**JOHN R. BROWN, .**

**.**

**Grievant, .**

**.**

**v. . DOCKET NO. 94-HHR-178**

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**WEST VIRGINIA DEPARTMENT OF .**

**HEALTH AND HUMAN RESOURCES AND .**

**DEPARTMENT OF ADMINISTRATION/ .**

**DIVISION OF PERSONNEL, .**

**.**

**Respondents. .**

## D E C I S I O N

This is a grievance by John R. Brown (Grievant), an employee of the Respondent Department of Health and Human Resources (DHHR), challenging his classification as a "Sanitarian, Chief" by the Respondent Division of Personnel (DOP). The Grievant contends he should be properly classified as a "Health and Human Resources Program Manager I." (See footnote 1) This grievance was initiated on July 21, 1993. As Grievant's superiors at Levels I and II were unable to grant the relief requested, the grievance was waived to Level III where an evidentiary hearing was conducted on April 8, 1994. Thereafter, a written decision denying the grievance was issued on May 2, 1994. R Ex 1. Grievant submitted a timely appeal to LevelIV where, pursuant to Rule 4.11 of the Procedural Rules of the West Virginia Education and State Employees Grievance Board, DOP was joined as an indispensable party by Order dated May 27, 1994. Thereafter, a hearing was conducted in this Board's Charleston office on July 13, 1994. Upon receipt of post-hearing documentation, as agreed at the conclusion of the hearing, this matter became mature for decision on July 19, 1994.

### Background

Very few facts in this case are in dispute. Grievant is employed by DHHR's Bureau of Public

Health in the Environmental Engineering Division of the Office of Environmental Health Services (OEHS). According to official documents admitted at Level III, OEHS has broad responsibility including "developing, administering and implementing a statewide comprehensive environmental health program that is designed to provide services for the health and well-being of the citizens of West Virginia in the home, workplace and community at large."

Within the Environmental Engineering Division, Grievant is in charge of all training and certification relating to wastewater treatment. Grievant's official position description (PD) (J Ex 1) provides the following detailed description of duties performed with Grievant's estimates regarding the percent of time spent on each task shown in parentheses:

> 1 Set up, administer, or conduct training classes for wastewater works operators, including telephone calls, memoranda, administer exams, travel, etc. (47%)
>
> 2 Grade wastewater certification exams, including certificate issuance, writing certifications (sic) exams,write training manuals and related material and grade review questions, process certification requests, answer complaints, classify wasteworks, and keep current listing of Class I-IV WWTW operators. (25%)
>
> 3 Field training Environmental Engineering engineers, and local sanitarians, in wastewater treatment principles, including inspections of wastewater systems as a part of training. Hands on training, assistance (trouble shooting for WWTW operators). Review inspections of trainees. (10%)
>
> 4 To prepare and give presentations at meetings, attend meetings, conferences, workshops, in relation to wastewater treatment and certification. (6%)
>
> 5 Provide training for DNR inspectors and provide assistance to EPA, DNR, PSC, Justice Department, ORSANCO, Department of Education, the environmental training center, consulting engineers, WWTW managers and operators, et al. (5%)
>
> 6 Administer EPA water treatment works circuit rider contract, supervise EPA contract person. (4%)
>
> 7 Read or review laws, regulations, information relative to wastewater treatment, and

operator certification and training. (1%)

8 Provide input on revision of Health Department rules, regulations, inspection reports, standards, laws relative to wastewater treatment, and operator certification and training. (1%)

9 Write rules, conduct public hearings, appear before committees approving wastewater operator rules, draft memorandum of understanding with other agencies, and write procedural memoranda. (1/2%)

Grievant clarified the foregoing PD by testifying that he no longer provides significant field training for the engineering staff as described in item 3 and no longer administers the contract described in item 6. Likewise, Grievant is no longer authorized to conduct public hearings as described in item 9. Grievant also agreed that his predominant duties were generally reflected in thecorrect order except that providing assistance under item 5 has superseded the training function described in item 3.

