

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**NANCY R. WOODFORD,
Grievant,**

v.

Docket No. 2018-0141-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL, and
DIVISION OF PERSONNEL,
Respondents.**

DECISION

Grievant, Nancy R. Woodford, an employee of the Department of Health and Human Resources, William R. Sharpe, Jr. Hospital, filed this action on or about July 24, 2017. The Statement of Grievance stated "Improper Classification - working in Class of Medical Records Assistant. Please see attached (2)." There were two pages attached to the grievance form which are a part of the record. As relief, Grievant seeks "Proper classification to Medical Records Assistant (9050) based on years experience with medical records and tenure the same, and being hired (04-16-92) before classification being revised 03-20-1993 to require certification. Please see attached (2)."

The grievance was waived at Level One of the process on August 7, 2017. Grievant appealed to Level Two on or about August 8, 2017. An Order was entered on August 16, 2017, joining the Division of Personnel as an indispensable party. On or about November 6, 2017, Grievant submitted a revised Level Two grievance form with the Statement of Grievance reading: "revision of Grievance dated 07-24-17 due to reclassification/reallocation to Data Entry Operator 2 owing to Word Processor being

abolished and working out of class.” The relief sought read: “Create New Job Description Medical Transcriptionist in Classification and Compensation Plan to entail duties and responsibilities performed commensurate with salary range and pay grade.” The matter came on for a Level Two mediation session on December 6, 2017.

Grievant appealed to Level Three on or about December 6, 2017. Grievant again amended her relief sought with the following: “In addition to Create a New Job Description of Medical Transcriptionist in Classification and Compensation Plan to entail duties and responsibilities performed commensurate with salary range and pay grade, I am requesting an additional 11% PAY INCREASE due to being reallocated/reclassified to Data Entry Operator 2 PG (8) effective 10-14-17 from a Word Processor PG (5), a (3) pay grade increase. I received a 7% INCREASE effective 12-09-17.”

A Level Three hearing was conducted before the undersigned on May 4, 2018, in Westover, West Virginia. Grievant appeared in person and by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. The Department of Health and Human Resources appeared by its counsel, Brandolyn N. Felton-Ernest, Assistant Attorney General. The Division of Personnel appeared by its counsel, Karen O’Sullivan Thornton, Assistant Attorney General. This matter became mature for consideration upon the receipt of the last of the parties’ fact/law proposals on June 26, 2018.

Synopsis

Grievant, holding the classification of Data Entry Operator 2, argues she should be classified as a Medical Transcriptionist, because there is no such classification, she contends that the Division of Personnel should create such classification. She argues in the alternative that she be reallocated as a Medical Records Assistant. Respondents

argue that the standard of review is one of abuse of discretion and the discretion of whether to create a certain classification is broad. In addition, Grievant has not shown by a preponderance of the evidence that her duties and responsibilities fall more closely within the Medical Records Assistant classification than the Data Entry Operator 2. For reasons more fully set out below, this grievance is denied.

The following Findings of Fact are based upon the record of the case.

Findings of Fact

1. Grievant was employed by the Department of Health and Human Resources in a position classified as a Word Processor at the time she filed her grievance on or about July 24, 2017.

2. Grievant originally filed a grievance challenging the classification of the position she occupies on March 30, 2016; however, she did not pursue that grievance beyond Level Two.

3. Grievant originally completed a Position Description Form on August 11, 2015. Based upon a review of the Position Description Form, the Division of Personnel determined the position occupied by Grievant was properly allocated to the Word Processor classification.

4. Grievant appealed the Division of Personnel classification determination on February 17, 2016, and her appeal included a second Position Description Form. By letter dated March 21, 2016, the Division of Personnel affirmed the original classification on the first Position Description Form by another determination on the second Position Description Form.

5. On July 28, 2016, the Division of Personnel conducted a job audit of the

position occupied by Grievant. By letter dated August 30, 2016, the Division of Personnel again determined that the position occupied by Grievant was appropriately classified as a Word Processor.

6. In an effort to resolve the original grievance, the Division of Personnel conducted national research regarding government classified positions with similar job duties to those assigned to the position occupied by Grievant. The Division of Personnel worked closely with the Department of Health and Human Resources and other agencies in an effort to address the concern Grievant had with regard to the classification of the position she occupied.

