WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBERT RAY SUTPHIN, Jr.,
Grievant,

v. **Docket No. 2010-0353-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES and DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant Robert Ray Sutphin, Jr. filed a grievance against his employer, Department of Health and Human Resources ("DHHR"), alleging, "Responsibilities of work assignments were gradually increased and resulted in performing work at an advanced level by providing administrative coordination of a complex technical assistance in a component of a statewide program in its entirety. The duties of assignment have evolved resulting in performance level out of classification for HHR Specialist."

For relief, Grievant seeks, "To have position title to be reclassified to HHR Specialist, Senior."

This grievance was waived to level two by letter dated September 22, 2009. A mediation session was held on November 9, 2009, prior to the mediation, Division of Personnel ("DOP") was joined as an indispensable party. After a timely appeal, a level three hearing was held at the Grievance Board's Charleston office on April 20, 2010. Grievant appeared pro se. Respondent Department of Health and Human Resources (DHHR) was represented by Allen Campbell, Supervising Senior Assistant Attorney General, and Respondent DOP was represented by Karen O'Sullivan Thornton, Assistant Attorney General. This case became mature after the level three hearing, as the parties declined to file proposed findings of fact and conclusions of law.

Synopsis

Grievant asserts that throughout his employment with DHHR additional duties have been added to his position. He avers he has been providing complex technical assistance in a component of a statewide program, and must therefore be reallocated to a Health and Human Resources Specialist Senior.

Respondent DHHR defers to Respondent DOP. Respondent DOP argues Grievant has not demonstrated a substantial change in the duties and responsibilities permanently assigned to the position.

Grievant has not met his burden. This grievance is Denied.

Findings of Fact

1. Grievant is employed by DHHR as a Health and Human Resources Specialist.

2. The classification specifications ("class specs") read:

> **Nature of Work**
> Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based on standards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical area specific to or characteristic of the Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics
The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operational area or a significant segment of a major statewide program or operational area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

Examples of Work
Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.
Interprets laws and regulations governing program or technical area for participants and staff.
Monitors changes in laws and regulations and advises participants and other staff.
Confers with inter- and intra-agency personnel to transact business or discuss information.
Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.
Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.
Represents the program in the area of assignment with the agency and outside entities.
Has contact with federal, state, local program representatives and participants, or technical area personnel.
Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.
May oversee the work of support staff or other specialists in relation to the completion of specific assignments.

Knowledge, Skills and Abilities
Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.
Knowledge of the federal and state regulations, laws and statutes governing program or technical area.
Knowledge of the objective of the program or technical area, its procedures, policies, and guidelines, and its relationship to the rest of the Department and other user entities.
Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.
Ability to represent area of assignment and to provide consultation on program or Department concerns.
Ability to synthesize information and provide interpretation.

Minimum Qualifications/Training:
Graduation from an accredited four-year college or university.

Substitution:
Additional experience as described below may be substituted for the required training on a year-for-year basis.

Experience:
Two years full-time, equivalent part-time paid or volunteer experience in a technical or program area that is related to the area of employment.

Substitution:
Post-graduate education in a field related to the technical or program area may be substituted for the required experience on the basis of fifteen semester hours for one year of experience.

OR

Master's Degree in social work from an accredited social work program in a four-year college or university.
Note: Appointment above the entry rate may be made at 5% for each 6 months of successfully completed work as an intern in a practicum placement with Department of Health and Human Resources for the Master of Social Work degree.

3. The class specs for a Health and Human Resources Specialist, Sr. state:

Nature of Work
Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, a statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi program operations. May consult on highly complex individual situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development

of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides others in developing and utilizing plans and recommends methods of improvement.

Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or delivery of service.

Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long-range work plans.

May lead or supervise professional and support staff.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area its procedures, policies, and guidelines, and its relation ship to the rest of the Department and other user entities.
Ability to plan and coordinate work, plan and project budgeting needs, and organize work and projects.
Ability to analyze situations, problems and information and develop appropriate responses and resolutions.
Ability to communicate well, both orally and in writing.
Ability to assign, direct, and review the work of others.

Minimum Qualifications/Training:
Graduation from an accredited four-year college or university.

