THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

AMY RAWLINGS,
Grievant,

v. **Docket No. 2009-1557-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILD SUPPORT ENFORCEMENT and DIVISION OF PERSONNEL,
Respondent.

DECISION

Grievant Amy Rawlings filed a grievance against her employer, Department of Health and Human Resources[1], on December 13, 2009. The statement of grievance reads:

> On March 5, 2009, Request for reconsider of classification decision was denied by Otis Cox. Position description was originally filed in January 2008. Request for copy of documentation that denial was based on, received 4/29/09. Denial was erroneously based on desk audit done in 2000 and recommendations therefrom. Thereafter, positions were reclassified in 2003 resulting in the Child Support Supervisor I and II series. In 2003, my position was made a CSSI. Since that time and as noted on the position description, additional duties have been added to my position. DOP in subsequent emails has maintained that those supervisors who supervise child support technicians are CSSI's and those who supervise child support specialists are CSSII's. However, the class specs for these positions make no such distinction. Further, DOP has clearly failed to consider the additional duties which have been added to my position since the 2003 reclassification.

For relief, the Grievant seeks, "Reclassification to Child Support II or remand to DOP with instructions to properly consider additional duties based on actual class specs."

The Chief Administrator agreed to waive level one and proceed directly to mediation. Mediation was held on September 8, 2009. Upon a timely appeal to level three, a hearing was held at the Grievance Board's Charleston office on January 13, 2010.

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[1]The Division of Personnel was joined at some point as an indispensable party.

Grievant appeared pro se. Respondent Department of Health and Human Resources ("DHHR") was represented by Jennifer Akers, Assistant Attorney General, and Respondent Division of Personnel ("DOP") appeared by its counsel Karen O'Sullivan Thornton, Assistant Attorney General. This case became mature after the hearing, as the parties declined to file proposed findings of fact and conclusions of law.

Synopsis

Grievant asserts that the classification specifications ("class specs") for Child Support Specialist 1 and 2 are incorrect. She argues that DHHR employees assisted in drafting the class specs, and in those drafts Child Support Supervisor 1 supervised work of a technical nature, while Child Support Supervisor 2 supervised employees in the Child Support Specialist and Child Support Technician categories. She avers that when she filed her Position Description Form ("PDF") asking to be reallocated, DOP reviewed it against the incorrect class specs. Had it been compared to the class specs drafted by the DHHR employees, Grievant asserts she would have been entitled to a reallocation.

Respondents assert that DOP is the entity charged with classifying positions. Respondents agree to stipulate that the class spec submitted by DHHR employees is not verbatim what DOP approved and has utilized as the official class spec. Grievant has not met her burden in this matter. Therefore this grievance is DENIED.

Findings of Fact

1. Grievant is employed by DHHR as a Child Support Supervisor 1, and supervises Child Support Technicians.

2. In January 2008, Grievant completed a PDF and submitted it to DOP.

3. After a review of the PDF, DOP decided Grievant was properly classified and notified her of their determination.

4. Upon such notification, Grievant then appealed the denial to Otis Cox, then Director of DOP.

5. On March 5, 2009, Director Cox sent Grievant a letter denying her reconsideration. It stated, "When the Child Support Supervisor 1 and 2 class series was established in 2001 as part of the BCSE [Bureau of Child Support Enforcement] classification study, the Child Support Supervisor 1 was defined for positions supervising CST's [Child Support Technians] ; the Child Support Supervisor 2 level was defined for positions supervising Child Support Specialists."

6. The DOP approved class spec for Child Support Supervisor 1 is:

> **Nature of Work**
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> Under limited supervision, performs full performance supervisory work overseeing a section of employees engaged in technical work requiring advanced training. Work is reviewed by superiors through results produced or information obtained in meetings. Performs analytical assessments of the highest complexity with regard to child support case processing and/or financial data to determine compliance with federal and state legislation and BCSE policy. Responsible for ensuring the accuracy and completeness of subordinate staff's work product. Trains subordinate staff and other staff with respect to changes in federal, state, and BCSE policy concerning case processing and distribution and allocation and guidelines and procedures. Interprets and analyzes relevant policy relating to case processing and to financial distribution and allocation into understandable processes to be incorporated into subordinate staff's procedures. Performs reviews of cases which may be of a sensitive nature. Oversees and directs the work of subordinate staff. Maintains workflow and reviews to ensure the timely delivery and quality customer service to a broad spectrum of BCSE customers. May represent the agency before committees, field offices and to consumers. Researches other agencies' databases to determine accurate data and history for accurate case management for the Bureau. Performs other work as required.