7. A result of the efforts made by the Division of Personnel, a proposal was submitted to the State Personnel Board in August of 2017 seeking to abolish the Word Processor classification and to reclassify the position to the classification of Data Entry Operator 2. There were only three positions in all of State government assigned to the Word Processor classification and all were within the Department of Health and Human Resources.

8. As there is not a corresponding increase to an employee's salary upon a reclassification unless the employee is paid below the minimum of the new paygrade assigned to the classification, the Division of Personnel encouraged the Department of Health and Human Resources to implement the reclassification with a special plan of implementation that would have allowed that employee to receive a salary increase. Nevertheless, the Department of Health and Human Resources requested that there be no special plan of implementation for the reclassification.

9. The State Personnel Board approved the reclassification proposal with no special plan of implementation on September 28, 2017, with an effective date of October 14, 2017. The Department of Health and Human Resources was notified of the proposal's approval by letter from the Division of Personnel on September 29, 2017.

10. Toward the end of October 2017, the Department of Health and Human Resources requested that the State Personnel Board reclassification proposal have a 7% special plan of implementation. Delaying the reclassification of the positions caused no harm to Grievant, as based on the original reclassification her salary would not have changed.

11. Grievant appealed the State Personnel Board reclassification of the Word Processor positions. By letter dated October 31, 2017, the Division of Personnel responded to Grievant's appeal explaining that the action to reclassify the position she occupies would occur based on the State Personnel Board action.

12. At its November 16, 2017 meeting, the State Personnel Board approved the modification to the original reclassification proposal and provided for a 7% special plan of implementation to be effective December 9, 2017. The Department of Health and Human Resources was notified of the State Personnel Board's action by correspondence from the Division of Personnel dated November 17, 2017.

13. The position Grievant occupies was reclassified from the classification of Word Processor to the classification of Data Entry Operator 2, with a 7% special plan of implementation, effective December 9, 2017.

14. A third Position Description Form was submitted by Grievant on December 14, 2017. The Position Description Form was returned to the Department of Health and

Human Resources because it was not complete. The Position Description Form was completed and returned to the Division of Personnel on December 18, 2017.

15. Based upon a review of the Position Description Form, which presented no changes in the duties assigned to the position, as well as consideration of the prior Position Description Form and previous job audit, the Division of Personnel determined that the position was properly allocated to Data Entry Operator 2 and notified the parties of such by correspondence dated January 8, 2018.

16. On January 19, 2018, Grievant appealed this determination of the Division of Personnel. By correspondence dated January 30, 2018, the Division of Personnel responded to Grievant's appeal explaining that as no new additional information had been provided by Grievant, the Division of Personnel affirmed the classification of the position as a Data Entry Operator 2.

17. On February 5, 2018, Grievant appealed the Division of Personnel's determination of her request for reconsideration of the classification determination. The Division of Personnel responded to Grievant on February 6, 2018, informing her that there were no further avenues in law, rule or policy to continue appealing the classification determination.

18. The Medical Records Assistant class specification reads in pertinent part as follows:

Nature of Work

Under general supervision, performs paraprofessional work at the full performance level in the maintenance of medical records in a state health care facility. Responsible for the upkeep and condition of patient files, including typing, indexing, coding and filing. Compiles medical care census data. May supervise staff in the medical records unit in a

small facility. May work nights, evenings, weekends and/or holidays. Performs related work as required.

Examples of Work

Codes and indexes patient files. Analyzes patient records to assure all information is included and in proper format. Files information related to patient charts and files, in compliance with federal, state and professional standards. Compiles statistical reports which may include: outpatient, inpatient and facility activity, deaths, longterm care, substance abuse, Medicaid, Medicare and other related reports. Types labels, creates file folders, forms and related correspondence; composes correspondence concerning information contained in medical records. Purges files when necessary. Decides if all files are complete and accurate. Returns files to appropriate person for changes when necessary. Uses patient charts to complete questionnaires and various reports. May bill Medicare, Medicaid and other accounts appropriately.

Minimum Qualifications

Training: Graduation from a standard high school.

Experience: Two (2) years of clerical experience working with medical records, including coding, filing and/or indexing medical records in a hospital or health-related setting.

Substitution: Successful completion of study from an accredited college or university in medical coding, health services administration, or related business or vocational school training may be substituted for the required experience.