The evidence adduced at Levels III and IV in this matter further established that while Grievant's PD is generally accurate, it understates the importance of Grievant's duties and responsibilities. Since 1973, Grievant has been singularly responsible for the development of training courses and examinations for the certification of five separate levels of wastewater treatment plant operators. He personally develops, administers and grades all certification examinations, coordinating examination content and degree-of-difficulty of such questions with the appropriate professional organization. Grievant issues certificates to successful applicants and maintains a database covering over 2500 currently qualified operators. He is also responsible for administration of the licensure process for operators claiming reciprocity based upon certification in other jurisdictions.

The evidence also established that Grievant is probably the state's leading expert on the wastewater treatment process. As part of his job duties, he writes a quarterly article for publication in Mountain Currents, the official publication of the West Virginia Water Pollution Control Association and the Waste Water Operators Association. See G Ex 3. He has also written articles which have appeared in national wastewater publications. It is evident that Grievant has "written the book" on this subject within the State of West Virginia as indicated by various instructionmanuals he prepared for distribution through the Department of Health. See G Ex 4 & 5.

As of the time Grievant's position was reclassified, he did not directly supervise any subordinate employees. However, Grievant suggested that other personnel classified as Program Manager I's within the Bureau of Public Health supervised from two to eight people, complaining that one Program Manager I supervises no employees. DOP countered with evidence that although some personnel classified as Program Manager I's supervise only two subordinates, those subordinates, in turn, each supervise from fifteen to twenty-seven subordinate employees. Moreover, the employee who Grievant believed to have no subordinates, Linda Jones, was in one of those positions. See R Ex 3 & 4. Grievant did not present Position Descriptions or other probative evidence regarding the duties and responsibilities of other employees classified as Program Manager I's. No other employees in the Environmental Engineering Division where Grievant works are classified as Program Manager I's. (See footnote 2)

Donald Kuntz, Chief of the Division of Environmental Engineering and Grievant's immediate supervisor, testified in support of Grievant's position, emphasizing the independence delegated to Grievant in his area of responsibility based upon his confidence inGrievant's superior expertise in the area. Joseph P. Shock, OEHS Director, similarly testified at Level III, generally emphasizing the importance of Grievant's duties.

Lowell Basford, DOP's Assistant Director for Classification and Compensation, testified at Level IV in regard to DOP's rationale for classifying Grievant as a Chief Sanitarian. (See footnote 3) Mr. Basford noted that the process is impersonal, meaning that the duties and responsibilities assigned to the position provide the basis for classifying a position, not the status and expertise of the individual holding the position. Thus, Grievant's significant expertise in wastewater treatment and his status as a recognized authority in the field were not considered in classifying his position. Mr. Basford further noted that DOP had originally proposed classifying Grievant's position as a Health and Human Resources Specialist. However, DHHR questioned that determination and requested the position be classified as a Chief Sanitarian, suggesting recruitment problems in filling the position with a qualified person under the HHR Specialist classification.

Mr. Basford further opined that Grievant was performing work at the advanced level within the Sanitarian family of positions. He also noted that Grievant substantially does the work himself, not acting through subordinate supervisors. DOP offered two PDs for Program Manager I's in the Bureau of Public Health and characterized those PDs as being typical of the Program Manager I

classification.

## Classification Specifications at Issue

The relevant portions of the classification specifications for the Program Manager I and Chief Sanitarian positions at issue in this case are reproduced herein as follows:

**HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I**

**Nature of Work**

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specific geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human services. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

**Distinguishing Characteristics**

Positions representative of the kind and level of work intended for the class include program areas such as Health Statistics, Health Promotion, Mental Retardation/Developmental Disabilities, Alcohol and Drug Abuse, Government Donated Foods, and other organizational units with similar size, scope and complexity.

**Examples of Work**

Supervises professional, technical and clerical staff; make assignments and reviews and approves plans of operation.

Provides administrative and program direction; enforces agency objectives, policies and procedures.

Responsible for management of recruitment/selection process, staff development, disciplinary matters, and other related actions in assigned area.

Responsible for developing collaborative efforts among health or human services agencies.

Performs research and analysis of legislation, work activities or other issues to develop

policies, standards and procedures.

Monitors and evaluates program administration, and the delivery to (sic) services to clients.

Provides technical consultation and policy interpretation to staff, supervisor, public officials, and advocacy groups.

Plans and implements programs for the training of profession al, technical and clerical staff.

