ROBIN DARBY AND LINDA LUCAS,

Grievants,

v. DOCKET NO. 93-HHR-356/357

WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES/HUNTINGTON STATE
HOSPITAL and WEST VIRGINIA DEPARTMENT
OF ADMINISTRATION/DIVISION OF PERSONNEL

Respondents.

D E C I S I O N

Robin Darby and Linda Lucas (hereinafter "Grievants"), employees of the Respondent Department of Health and Human Resources at Huntington State Hospital (hereinafter "HSH"), challenge their present classification as "Accounting Assistant I's." The Grievants contend they should be classified as "Account-ing Assistant II's" or "Office Assistant III's." Their grievances were initiated at Level I on January 15, 1993, following their reclassification as Office Assistant II's on December 16, 1992. (See footnote 1) After waiving decisions at Levels I and II, as they were unable to obtain relief at those levels, Grievants proceeded to a hearing at Level III on June 28, 1993. On August 18, 1993, the GrievanceEvaluator issued a decision finding that the Grievants had been misclassified as Office Assistant II's but the "best fit" for their duties, as documented by the Division of Personnel (hereinafter "DOP"), was Accounting Assistant I. (See footnote 2) The Grievants elected to appeal to Level IV and a hearing was conducted in the Board's Charleston office on November 17, 1993. (See footnote 3)

Background

The Grievants are employed as "billing clerks" in the Billing Department of HSH. R Ex 4 & 5. Both of the Grievants report directly to Mr. Jerry Workman, Director of Fiscal Services. There are two other positions in the Billing Department, an Office Assistant I and a vacant billing clerk (Accounting

Assistant I) position. Grievants contend they both function as "lead" em-ployees, based upon their considerable experience and expertise, particularly in working with the "AIMS" (Advanced Information Management Software) computer program.

A great deal of testimony at the Level IV hearing focused upon this computer program and a brief description is warranted. AIMS was developed for the State by a private contractor in a "team approach" with Health and Human Resources personnel at various sites. HSH was the initial implementation site for this new program, which has "modules" to automate the documentation aspects ofadmissions, nursing, and other hospital functions, including billing. Both of the Grievants, and particularly Grievant Darby, were involved in developing this program, and both were instrumental in implementing the billing module of AIMS.

As the AIMS software program was first installed at HSH in 1991, and then expanded to other state hospitals, Grievants came to be the "experts" on the billing aspects of this program, resulting in calls from other agencies for telephonic advice, as well as in-person, on-site, assistance from the Grievants who aid in resolving various problems encountered while implementing this system. Using the AIMS system at HSH involves a considerable amount of decision-making, based upon knowledge of hospital terminology, billing policies and state and federal guidelines, such as Medicare rules. The software developer has tested upgraded versions of the billing module at HSH based upon the experience of the Grievants in trouble-shooting software problems.

Although the foregoing circumstances have resulted in some additional duties for the Grievants not assigned to other billing clerks in the state hospital system, they are not so pervasive as to alter the inherent nature of the Grievants' jobs. Their specific job function is summarized on their respective Position Descriptions (hereinafter "PD's") as follows:

> Use the AS400/AIMS computerized billing system to produce bills and generate revenue in compliance with state and federal regulations. Maintain accounting records as they relate to accounts receivable, which includes monitoring status for accuracy, maintaining various journals and ledgers, verifying data, identifying discrepancies, reconciling incorrect data, and producing financial reports. R Ex 4 & 5.

The PD's further describe the function of the unit in which the

Grievants work as follows:

> The function of the unit is to produce bills and maintain Accounts Receivable for Huntington State Hospital patients. This must be done in accordance with State guidelines, Medicare laws (Parts A & B), HCFA, and JCAHO requirements. Proper accounting procedures must be followed in keeping records to enable the accurate preparation of Cost Reports. R Ex 4 & 5.

The PD's describe the function of the Grievants' respective

positions as follows:

> This position must interpret and apply the rules, regulations and laws relating to Medicare and State Billing policy. This position often explains the rules, regulations and laws to other clerical staff, management, auditors, consultants, patients and patients' family members. Uses AIMS software to produce bills and maintain Accounts Receivable. Reviews and enters superbills from various clinical departments. Maintains ledgers and produces reports. R Ex 4 & 5.