Note: State hospitals accredited by national or regional accreditation boards require certification as a Registered Health Information Technician (RHIT) from the American Health Information Management Association (AHIMA) which was formerly the Accredited Records Technician (ART) certification by the American Medical Records Association (AMRA).

19. Grievant does not perform the duties of a Medical Records Assistant nor does she meet the minimum qualifications of the classification as she has not obtained any of the listed certifications.

20. The Data Entry Operator 2 class specification reads in pertinent part:

Nature of Work

Under direct supervision, at the full performance level, rapidly and accurately transcribes dictation or alpha/numeric data from routine, complex, or rough source documents into computer usable form by operating various types of computer systems.

Performs complex assignments such as transcribing information that is either read aloud or recorded into a usable format, entering detailed budgets and pay plans or data which deviates from a standard procedure according to changes in coded information. Accessing and manipulating the data is normally not required. Shift work may be necessary. Performs related work as required.

Distinguishing Characteristics

Both Data Entry Operator 1 and 2 are production-intensive classes using multiple formats as guidelines for proper entry of the data. The work requires repetitive and sustained high speed operation of data entry devices, sitting for long periods of time at fixed posture, handling confidential information and working in a production environment under demanding time constraints. Data Entry Operator 2 is distinguished from Data Entry Operator 1 by the performance of the employee when evaluated against several criteria such as strokes per hour, error rate, independently developing low-level format programs for new jobs and familiarity with multiple screens; the source documents are also considered in the evaluation.

Examples of Work

Types correspondence, reports, text and other written material from rough drafts, corrected copies, voice recordings, dictation, etc. Enters posts, verifies, proofs and/or edits data or information into a computer system, log, ledger or database. Transcribes dictation for a variety of reports. Enters routine to complex data into various types of computer systems. Follows procedures and established guidelines such as formats for entering data and/or dictation. Develops and maintains low-level format programs for new jobs. Posts to batch ticket or production log such information as the batch type, quantity, operator's name and section, data, number processed, number rejected, etc. after entering data. Verifies data entered by other operators using various types of computer systems. May identify errors on the source documents and make necessary corrections.

21. The record supports a finding that Grievant's predominant duties are to retrieve and transcribe initial probable cause, and court ordered psychiatric evaluations upon admission to assure appropriate plan and treatment for patients. Grievant retrieves and transcribes dictated physicians' and psychologists' assessments for Final Commitment Hearings. Grievant also has other limited duties that fall within the Data Entry Operator 2

classification specification. Grievant does not possess certification as a Registered Health Information Technician from the American Health Information Management Association.

22. The Data Entry Operator 2 class specification was revised to include the duties performed by the positions that were classified as Word Processors. This included the work performed by the position occupied by Grievant. The revision allowed the State Personnel Board to reclassify the position occupied by Grievant from the classification of Word Processor to the classification of Data Entry Operator 2.

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).

In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one

in which her position is currently classified. See *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

When an employee requests reclassification or reallocation, the Division of Personnel normally makes its classification determination based on the Position Description Form completed by the employee. Classification is a highly technical matter, based on carefully drafted class specifications and a complex pay plan, using terms of art to describe duties and job types defined by the Division of Personnel. To do this the Division of Personnel fits positions into specifications based on a lengthy technical document, the aforementioned Position Description Form. This document is completed by a person the Division of Personnel invariably points out has no training or expertise whatsoever in the arcane field of classifying jobs. In some instances, the Division of Personnel conducts a desk audit of the position. Therefore, while the Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous, the Division of Personnel's interpretation of what the employee is trying to communicate with the Position Description Form does not carry that weight. See *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

Division of Personnel 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 Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

Grievant seeks to have a new class specification titled Medical Transcriptionist created for the State of West Virginia Classification Plan. Additionally, Grievant argues that within the current Classification Plan, the Medical Records Assistant classification is the best fit for the duties she performs.

The Division of Personnel asserts that it is the State Personnel Board possessing the sole authority to create new classifications within the Classification Plan.¹ Additionally, there is no need for the creation of a new title as revisions were made to the current title of Data Entry Operator 2 to include the job duties and responsibilities performed by the position that Grievant occupies. The Division of Personnel also asserts that not only does Grievant not perform the duties of a Medical Records Assistant, neither does she meet the minimum qualifications of that classification.

