THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KIMBERLY Y. SMITH,
Grievant,

v. **DOCKET NO. 2009-1346-DHHR**

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

DECISION

Grievant, Kimberly Y. Smith, filed a grievance against her employer, the Department of Health and Human Resources, on March 23, 2009, alleging she was misclassified as a Child Support Specialist 2. As relief, Grievant sought to be, "[r]eclassified from a Child Support Spec. II to a Child Support Spec. III effective 10/2007. This should include a retroactive pay increase effective 10/2007 as well." The grievance was waived to level two by the level one grievance evaluator on April 2, 2009. A mediation session was held at level two on August 20, 2009, and Grievant appealed to level three on September 4, 2009. A level three hearing was held before the undersigned Administrative Law Judge on March 2, 2010, in Elkins, West Virginia. Grievant represented herself, the Department of Health and Human Resources was represented by Jennifer K. Akers, Assistant Attorney General, 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 April 6, 2010.

Synopsis

Grievant believes she should be classified as a Child Support Specialist 3, because she has a very large caseload, which she has successfully advanced to the enforcement phase, she works complex cases, she has helped out in other counties, and she has participated in on the job training of new employees. The Division of Personnel believes Grievant is properly classified as a Child Support Specialist 2. While Grievant does work on complex cases, she also works on all other types of cases on a regular basis, and performs clerical duties. She has only participated in the training of four individuals during her entire employment period. Grievant did not demonstrate that her duties had changed significantly, so as to warrant reallocation, nor did she demonstrate that the Child Support Specialist 3 classification was a better fit for her duties.

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 Department of Health and Human Resources/Bureau for Child Support Enforcement ("HHR") as a Child Support Specialist 2 ("CSS 2"), in Hardy County. She has been employed by HHR since November 2001.

2. In June 2007, Grievant completed a Position Description Form ("PDF"), and after being signed by Grievant's supervisor, it was submitted to the Division of Personnel ("Personnel") for review. Personnel determined that Grievant was properly classified, and Grievant was advised of this determination in April 2008. Grievant appealed this determination, and her appeal was denied in March 2009.

3. At the time she submitted her PDF Grievant was the only person working in the office to which she was assigned. Shortly after she submitted her PDF, a second person was assigned to the office. Grievant's supervisor is not assigned to the same office as Grievant, and Grievant works independently.

4. Grievant has participated in providing on the job training of four CSS 2's over the course of her employment at HHR. She has also mentored other employees who work in other counties. She does not supervise any employees.

5. Grievant does intake work, takes telephone calls, and works all types of cases, including complex cases.

6. Grievant's PDF describes the general purpose of her job as follows:

> Manage Hardy County BCSE cases. This includes creation of cases in OSCAR and physical files, to review and assess the need for legal action. Also prepared legal referrals to establish a court order or enforce a court order.
>
> Develop relationship with clients to provide timely and courteous services even in hostile situations. To assess each case for information accuracy and possible actions and then closure as needed.
>
> Build and maintain close working relationships with other state and local agencies (IV-A & IV-E). As well as the legal community such as local attorneys and staff, Family Law Master and Circuit & County clerks.

The focus of Grievant's job has not changed.

7. At the time she submitted her PDF Grievant spent 30% of her time on client activities such as interviewing clients, creating cases, and reviewing cases for updates and accuracy, explaining services and procedures to clients, and working with other staff on case management and with staff attorneys and paralegals to prepare and file complaints. She spent 20% of her time on what she described as "legal services," which involved

updating cases and files for possible legal action, preparing complaints and supporting documents for referral to an attorney, locating parties and verifying information, locating and providing court orders, preparing case summaries and summaries for state benefits paid, such as cash assistance and birth expenses, maintaining current addresses on parties, and entering court order data and establishing cash balances and payments. She spent 15% of her time on collection and financial data, which involved reviewing cases to collect support and arrears, maintaining current and verifying case balances, referring cases for financial review and adjustment, working with other state agencies to credit absent parents for payments made, and verifying interest due. She spent another 15% of her time performing clerical/administrative duties, 10% of her time training other employees, attending training, and assisting co-workers, 5% of her time in activities related to enforcement of payments, and 5% of her time working with agencies in other states on enforcement and answering customer questions.