Both PD's indicate that the Grievants generically spend 75 per cent of their time "typing" which was clarified to mean primarily working at the computer keyboard to input data and conduct database inquiries, as well as conventional typing. R Ex 4 & 5. The PD's further indicate that Grievant Darby specifically spends 10 per cent of her time on "exonerations," 10 per cent on "billing profiles," 14 per cent on conducting a "billing edit," 13 per cent to "produce bills," and 13 per cent compiling "accounts receivable on AIMS system." R Ex 4. Grievant Lucas specifically spends 3 per cent of her time on "exonerations," 13 per cent on "billing profiles," 14 per cent on conducting a "billing edit," 13 per cent to "produce bills," 8 per cent on "queries," and 8 per cent on "AIMS query reports." R Ex 5.

The PD's also indicate that the Grievants spend only 1 per cent of their time as "functional facilitators," (See footnote 4) that portion of their duties which involves problem-solving, trouble-shooting and testing new releases which update the AIMS billing module. R Ex 4 & 5. Grievant Darby spends an additional 1 per cent of her time as a "member of the ARMS facility user group" and 3 per cent as a "member of ARMS statewide user group." (See footnote 5) R Ex 4. Assisting in training new employees is one of eight listed items to which Grievant Lucas devotes 5 per cent of her time (R Ex 5.), and one of seven items to which Grievant Darby likewise devotes 5 per cent of her time. R Ex 4.

Of course, the Grievants' work requires more than simply entering data in a computer. While the computer may simplify and expedite various repetitive processes, the Grievants are required to know what data can be entered into the computer based upon Medicare rules and state regulations, and

HSH billing policies. (See footnote 6) HSH was only certified to bill to Medicare three years ago. Prior to that certification, billing at HSH was limited to professionalservices and was fairly routine. (See footnote 7) Becoming knowledgeable of Medicare rules has added a significant degree of complexity to the billing function. A financial management consultant testifying for the Grievants noted that Medicare rules and regulations are comparable to the tax code in that a significant amount of interpretation is involved when applying the written guidelines.

Having a thorough knowledge of Medicare standards is particularly important for the Grievants when designing queries which direct the computer to provide certain types of information and generate meaningful reports, as well as determining if a computer-generated bill will be accepted by Medicare. (See footnote 8) Mr. Workman testified that the other Accounting System I position in theBilling Department which was then vacant involved "less complex" work than that performed by Grievants. (See footnote 9)

DOP's reclassification of the Grievants as Accounting Assistant I's was explained through the testimony of Mr. Lowell D. Basford, the Assistant Director in the Division of Personnel responsible for classification and compensation. Prior to the reclassification project, DOP had classification series for various classes of "clerks" and "audit clerks." Audit clerks normally dealt with accounting functions while clerks performed generic clerical duties at various levels. The "audit clerk" classifications were revised to focus on accounting and the positions were designated "Accounting Assistants." At the same time, the "clerk" classifications were converted to various classes of "Office Assistant."

Grievants were initially classified in the Office Assistant series based upon the emphasis on clerical duties in their original PD's. (See footnote 10) When the Grievants exercised their right to submit newPD's during the appeal process (R Ex 4 & 5), DOP recognized that the focus of the Grievants' positions was on accounting functions rather than clerical functions. Thus, Grievants were assigned to the Accounting Assistant series.

DOP defines "entry-level work" to mean the first in a series. As Mr. Basford noted in his testimony, it was not intended to describe a trainee, since the minimum qualifications for the Accounting Assistant I classification include being a high school graduate and having one year of clerical experience including bookkeeping, accounting, or closely related experience. Mr. Basford opined that the AIMS computer software provided technical supervision since it was a highly structured system that did not give them much discretion. Thus, the Grievants were considered under

"direct" supervision, even though their immediate supervisor might only exercise limited administrative supervision.

Mr. Basford further noted that Grievants' work, based upon their PD's, is focused upon one financial aspect of HSH, patient billing. According to Mr. Basford, other Accounting Assistants in other agencies are involved in the entire gamut of financial transactions. In particular, the duties of an Accounting Assistant II have a broader focus than just one area, such as patient billing. Moreover, Mr. Basford noted that Grievants are not required to reconcile their records with an independent agency, one of the distinguishing characteristics for Accounting Assistant II. Likewise, Mr. Basford noted that Grievants do not work with balance statements, another element in the distinguishing characteristicsfor Accounting Assistant II that identifies more complex accounting tasks.