Substitution:
Additional experience as described below may be substituted for the required training on a year-for-year basis.

Experience:
Four years full-time, equivalent part-time paid or volunteer experience in a technical or program area that is related to the area of employment.

Substitution:
Post-graduate education in a field related to the technical or program area may be substituted for the required experience on the basis of fifteen semester hours for one year of experience.

4. Grievant completed a Position Description Form ("PDF") on July 6, 2009, requesting to be reallocated to the position of Health and Human Resources Specialist, Sr.

5. In the PDF, Grievant stated that he did the following duties for the stated period of time:

53% administrative oversight and responsibility for planning and operational aspects of all the statistical data for Quality Control for West Virginia. This requires knowledge of the federal and state regulations of this technical area with the ability to analyze situations, and follow-up required to ensure data receipt and deadlines were adhered. Use independent judgement with the primary responsibility for developing standards for evaluation of major complex systems such as compilation ongoing statewide and federal reports for statistical analysis of the WV Works, Food Stamps and Medicaid

Programs through RAPIDS[1] and reporting all information to the director. Assist in development and training of all staff for the Medicaid Pilot Project which includes formal and informal presentations at staff meetings. Report all statistical information to the director and assist with creating the Excel Spreadsheets as well as entering the information into the database.

25% Coordinate Payment Accuracy Committee meetings and participates in interpreting federal regulations and guidelines for staff which provides services and guides others in developing and utilizing plans and recommends methods of improvement and operational changes to facilitate efficient and effective goals. Knowledge of the rules, regulations and policies for both the State and Federal entities and possess all proper manual sections as well as case record information for discussion on finalization of QC cited variances and corrective measures. Has contact with federal, state, and local program representatives to participate to plan and develop rules and procedures of the multi program operations.

12% Processing Medicaid claim information for regular and pilot projects. Print Mobius reports and request claim information from the Bureau for Medical Services. Calculate the Medicaid claim information and enter into the database in order to report the error rate to the director. Compile the raw statistical information, analyze and report findings to the Director for purposes of preparing annual status reports for Management Purposes.

10% Work at full-performance level work in all aspects of electronic document management production, including electronic imaging, indexing and lifetime tracking. Use independent judgment to assure appropriate identification and routing of business documents. Troubleshoots operational problems. Evaluates and resolves equipment problems. Read the images to disc and route to the federal government for review.

6. Grievant does not maintain RAPIDS.

7. Grievant is not responsible for WV Works, Food Stamps, or Medicaid computer programs.

8. Grievant is not in charge of a component of a major state-wide program.

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[1]RAPIDS is the state-wide computer program used by the agency.

9. Grievant does not supervise anyone.

10. By memorandum dated August 24, 2009, DOP determined there had not been a substantial change in Grievant's job duties so as to warrant a change in classification.

11. Grievant did not appeal this decision.

Discussion

Grievant has the burden of proving his 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).

Grievant asserts he should be reallocated to the position of a Health and Human Resources Specialist, Sr. because he took on some additional duties when a co-worker left. Grievant asserts he is overseeing a major state-wide program by imputing and extracting data from various computer systems used by both the state and federal government.

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 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).

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.*

First, Grievant did not demonstrate that his duties had significantly changed. He testified that he accepted additional responsibility and was over a major state-wide program. However, on cross-examination, Grievant acknowledged that he did not maintain any of the computer systems. Instead, Grievant's role is to ensure that data placed in the

computers are correct. Grievant then takes the information entered into RAPIDS and uploads it to WV WORKS and Medicaid.

Debbie Anderson, an employee with the Division of Personnel in their Classification and Compensation section, testified that after reviewing Grievant's PDF it was clear that Grievant was not in charge of a component of a major state-wide program. Instead, Grievant's role was that of quality control, and that did not constitute a state-wide program.

Grievant has not met his burden in this matter, and therefore, this grievance must be DENIED.

Conclusions of Law

1. Grievant has the burden of proving his 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).

2. 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).

3. 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).

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."

5. 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).

6. 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.*

7. Grievant did not meet his 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: September 8, 2010

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Wendy A. Elswick
Administrative Law Judge