8. The record does not reflect that Grievant's job duties changed from the time she became classified as a CSS 2 until the time she completed the PDF, except that she now handles complex cases which she did not handle when she was first employed by HHR. Since she submitted her PDF, Grievant's duties have not changed, but the time she spends performing those duties she described as legal services has increased by almost 10%, the time she spends on case management and enforcement has increased by almost 10%, and, because the county has added a new employee, she has been spending more time in training and less time performing clerical and administrative duties.

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).

Grievant believes that she should be classified as a CSS 3, rather than a CSS 2, because she has participated in training co-workers, she mentors co-workers, she has been assigned to work cases in other counties, she works independently on a large number of cases, and is able to complete all requirements of her job, and she works on complex cases. Personnel believes Grievant is properly classified, and that reallocation of her position would not be appropriate because there has not been a significant change in Grievant's duties.

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.*

First, Grievant did not demonstrate that her duties had changed significantly from the time she was first classified as a CSS 2 until the time she submitted the PDF. Her testimony was that she now handles complex cases, in addition to her other workload, which she did not handle when she was first employed by HHR. Since the time she submitted the PDF, her duties have remained the same, but the time she has spent performing certain duties has changed. These changes, however, were small, and the focus of her job has not changed. Grievant has not met her burden of demonstrating a significant change in her duties as is required for her position to be reallocated.

The relevant portions of the classification specifications at issue follow.

CHILD SUPPORT SPECIALIST 2

Nature of Work

Under limited supervision, performs full-performance level case management work in child support enforcement. Manages a full caseload in providing services of the Bureau for Child Support Enforcement. Performs related work as required.

Distinguishing Characteristics
Under limited supervision, provides full-performance child support services. Employees assigned to positions at this level will have more independence of action and will have successfully completed a one-year probationary period as a Child Support Specialist 1. The Child Support Specialist 2 will interact with a variety of professional practitioners in the legal community, as well as other agencies. The Child Support Specialist 2 is distinguished from the Child Support Specialist 3 by the complexity of assignments.

Examples of Work
Has the knowledge and abilities to manage a caseload in the area of child support enforcement. Familiar with agency policy and state and federal law.
Locates parents, assets, and sources of income.
Calculates the child support formula.
Attends hearings to assist legal staff or give testimony regarding specific cases.
Completes application for services, explains policy as it relates to cases.
Researches legal sources such as statutes, court opinions, rules and regulations.
Drafts complaints and other legal documents for use by the BCSE Attorney.
May direct clerical personnel in the preparation of legal documents for BCSE Attorney.
Compiles case information by reviewing public documents, interviewing customers or gathering information from other agencies.
Prepares and maintains case files for the BCSE Attorney.
Prepares summaries and reports, as needed.
Evaluates cases to determine appropriate legal and administrative actions to recommend to the BCSE Attorney, in compliance with state and federal laws.
Handles routine and moderately difficult customer service inquiries.
Composes routine correspondence and assists supervisors with complex correspondence.
Maintains interviewing techniques and skills.
Maintains confidentiality of information.

CHILD SUPPORT SPECIALIST 3

Nature of Work
Under limited supervision, performs advanced level case management work in child support enforcement. Employees at this level perform advanced level work as a lead worker in the regional offices with the highest difficulty and complex cases such as interstate, foster care, and disputed paternity, and unusually sensitive or complex cases and for lead worker positions in the above Central Office Units with subordinate Child Support Specialist I and II positions. Will mentor and train other Child Support Specialists and be a back-up to the supervisor when they are out of the office. Performs related work as required.

Distinguishing Characteristics
Employees in this classification will have previously served as a Child Support Specialist 1 and 2. Under limited supervision, a Child Support Specialist 3 provides advanced level child support services. Employees assigned to positions at this level will have greater independence of action. Interacts with a variety of professional practitioners in the legal

community, as well as other agencies. Must be able to assess the customer's needs and the posture of the case and determine appropriate course of action. Performs advanced level work with the highest difficulty and complex cases such as interstate, foster care, and disputed paternity. Will serve as a lead worker and will mentor and train other Child Support Specialist and be a back-up to the supervisor when they are out of the office.