## SANITARIAN, CHIEF

### Nature of Work

Under administrative direction, performs complex administrative and supervisory work at the advanced level directing the environmental and public health sanitation programs in a large local health department, a multi-county regional health department or as a district sanitarian for the Division of Public Health Sanitation, or as an environmental health program specialist with the Office of Environmental Health Services. Plans, organizes and directs all general environmental and public health sanitation activities and is responsible for quality of such services in the assigned area. Work is governed by broad instructions, objectives and policies. Responsible for effectiveness of sanitation services in the assigned district. Participates in environmental and public health sanitation education programs, and enforces applicable public health laws. Performs related work as required.

### Distinguishing Characteristics

This level in the series is located in a large local health department or a multi-county regional health department, has the responsibility for planning, assigning, reviewing and approving the work of a large staff of full-time employees which also includes initiating disciplinary actions, approving sick and annual leave requests, conducting performance evaluations, recommending salary increases and is a step in the grievance process. Those employees supervised may include Sanitarian Supervisors in charge of various programs. Administrative duties include responsibility for, or assisting in, setting goals and objectives of a large established organizational unit and the coordination of resources to meet those objectives; for developing plans and executing policies for directing the work of others in the performance of the prescribed mission; and for interpreting the policies of the unit to employees and others.

If this level in the series is functioning as a district sanitarian or an environmental health program specialist in a stateoffice, the administrative and supervisory component is not as direct. The district sanitarian and environmental health program specialist function in more of a consultative and/or technical assistance level, with a high level of authority.

**Examples of Work**

Plans, develops and implements a complex general environmental and public health sanitation program.

Plans and directs the work of environmental health staff; recruits and interviews support staff; conducts annual reviews of employee performance; plans and conducts conferences with staff.

Supervises gathering of data and prepares annual environmental health report and formulates annual program plan.

Develops policies, sets standards and objectives for complex general environmental and public health sanitation programs in accordance with established public health laws, rules, regulations and department policies.

Makes long range plans and regularly reviews activities, problems and functions of complex general environmental and public health sanitation programs; provides or arranges for in-service training for sanitarians on a continuing basis; directs complex general environmental and public health sanitation educational programs.

Determines the needs of a complex general environmental and public health sanitation unit for personnel, supplies and equipment; assists budget officer in developing annual budget and expenditure of allocated funds.

Makes decisions and judgements in complicated general environ- mental and public health sanitation situations or con- cerning potential legal problems; conducts hearings in absence of health officer; prepares legal cases for prosecuting attorney; attends court hearings on behalf of local health department.

Advises other governmental bodies and attends intergovernmen tal meetings.

Review plans and specifications and issues permits as warran- ted.

Collects and evaluates health statistics and data to support complex general environmental and public health sanita tion programs; determines priorities and types of services

required to protect the public health.

Supervises review of plans of new and remodeled facilities to determine compliance with public health laws, rules, regulations and departmental policies.

Provides consultative services and technical assistance to local sanitarians and health officers on highly technical or difficult general environmental and public health sanitation matters.

Develops programs and procedures adaptive to the general environmental and public health sanitation needs of assigned district.

Provides consultative services and technical assistance to local sanitarians in the event of man-made or natural disasters or emergencies.

Maintains liaison between the Office of Environmental Health Services and the local health departments, local Boards of Health, county Commissioners and other community groups.

Provides emergency general environmental and public health sanitation services to counties temporarily without the services of a sanitarian.

Conducts or assists local sanitarians in epidemiological investigations.

Conducts evaluations of local health departments general environmental and public health sanitation programs.

Reviews program plans of local health departments within assigned district.

## Discussion

In order for the Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than the one under which he 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.

Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991); 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 the Grievant's current classification constitutes the "best fit" for his 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 No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

As indicated by the foregoing precedents applicable to grievances alleging misclassification, Grievants face a heavy burden when attempting to demonstrate that they have been misclassified. In this case, the position classification specifications are written so that it is difficult to readily ascertain that a Program Manager I represents a higher classification than Chief Sanitarian. Obviously, both classifications involve considerable responsibility for public health matters encompassing a reasonably broad scope of authority. While Grievant presents a plausible argument that he could be classified as a Program Manager I, DOP's rationale for classifying Grievant as a Chief Sanitarian was not so illogical or inconsistent as to be labelled "clearly wrong."