Distinguishing Characteristics

Is distinguished by the complex nature of the work product being reviewed and the level of collateral work assigned to the position. The nature of the work supervised is typically of a more technical nature as opposed to other supervisory titles. Would be a working supervisor performing related work of a more advanced level than those supervised. Assist subordinate staff and managerial staff to resolve complex problems relative to individual case processing and respective financial distribution.

Examples of Work

Plan, organizes, directs and evaluates processes; designs and monitors workflow and operational processes.

Establishes controls, such as quotas and quality assurance procedures, to ensure that work is properly completed and deadlines are met.

Reviews cases to determine priority levels and assigns appropriately.

Reviews completed and/or outgoing audits to determine employee's training needs and act on information accordingly.

Reviews and approves requests for checks to customers (manual and computer generated).

Prepares and maintains records and reports for superiors to document activities and to evaluate the performance of subordinates.

Assesses staff training needs, development and professional growth, and recommends incentives or corrective action, as appropriate.

Train employees in work methods, procedures, and office policies.

Interprets and applies departmental policies and regulations for subordinate staff and others.

Provides input in changes to policy. Interprets and applies departmental policies and regulations for employees.

Evaluates and maintains records for work quality of staff.

Confer with policy coordinators, trainers, managers, directors, General Counsel, and the Commissioner with solving case problems of a complex nature.

Plans and conducts unit meetings and individual staff conferences in order to promote staff development and professional growth.

Monitors, evaluates and assists the technical staff in development of enhanced programming that pertain to the Child Support Enforcement's automated system.

Assists subordinates in overall operations of programs and policies.

Answers questions and solves problems of a complex nature for, and with, subordinates.

Revises work procedures to align with changes in state and federal laws and programs.

Recruits, interviews, hires and trains professional staff, as needed.

Approves attendance reports, leave and travel requests, and work schedules in accordance with personnel policies.

Responds to grievance issues within the mandated time frames.
Performs employee performance appraisals, recommends disciplinary actions and monitors work schedules.

Counsel employees.

Ensures that equipment, supplies and materials are available to complete work.

May act as backup manager in immediate supervisor's absence.

Based on assignment may have daily contact with other entities, such as other state agencies, employers, attorneys, customers, etc.

Knowledge, Skills, and Abilities

Knowledge of federal and state laws relating to child support.

Knowledge of the Bureau for Child Support Enforcement's automated system.

Knowledge of and ability to apply principles and practices of supervision.

Knowledge of office methods, procedures and techniques for technical specialty practice.

Knowledge of child support policies.

Knowledge and ability to perform full-performance work of the unit along with personnel
issues.

Ability to plan, direct, and evaluate the work of employees to analyze information, draw conclusions, find inconsistencies and formulate solutions.

Ability to communicate effectively, orally and in writing.

Ability to establish and maintain effective relationship with directors, managers, employees and other staff.

Ability to make composite detailed reports based on individual reports of subordinates.

7. The DOP approved class spec for Child Support Supervisor 2 is:

Nature of Work

Under limited supervision, performs full performance supervisory work overseeing a local (county) office or over units in the Central Office which supervise Child Support Specialists and other support and clerical staff. Work is reviewed by superiors through results produced or information obtained in meetings. Performs analytical assessments of the highest complexity with regard to child support case processing and/or financial data to determine compliance with federal and state legislation and BCSE policy. Responsible for ensuring the accuracy and completeness of subordinate staff's work product. Trains subordinate staff and other staff with respect to changes in federal, state, and BCSE policy concerning case processing and distribution and allocation and guidelines and procedures. Interprets and analyzes relevant policy relating to case processing and to financial distribution and allocation into understandable processes to be incorporated into subordinate staff's procedures. Performs reviews of cases which may be of a sensitive nature. Oversees and directs the work of subordinate staff. Maintains workflow and reviews to ensure the timely delivery of quality customer service to a broad spectrum of BCSE customers. May represent the agency before committees, field offices and to customers. Researches other agencies' databases to determine accurate data and history for accurate case management for the Bureau. Performs other work as required.