Examples of Work
Has the knowledge and abilities to manage a caseload in the area of child support enforcement.
Familiar with agency policy and state and federal law.
Locates parents, assets, and sources of income.
Calculates the child support formula.
Attends hearings to assist legal staff or give testimony regarding specific cases.
Completes application for services, explains policy as it relates to cases.
Researches legal sources such as statutes, court opinions, rules and regulations.
Drafts complaints and other legal documents for use by the BCSE Attorney.
May direct clerical personnel in the preparation of legal documents for BCSE Attorney.
Compiles case information by reviewing public documents, interviewing customers or gathering information from other agencies.
Prepares and maintains case files for the BCSE Attorney.
Prepares summaries and reports, as needed.
Evaluates cases to determine appropriate legal and administrative actions to recommend to the BCSE Attorney, in compliance with state and federal laws.
Handles customer service inquiries of all levels of difficulty.
Composes correspondence of all levels of complexity.
Assists BCSE Attorney with complex litigation.
Maintains interviewing techniques and skills.
Maintains confidentiality of information.
Mentors/trains Child Support Specialist I and II.
Participates in regional or statewide projects.
Demonstrates advanced ability to master the technical aspects of the Child Support Enforcements automated system.
Engages in community outreach.
May serve as a back-up for the supervisor.

Debbie Anderson, an employee in Personnel's Classification and Compensation Section, explained that Personnel intended that those classified as CSS 3's would be lead workers in regional offices and central offices, who trained and mentored other employees, and acted as the back-up supervisor on a regular and recurring basis. Ms. Anderson pointed out that Grievant has assisted in on the job training of only four co-workers over

the entire course of her career. She also testified that Personnel intended for those in this classification to have as their predominant case assignment complex cases, such as foster care, dispute and paternity cases, and other such unusually sensitive and highly complex cases. Ms. Anderson did not dispute that Grievant does indeed handle these types of cases, but pointed out that Grievant also handles many other cases which are not complex, and she also performs clerical duties. Grievant argued that the classification specification does not state that the CSS 3 only performs advanced level work, and that this interpretation is contradicted by the examples of work.

As with many classification grievances, it is understandable that Grievant would read the classification specification for a CSS 3 and believe that she performs that job. However, classification is not just a matter of reading listed duties in a classification specification and matching them to certain duties an individual performs. Classification is a specialty area. It involves a knowledge of the entire classification system, and how the different classifications fit together. Those who are classification specialists with the Division of Personnel have a unique understanding of this specialty area, and their interpretation and explanation of the classification specifications is therefore entitled to great weight. While Grievant does indeed perform duties which are listed in the CSS 3 classification specification, this does not mean that she is misclassified as a CSS 2. The undersigned cannot find that Personnel's interpretation of the classification specifications for the CSS 2 and the CSS 3 are clearly wrong. In fact, contrary to Grievant's assertions, it is clear from the Nature of Work and Distinguishing Characteristics sections of the classification specification for the CSS 3 that this classification is indeed intended for those individuals whose primary role is to perform advanced level work. While Grievant performs

some advanced level work, and apparently is quite a capable employee, she also handles cases on a routine basis which cannot be characterized as difficult or complex, because it is her role to handle any case which comes in. Grievant has not demonstrated that the CSS 3 classification is a better fit for her duties.

Finally, Grievant argued that Personnel did not demonstrate that "employees currently classified as Child Support Specialist IIIs met the specification for said classification." The burden of proof in this grievance is on the Grievant, not Personnel. Further, "as has been recognized by the West Virginia Supreme Court of Appeals, when determining whether or not an employee is correctly classified, it is *not* appropriate to look at duties performed by other employees, due to the possibility that the comparative employees may themselves be misclassified. *See Akers and Boggs v. Dep't of Tax and Rev.,* 194 W. Va. 456, 460 S.E.2d 702 (1995)." *Butler, et al., v. Div. of Corrections and Div. of Personnel*, Docket No. 07-CORR-314 (July 9, 2008). "Classification determinations are not made based upon comparison to other employees, but upon which classification specification is the best fit for that employee's duties. *See Akers and Boggs v. Dep't of Tax and Rev.,* 194 W. Va. 456, 460 S.E.2d 702 (1995); *Baldwin v. Dep't of Health and Human Res.*, Docket No. 99-HHR-142 (Oct. 28, 1999)." *Id.*

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. The Child Support Specialist 3 classification is not a better fit for Grievant's duties than the Child Support Specialist 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: August 12, 2010