As previously noted, the West Virginia Supreme Court of Appeals' ruling in Blankenship established a precedent requiring this Grievance Board to defer to DOP, unless the evidence demonstrates that DOP's interpretation of its classification specifications is "clearly wrong." Moreover, this Grievance Board has adopted certain general rules for analyzing claims of misclassification as recited above. One of those rules recognizes that the predominant duties performed by an incumbent in a position are class controlling. Broaddus, supra. Thus, although Grievant may perform, to some degree, each of the examples of work listed under the Program Manager I class specification, except for supervising subordinates, (See footnote 4) the predominant duties he performs, when considered as a whole, are consistent with the class specification for Chief Sanitarian. See Childress v. Dept. of Tax & Revenue, Docket No. 93-T-434 (Jan. 31, 1994). DOP's administrative rules for classification plans specifically permits such considerations as follows:

> The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one

> example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class. (Div. of Personnel Administrative Rules, Series I (Amended), § 4.04(d) (1993).)

Moreover, although Grievant manages a statewide program he does not accomplish this task through subordinate employees as contemplated by DOP in the classification specification for Program Manager I.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

## FINDINGS OF FACT

1. Grievant is employed by the Department of Health and Human Resources (DHHR) in the Environmental Engineering Division of the Office of Environmental Health Services in the Bureau of Public Health.

2. On December 16, 1992, Grievant was reclassified as a Chief Sanitarian by the Division of Personnel (DOP) in conjunction with a statewide reclassification project.

3. Grievant has general statewide responsibility for the wastewater treatment program in West Virginia with specific responsibility for the licensure and accreditation of wastewater treatment operators.

4. Grievant's duties are primarily focused upon developing and administering training classes for wastewater treatment operators, writing, administering and grading certification examinations for wastewater treatment operators, documenting certification status, and providing consultation and technical advice to operators and other personnel in the field. According to Grievant's Position Description and testimony at Level IV, he spends over 50 per cent of his time performing duties in the forgoing areas.

5. Grievant does not accomplish his duties through subordinate employees under his immediate supervision.

## CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Health

and Human Resources ProgramManager I constitutes the "best fit" for the duties he performs. See Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievant is performing some duties that are outside his current classification as a Chief Sanitarian, this does not render him misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See Div. of Personnel Administrative Rules, Series I (Amended), §4.04(d) (1993); Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. Personnel's interpretations of the classification specifications for the positions of Program Manager I and Chief Sanitarian, as they apply to the duties being performed by Grievant, are not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

4. The Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit with the classification specification for Chief Sanitarian.

Accordingly, the grievance is **DENIED**.

Any party 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.

**LEWIS G. BREWER**

**Administrative Law Judge**

**Dated: October 19, 1994**

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*Footnote: 1To simplify discussion, these two classifications will be referred to as "Chief Sanitarian" and "Program Manager I," respectively.*

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*Footnote: 2There was considerable dispute in regard to the accuracy of an organization chart depicting the Division of Environmental Engineering. Although none of these charts contained evidence directly probative of the issues raised in*

*this grievance, Grievant demonstrated through the testimony of Mr. Kuntz that the organizational arrangement depicted in the chart provided to DOP during the reclassification process had never actually been implemented.*

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*Footnote: 3In his post-hearing submission, Grievant took exception to Mr. Basford being permitted to testify as an expert witness at the Level IV hearing. While formal rules of evidence do not apply in Level IV hearings under the express terms of W. Va. Code § 29-6A-6, it is noted that Grievant made no objection to Mr. Basford's testimony at the time it was rendered, thus waiving any such objection under the rules of evidence that would apply in a court of law. See W. Va. R. Evid. 103(a)(1) (1994); Fed. R. Evid. 103(a)(1) (1986). Moreover, contrary to Grievant's argument, it is not necessary that Mr. Basford hold any particular license or certification to testify as an expert on matters within his particular field of expertise, i.e., personnel classification matters involving state employees.*

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*Footnote: 4Grievant also meets at least one element of this example of work, having participated in the process of interviewing and selecting someone to serve as a secretary, although that individual is not currently working under Grievant's supervision.*