Distinguishing Characteristics

The Child Support Supervisor 2 is for supervisory positions in a local (county) office or over units in the Central Office which supervise Child Support Specialists and other support and clerical staff. Would be a working supervisor performing related work of a more advanced level than those supervised.

Example of Work

Plan, organizes, directs and evaluates processes; designs and monitors workflow and operational processes.

Establishes controls, such as quotas and quality assurance procedures, to ensure that work is properly completed and deadlines are met.

Reviews cases to determine priority levels and assigns appropriately.

Reviews completed and/or outgoing audits to determine employee's training needs and act on information accordingly.

Reviews and approves requests for checks to customers (manual and computer generated).

Prepares and maintains records and reports for superiors to document activities and to evaluate the performance of subordinates.

Assesses staff training needs, development and professional growth, and recommends incentives or corrective action, as appropriate.

Train employees in work methods, procedures, and office policies.

Interprets and applies departmental policies and regulations for subordinate staff and others.

Provides input in changes to policy.

Interprets and applies departmental policies and regulations for employees.

Evaluates and maintains records for work quality of staff.

Assists staff, including supervisory personnel, with completing audits.

Confer with policy coordinators, trainers, managers, directors, General Counsel, and the Commissioner with solving case problems of a complex nature.

Plans and conducts unit meetings and individual staff conferences in order to promote staff development and professional growth.

Monitors, evaluates and assists the technical staff in development of enhanced programming that pertain to the Child Support Enforcement's automated system.

Assists subordinates in overall operations of programs and policies.

Answers questions and solves problems of a complex nature for, and with, subordinates.

Revises work procedures to align with changes in state and federal laws and programs.

Recruits, interviews, hires and trains professional staff, as needed.

Approves attendance reports, leave and travel requests, and work schedules in accordance with personnel policies.

Responds to grievance issues within the mandated time frames.

Performs employee performance appraisals, recommends disciplinary actions and monitors work schedules.

Counsel employees.

Ensures that equipment, supplies and materials are available to complete work.

May act as backup manager in immediate supervisor's absence.

Based on assignment, may have daily contact with other entities, such as other state agencies, employers, attorneys, customers, etc.

Other duties as assigned.

Knowledge, Skills and Abilities

Knowledge of federal and state laws relating to child support.

Knowledge of the Bureau for Child Support Enforcement's automated system.

Knowledge of and ability to apply principles and practices of supervision.

Knowledge of office methods, procedures and techniques for technical specialty practice.

Knowledge of child support policies.

Ability to plan, direct, and evaluate the work of employees to analyze information, draw conclusions, find inconsistencies and formulate solutions.

Ability to communicate effectively, orally and in writing.

Ability to establish and maintain effective relationship with directors, managers, employees and other staff.

Ability to make composite detailed reports based on individual reports of subordinates.

Knowledge and ability to perform full-performance work of the unit along with personnel issues.

8. DHHR employees assisted in developing the class specs for these two positions.

9. The class specs submitted by DHHR employees is not verbatim what DOP adopted as the official class spec.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

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 classification assignments to its employees. *Toney v. W. Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994).

Grievant is asserting that DOP adopted the wrong class specs, and then reviewed her PDF with the incorrect class spec. Grievant provided the undersigned with two class specs for the Child Support Supervisor 1 and 2 that are different from the official class specs. She believes the class specs drafted by DHHR employees which states in the Distinguishing Characteristics section that a Child Support Supervisor 2 could supervise Child Support Specialists, Child Support Technicians, and any other support and clerical staff are the ones DOP should have adopted and used as the official class specs. Had these class specs been adopted and utilized by DOP, Grievant contends she should be reallocated because she supervises Child Support Technicians.

Both DHHR and DOP agreed to stipulate that the class specs submitted by the DHHR employees is not verbatim what DOP has approved and utilized as the official class spec. While DOP did have DHHR employees assist in drafting the class specs, they were not adopted verbatim. This does not invalidate the class specs that were adopted and are utilized by DOP. By statute, DOP has the authority to establish and maintain the classification system. Grievant has not met her burden in this matter. Therefore, this grievance must be DENIED.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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. 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 classification assignments to its employees. *Toney v. W. Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994).

3. Grievant has not met her burden in this matter.

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: March 26, 2010

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Wendy A. Elswick
Administrative Law Judge