."[7] Mr. Basford asserted that the courthouse duties fall within the full performance level of duties within the OA 2 classification and not the advanced level of duties which require "interpretation" and "inherent latitude of action." *See* Respondents' Exhibit 2.

An examination of the appeal PDF demonstrates that there has not been a substantial change in Grievant's duties since she was employed as an OA 2. Seventy

---

[6] Lowell Basford retired from the position of Assistant Director of DOP in charge of their Classification and Compensation Section in 2007. Basford was continuously employed by DOP for thirty-one years, from 1976 through 2007.

[7] This definition is consistent with a standard dictionary definition of "research" which is "diligent and systematic inquiry or investigation into a subject in order to discover or revise facts theories applications, etc." *Dictionary.com Unabridged (v1.1).* Retrieved Feb. 12, 2009, from Dictionary.com website, *http://dictionary.reference.com/browse/research.*

percent of her duties include maintenance of files, processing mail, answering phones, screening calls, maintaining office equipment and supplies, and taking and processing child support payments. These responsibilities fall within the original job posting. *See* Respondents' Exhibit 5. The key to the reallocation analysis is to ascertain whether a grievant's current classification constitutes the "best fit" for the required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, 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). Grievant's predominant duties fall within the OA 2 classification and that is the "best fit" for her position.

Another way for Grievant's position to qualify for an OA 3 classification would be if she were a "lead worker"[8] who directs the work of other employees within her classification series. However, Grievant and Ms. Fruit are the only clerical workers in their section and Grievant does not supervise any employees. Grievant provided a day and a half training to new Office Assistants in the Beckley Office and answers follow-up questions from these individuals from time to time. However, this intermittent and occasional responsibility does not come close to being a predominant duty that would justify a reallocation.

---

[8] The DOP defines "lead worker" as follows:"

> **Lead Work/Lead Worker** - this is a level of work at which an incumbent is assigned the on-going responsibility of scheduling and/or reviewing the work of other co-workers and guiding and training them while performing identical or similar kinds of work. *DOP Glossary of Classification Terms.*

Finally, there is no doubt that Grievant and Ms. Fruit, who is classified as OA 3, are performing the same duties. The testimony in that regard is uncontested. Nevertheless, such comparisons are not controlling in reallocation cases. Classification determinations are not made based upon comparison to other employees, but upon which classification description is the "best fit" for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999); *Garretson* v. *W. Va. Dep't of Health & Human Res. and Div. of Personnel*, Docket No. 07-HHR-397(Oct. 22, 2008). Mr. Basford pointed out that the original job posting for Ms. Fruit's OA 3 position[9] contained a number of advanced responsibilities such as, calculating support arrears, evaluating financial data by using several computer systems, auditing calculated support arrearages, and preparing several reports from raw data. Ms. Fruit and Grievant testified that neither of them performed these duties in their present positions. It was Mr. Basford's opinion that without these advanced duties the positions best fit the OA 2 classification.

The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (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. 458, 655 S.E.2d 204 (2007). DOP's determination that Grievant's position fits better in the

[9] Respondents' Exhibit 1.

OA 2 classification is supported by the evidence. Grievant was unable to prove that DOP's determination was clearly erroneous and the grievance must be denied.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008). 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).

2. To qualify for a reallocation one must demonstrate a significant change in the kind or level of duties and responsibilities. "The performing of a duty not previously done, but identified within the class specification does not require reallocation." *Toney, supra; McLaughlin v. W. Va. Dep't of Health & Human Res/Bureau for Children and Families and Div of Personnel,* Docket No. 07-HHR-369 (Sept. 26, 2008).

3. The key to the reallocation analysis is to ascertain whether a grievant's current classification constitutes the "best fit" for the required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, 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).

4. Grievant did not prove that there was a significant change in the kind or level of her duties nor that the predominant duties of her position fit within the OA 3 classification.

5. The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (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. 458, 655 S.E.2d 204 (2007).

6. Grievant did not prove that DOP's determination that her position best fit in the OA 2 classification was clearly wrong.

Accordingly, the 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: February 19, 2009

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE