TINA M. HUNT

v. **Docket No. 94-HHR-040**

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/OFFICE OF OPERATIONS

and DIVISION OF PERSONNEL

D E C I S I O N

Ms. Tina Hunt, Grievant, is a classified employee with the Office of Operations within the Department of Health and Human Resources. She disagrees with her reclassification from a Typist to a Office Assistant I ("OA I") (See footnote 1) and requests the "title and pay of an Office Assistant III ("OA III")." In a lengthy statement of grievance, the Grievant detailed her work and concluded the OA III classification was "more accurate with my job function." This grievance was waived at Levels I and II and denied at Level III. A Level IV hearing (See footnote 2) was held on July 15, 1994 and this case became mature for decision on August 3, 1994.

Grievant's working title is Typist/Income Maintenance and Negotiables Clerk. She works in a satellite office in Danville, West Virginia in Boone County. There are four Office Assistants in the office with one OA III, Ms. Sharon Belcher, serving as the terminal operator and lead worker. Ms. Belcher is in charge of the office and her duties include interacting with the landlord, supervising workers, and maintaining security, as well as other duties. Because this is a small office, the Office Assistants must frequently back one another up when employees are absent. Grievant is Ms. Belcher's first backup.

The pertinent sections of the class specifications at issue are reprinted below:

OFFICE ASSISTANT I

Nature of Work

Under close supervision, performs entry level work in a variety of routine clerical tasks within prescribed procedures and guidelines. Performs related work as required.

Distinguishing Characteristics

Performs routine clerical tasks as a predominant portion of the job. Tasks may include sorting and filing documents, typing routine forms and labels, sorting and distributing mail. May enter data using a video displayterminal and make inquiries into the system; data work is limited to a few simple applications.

At this level, the predominant tasks are of a routine nature with well-structured directives for completing the work. Work is learned through repetition and requires ability to learn the steps in the series of related tasks, which are typically a part of a broader work function. Work is reviewed for completeness and accuracy or provides an inherent system of checks. Contacts are typically informational; position is limited in authority for independent action.

Examples of Work

Sorts and files documents numerically, alphabetically or according to other predetermined classification criteria; pulls material from files upon request.

Types routine correspondence, forms, and labels.

Operates office equipment such as adding machines, electrical calculating or copying machine or other machines requiring no special previous training.

Answers telephone; takes messages; routes calls; answers general information questions.

Receives, sorts and distributes incoming and outgoing mail and performs messenger work.

Inventories, stocks and distributes office supplies.

Counts, collates, codes, sorts, staples and inserts forms in envelopes.

Posts information to log or ledger for record-keeping purposes.

Collects, receipts, counts and deposits money.

May record and maintain time/attendance records for unit or section.

May enter data into a video display terminal; may make inquiries into the system; may run a mailing list.

May microfilm documents for record maintenance.

OFFICE ASSISTANT III

Nature of Work:

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics:

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policyto a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

Grievant makes several arguments to support her request for reclassification to an OA III. First, she states her duties with negotiables are complex and require her to analyze and interpret guidelines and to perform research. Second, she states she has in the past, and continues to this date, to perform effectively and efficiently the duties of the lead worker in her absence. Third, the Grievant argues that since she performs the duties of a leadworker in her own area as well as backup for Ms. Belcher she should be classified as an OA III. Fourth and last, Grievant argues an agency should be allowed to have more than one OA III in an office.

Grievant and her supervisor testified Grievant works under general, not close, supervision. Grievant is a competent and highly regarded employee with fourteen years of experience. It is clear her employer trusts her to complete her work without constant checking.

According to the Grievant's Position Description Form, completed on January 3, 1994, she spends approximately fifty percent of her time dealing with negotiables and maintenance income information, processing mail, and typing. The activities involved with negotiables and income maintenance are directed and controlled by a negotiables manual and do not require interpretation and application of office procedures. The research Grievant referred to actually consisted of reviewing files to ascertain what a specific check was for and where it should be placed. This does not appear to be the type of research referred to by the OA III position description when it refers to research to gather data for information and statistics. Grievant testified her typing consists mainly of routine forms she has inputted into her machine. She then adds the necessary data for completion.

Approximately twenty-five percent of Grievant's time is spent backing up the receptionist. The final portion of Grievant's time is spent backing up the terminal operator who also serves as a lead worker. Because this Position Description Form was based only onthe month of December, these latter two percentages appear to be inflated when correlated with the other testimony. Grievant stated that the month she based her calculations on was not representative of a typical month. This interpretation was supported by the testimony of her supervisor who stated, "In my opinion, her main job function is income maintenance clerk, negotiables, designated person for negotiables and also as typist." Level III Trans. at 39.

Mr. Basford refuted each of the Grievant's arguments and testimony. He testified the

Grievant's duties were not complex, but were controlled by agency rules, regulations, and policy manuals. Further, since backing up the lead worker was not a predominant portion of her duties this activity would not be class controlling. Mr. Basford also stated that within a small group of four office assistants, only one lead worker is needed, and that person was classified, after discussion with the agency, as an OA III.

The tasks Grievant routinely performs are not of an advanced and complex level and do not involve interpretation and application of policies and practices. Grievant's work is directed by previously identified rules, regulations and policies. She clearly does not routinely communicate agency policy to a wide variety of people as required by the OA III's position description form.

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closelymatched another cited Personnel classification specification than that under which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). 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. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993).

Under the foregoing legal analysis, the West Virginia Supreme Court holding in Blankenship presents employees contesting their classification with a substantial obstacle to overcome when they attempt to establish they are misclassified. Grievant diddemonstrate that

she performed some tasks above the entry level of OA I, but she failed to present sufficient evidence to demonstrate that the OA III was a "best fit" for her required duties. Additionally, since the predominant duties are class-controlling, the fact that Grievant occasionally performs tasks outside her written job description does not elevate her position to an OA III. Broaddus, supra.

Finding of Fact

Grievant functions under general supervision, as a negotiables clerk, income maintenance clerk, and a typist. Her predominant duties are processing negotiables, typing routine letters, and processing outgoing mail. She occasionally serves as a backup to the terminal operator, who is the lead worker, and the receptionist.

Conclusion of Law

Grievant has not demonstrated by a preponderance of the evidence that she is misclassified or the position of OA III is the "best fit" for her normal duties.

Accordingly, this grievance is DENIED.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 21, 1994

Footnote: 1*At the Level IV hearing, Mr. Lowell Basford, Assistant Director of Compensation and Classification*

with the Division of Personnel, advised the Grievant that certain changes were being discussed in the Office Assistant class series, and that she might wish to continue her grievance until this process was completed. He opined she would probably be reclassified as an Office Assistant II but it was doubtful she would be reclassified as an Office Assistant III because she was not the lead worker in her office. Grievant elected to continue with her grievance stating she was not interested in the Office Assistant II classification.

Footnote: 2In reading her Level IV opening statement, the Grievant for the first time, brought up the issue of discrimination, saying Division of Personnel had discriminated against the Office Assistant class. Both the Department of Health and Human Resources and Division of Personnel objected to the introduction of this grievable issue at Level IV. This objection was sustained and the issue was not considered in this decision. See W. Va. Dept. of Health and Human Resources v. Hess, 189 W. Va. 357 (1993).