Mr. Basford further noted that, unlike most Office Assistant III's, Grievants do not serve in a lead worker capacity for subordinate Office Assistant positions as a significant portion of their duties. He suggested that the Accounting Assistant series was a better fit since it was intended for positions that concentrate on fiscal functions, rather than the generic Office Assistant series. Mr. Basford also noted that work is not considered "advanced" by DOP unless the work is predominantly atypical. Given the structure to patient billing resulting from the use of the AIMS computer software and federal and state billing regulations, Grievants' work appears highly structured and repetitive.

Mr. Basford also indicated that DOP's definition of "lead worker" requires such duties as training new employees be regular and recurring and such individual must be responsible for three or more employees. He stated that he did not see the reference to training in the Grievants' PD's as class controlling since it appeared to involve a very small percentage of their time. Mr. Basford agreed that Accounting Assistant I requires significant knowledge of the subject matter and a decision-making process prior to entering information in the computer system. He indicated that if Grievants did not make such decisions, they could have been classified as Data Entry Operator I's. Mr. Basford conceded that DOP had a different picture of the nature ofGrievants' work based upon their 1990 PD's than they had after reviewing their new PD's in 1993.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Accounting Assistant I, Accounting Assistant II and Office Assistant III positions at issue in this case are reproduced herein as follow:

ACCOUNTING ASSISTANT I

Nature of Work

Under direct supervision, performs entry-level work by routinely calculating, posting, verifying and maintaining accounting records. Receives and reviews transactions for completeness, accuracy and compliance to standards of agency. Performs related work as required.

Distinguishing Characteristics

Performs clerical work involving a predominance of duties in the recording and balancing of financial and numerical data in accordance with agency standards and work procedures.

Examples of Work

Compares data with other prescribed sources to verify accuracy, completeness and compliance to standards.

Assigns codes and account numbers to vouchers, expense accounts, invoices, statements, payrolls, etc., using prescribed lists.

Verifies accuracy of arithmetic calculations and lists discrepancies for adjustment or corrects errors.

Obtains and retrieves information or files materials; returns files.

Posts transactions to ledgers, books, journals, or spreadsheets and totals; reviews transaction postings to identify and correct errors or erroneous entries; reviews computer printouts to balance account and identify delinquent entries.

Calculates percentages and totals of work for control purposes and prorates work allocations.

Prepares or assists in the preparation of standardized financial reports.

Types, files, answers the telephone and performs other clerical tasks as necessary. (R Ex 2.)

ACCOUNTING ASSISTANT II

Nature of Work

Under general supervision, performs full-performance work by receiving and auditing complicated accounts and transactions for completeness, accuracy and compliance to standards of agency, state and federal regulations; may supervise. Performs related work as required.

Distinguishing Characteristics

Performs clerical work involving a predominance of duties in the recording and reconciliation of multiple-entry financial and numerical data in accordance with federal and state regulations. Work involves complicated multiple-entry recording and extension of such data to balance statements.

Examples of Work Performed

Compares data with other prescribed sources to verify accuracy, completeness and compliance to standards set by agency or by state and federal regulations.

Assigns codes and account numbers to financial records using prescribed lists.

Verifies accuracy of arithmetic calculations and legal compliance; lists discrepancies for adjustments or reconciles errors.

Posts transactions to multiple entry ledgers, journals and/or spreadsheets and balances.

Reconciles individual ledgers with control ledgers; reviews computer printouts to balance account and identify delinquent or erroneous entries.

Compiles information and prepares financial reports and calculates cash balances.

Compares monthly and yearly statements and notes discrepancies.

Calculates percentages and totals of work for control purposes and prorates work applications.

Obtains and retrieves information or files materials; returns files.

Writes checks, receives money and makes bank deposits; post debits and credits.

Types, files, answers the telephone and performs other clerical tasks as necessary.

May prepare budget for operational unit.

May assign, direct and review the work of others. (G Ex 1.)

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 functionas 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 policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

NOTE:

All three levels of Office Assistant perform a variety of clerical tasks. Classification of a position in this series is based on the predominant duties of the position. Decision-making and latitude of action are considered in the scope of the work.

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. (R Ex 3.)