Grievant was in a position classified as a Word Processor up and until the State Personnel Board reclassified her position effective December 9, 2017. Over the past two years, Grievant has requested to have the classification of the position she occupies changed from a Word Processor to either a Medical Records Assistant or to a Medical Transcriptionist. In an effort to address Grievant's concerns, the Division of Personnel

¹The authority to reclassify positions in the classified service and to create new classifications for the State Classification Plan lies not with the Department of Health and Human Resources nor the Division of Personnel; rather, that authority lies solely with the State Personnel Board. As "grievance" does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer, the Grievance Board does not have the jurisdiction and lacks the authority to order the State Personnel Board to reclassify positions or to create new classifications.

conducted national classification research regarding government positions with similar job duties to those assigned to the position occupied by Grievant. The Division of Personnel worked with the Department of Health and Human Resources and other State agencies. As a result of those efforts, the Division of Personnel submitted a proposal to the State Personnel Board in August of 2017, seeking to abolish the Word Processor classification and to reclassify the positions to the classification of Data Entry Operator 2.

The record of this case also reflects that the Division of Personnel encouraged the Department of Health and Human Resources to implement the reclassification with a special plan of implementation that would have allowed for a salary increase. In spite of the Division of Personnel's suggestion, the Department of Health and Human Resources requested that there be no special plan of implementation for the reclassification. Later, at its November 16, 2017 meeting, the State Personnel Board approved a modification to the original reclassification providing for a 7% special plan of implementation to be effective December 9, 2017.

Concerning Grievant's allegation that the class specification that was the best fit for the position she occupies is the Medical Records Assistant classification, the record supports a finding that Grievant's Position Description Forms indicate that she does not perform the work expected of that classification. In addition to not performing the duties of a Medical Records Assistant, it is undisputed that Grievant does not meet the minimum qualifications of the classification, as she has not achieved any of the required certifications.

Prior to the actions taken by the State Personnel Board in September and November of 2017, the position occupied by Grievant was allocated to the Word Processor

classification and that classification was deemed the best fit for the job duties performed by Grievant. Since the actions taken by the State Personnel Board to abolish the Word Processor classification and to reclassify to Data Entry Operator 2, the position now occupied by Grievant is now allocated to the Data Entry Operator 2 classification and that classification is the best fit within the State Classification Plan for the job duties performed by Grievant.

Finally, employees have a substantial obstacle to overcome when contesting their classification, as the Grievance Board's review is supposed to be limited to determining whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of DOP. *Moore v. W. Va. Dep't of Health & Human Resources*, Docket No. 94-HHR-126 (Aug. 26, 1994); *Celestine v. State Police*, Docket No. 2009-0256-MAPS (May 4, 2009); *Logsdon v. Div. of Highways*, Docket No. 2008-1159-DOT (Feb. 23, 2009). Rather, the role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989); *Logsdon, supra*. The undersigned cannot make a finding based upon this record that the Division of Personnel's actions taken in this case can be viewed as arbitrary and capricious or an abuse of discretion.

The following Conclusions of Law support the decision reached.

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).

2. In a misclassification grievance, the Grievant must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one in which her position is currently classified. See *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

3. Employees have a substantial obstacle to overcome when contesting their classification, as the Grievance Board's review is supposed to be limited to determining whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. The Grievance Board's role is not to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, or to substitute its judgment in place of the Division of Personnel. *Moore v. W. Va. Dep't of Health & Human Resources*, Docket No. 94-HHR-126 (Aug. 26, 1994); *Celestine v. State Police*, Docket No. 2009-0256-MAPS (May 4, 2009); *Logsdon v. Div. of Highways*, Docket No. 2008-1159-DOT (Feb. 23, 2009). Rather, the role of the Grievance Board is to review the

information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989); *Logsdon, supra*.

5. Division of Personnel 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 Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

6. Grievant has not shown by a preponderance of the evidence that her duties and responsibilities fall more closely within the Medical Records Assistant classification than the Data Entry Operator 2 classification. It is also undisputed that Grievant does not meet the minimum qualifications of the classification, as she has not achieved any of the required certifications.

7. Grievant failed to establish by a preponderance of the evidence that the Division of Personnel abused its discretion in not seeking the creation of a Medical Transcriptionist classification. The record of this case does not support a finding that the Division of Personnel’s actions taken in this case can be viewed as arbitrary and capricious or an abuse of discretion.

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: July 18, 2018

**Ronald L. Reece
Administrative Law Judge**