Discussion

In order for the Grievants to prevail upon a claim of misclassification, they must prove by a

preponderance of the evidence thattheir duties for the relevant period more closely matched another cited Personnel classification specification than the one under which they are 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 Grievants' current classification constitutes the "best fit" for their 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, 431 S.E.2d 681, 687 (W. Va. 1993).

Based on all available evidence of record, the Grievants are performing duties that require a solid knowledge of hospital terminology and procedures, as well as state and federal billingguidelines, work that is more complex than would be encountered by most other billing clerks in the state hospital system. They have been instrumental in implementing the AIMS billing module at HSH, a process that has increased their workload while they move toward a standardized, automated system that will ultimately streamline the billing process. Nonetheless, this involvement in computer software testing and trouble-shooting has not been so extensive as to alter the basic nature of the Grievants' work, which is generating various bills for accounts receivable at HSH. Likewise, this involvement has not become a predominant part of their current position.

The Grievants established that they are probably the most knowledgeable billing clerks in the state hospital system, and that they are performing their duties in an exemplary manner. However, the issue to be decided in this grievance is whether or not they have been misclassified, given the classifications available, and DOP's interpretation of the standards applicable to those classifications. When comparing Grievants' duties with the classifications at issue, Accounting Assistant I,

Accounting Assistant II and Office Assistant III, none of the classification standards makes a perfect match. Because this situation is not unusual, our precedent calls for determining which proposed classification constitutes the "best fit" for the employees' duties. (See footnote 11) Simmonsv. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991).

DOP takes the position that the classification of Accounting Assistant I is the "best fit" for Grievants' duties. The West Virginia Supreme Court of Appeals has held that DOP's determination on such matters is entitled to great weight unless it is "clearly wrong." W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993). Based upon the testimony of Mr. Basford at the Level IV hearing, the undersigned cannot find that DOP's application of the standards is clearly wrong. (See footnote 12)

Our precedent further establishes that the predominant duties performed by an incumbent in a position are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990). As noted earlier in the discussion of the Grievants' PD's, notwithstanding the added complexity of the work resulting from implementation of the AIMS system and Medicare billing, Grievants devote the predominant portion of their workday performing classic billing functions.

While Grievants must have a comprehensive knowledge of billing policies, medical terminology and the intricacies of the AIMS program to perform their billing function, they did not prove that they exercise the degree of discretion or judgment required at theOffice Assistant III level. Likewise, although they are required to interpret such policies as Medicaid reimbursement regulations, they did not demonstrate that this aspect of their work predominates the duties they perform on a daily basis. In other words, even though they may be called upon to make these interpretations on a daily basis, they still spend the majority of their time on less complex tasks. (See footnote 13)

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

FINDINGS OF FACT

1. Grievants are employed as billing clerks in the Billing Department of the Fiscal Services Division at Huntington State Hospital (HSH). R Ex 4 & 5.

2. After being reclassified as Office Assistant II's on December 16, 1992, when the reclassification of the Department of Health and Human Resources was implemented, Grievants filed

a timely grievance contending they should be classified as Office Assistant III's.

3. In the course of the grievance process at Level III, the Department of Personnel (DOP) reclassified the grievants as Accounting Assistant I's.

4. Grievants submitted a timely appeal to Level IV contending they should be classified as either Office Assistant III's or Accounting Assistant II's.

5. Grievants are responsible for producing bills and maintaining accounts receivable records for HSH patients. They perform these duties following state, federal and accrediting agency guidelines.

6. Grievants use the AS400 computer and the Advanced Information Management Software (AIMS) system to create and maintain the required financial data.

7. Grievants must be knowledgeable of medical and hospital terminology, as well as standard accounting practices, to properly and efficiently perform their assigned duties.

8. Grievants do not spend a predominant portion of their time trouble-shooting problems with the computer software or answering questions from other hospitals or departments regarding AIMS or Medicare issues.

9. There are four positions in the Billing Department. In addition to the Grievants' positions which are currently classified as Accounting Assistant I's, there is a third Accounting Assistant I and an Office Assistant I.

10. Grievants do not spend a predominant portion of their time training or providing guidance to new or subordinate employees.

11. Grievants are not required to reconcile their accounts with an independent set of records.

12. Grievants do not prepare balance statements covering the fiscal status of HSH.

CONCLUSIONS OF LAW

1. Grievants have not proven by a preponderance of the evidence that the classification of Accounting Assistant II or Office Assistant III constitutes the "best fit" for the duties they perform. See Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Although Grievants are performing some duties that are outside their current classification as Accounting Assistant I's, this does not render them misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See W. Va. Div. of Personnel

Administrative Rules, Series I (Amended) §4.04(d) (1993).

3. Personnel's interpretations of the classification specifications for the positions of Accounting Assistant I, Accounting Assistant II and Office Assistant III, as they apply to the duties being performed by the Grievants, 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 Grievants' job duties, as demonstrated by a preponderance of the evidence, best fit with the classification specification for Accounting Assistant I.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County 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.

Dated: January 18, 1994 LEWIS G. BREWER

Administrative Law Judge

Footnote: 1The classification specification for Office Assistant II was not addressed at Level IV, apparently since neither Grievants nor Respondents believe it represents the "best fit" for their duties.

Footnote: 2Consistent with this finding, the Grievants had been reclassified as Accounting Assistant I's by DOP on July 7, 1993.

Footnote: 3Following receipt of timely post-hearing submissions from each of the parties, this case became mature for decision on December 27, 1993.

Footnote: 4The "functional facilitator" title designates those persons who are authorized to contact the AIMS software company directly to discuss problems relating to operation of AIMS. The Grievants were given this designation for the Billing Department.

Footnote: 5"ARMS" was not defined either in the Position Descriptions or the testimony at Level IV. It appears to be an automation initiative which uses the AIMS software to accomplish various functions by computer.

Footnote: 6*The Grievants established, through the testimony of Mr. Dan Van Kirk, a Computer Programmer Analyst for the Dept. of Health and Human Resources, that the AIMS program does not automatically detect many potential errors but relies upon the knowledge of the personnel using the system.*

Footnote: 7*For example, a patient would be charged a set fee for each day in the hospital, a simple mathematical calculation. Following Medicare certification, a fee schedule was developed for each drug, test, procedure, service or medical supply item provided and records were generated and maintained to support these bills. With the exception of the Welch facility, other state hospitals generally bill on the simpler per diem basis, as they do not bill Medicare.*

Footnote: 8*According to Mr. Workman's testimony, because Medicare sets limits on amounts that can be claimed or paid for various services, treatments and hospital stays, the actual data generated by AIMS must be edited by Grievants or other Billing Department personnel, prior to submission to Medicare for payment, in order to avoid costly and time-consuming rejections and resubmissions. It does not appear from the testimony that the AIMS software is compatible with Medicare guidelines, thus adding a certain degree of complexity to the Grievants' work. Moreover, HSH employs financial management consultants to provide additional expertise on compliance with Medicare guidelines.*

Footnote: 9*The Grievants' own witness, a financial management consultant to HSH, noted that most patient accounts departments have a person in charge reporting to the director of fiscal affairs, and that this "weakness" in the organizational structure was previously pointed out to HSH management. While the witness was strictly concerned with the management control and efficiency aspects of the organization (and rightly so), it appears to the undersigned a higher grade position potentially exists within the Billing Department. However, grade-controlling duties are diffused by the present arrangement where the Grievants share responsibility for operating the Billing Department.*

Footnote: 10*These earlier PD's were not in evidence. The PD's referred to in this decision, R Ex 4 & 5, were not prepared until June 1993, apparently in preparation for the Level III hearing in this grievance.*

Footnote: 11*If there was a classification for "Medicare Billing Clerks (Automation)" for state employees who work with complicated Medicare hospital billing, on a computerized system, Grievants would be easy to match. However, the undersigned is limited to considering position classifications officially established by DOP.*

Footnote: 12*Although Mr. Basford made some erroneous assumptions regarding the operation of the AIMS program and over-simplified the Grievants' function, these minor discrepancies did not detract from his overall testimony regarding application of DOP's classification specifications to the Grievants' duties, as documented in the record of this appeal.*

Footnote: 13*It is apparent that Grievants' jobs have been complicated by the advent of Medicare billing and computerization of the system, in that a greater body of knowledge is required to perform their jobs today than several years ago. However, these changes do not rise to the level of proving that DOP's classification of Grievants as Accounting Assistant I's is "clearly wrong." Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).*