PAUL WHITTINGTON, .

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Grievant, .

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v. . Docket No. 94-HHR-045

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES at CHILD ADVOCATE .

OFFICE and WEST VIRGINIA DEPARTMENT .

OF ADMINISTRATION / DIVISION OF .

PERSONNEL, .

.

Employer. .

D E C I S I O N

This complaint was filed by Paul Whittington (hereinafter Grievant) on August 19, 1993, against his employer, the West Virginia Department of Health and Human Resources, and against the West Virginia Division of Personnel (hereinafter Personnel). Grievant contends that Personnel misclassified his position in December 1993, when it was determined that the duties and responsibilities of his position warranted the classification of Office Assistant II. Prior to that decision, Grievant had been classified as an Administrative Assistant. This complaint wasdenied at the lower levels which prompted an appeal to level four dated February 7, 1994. A hearing was held at the Grievance Board's office in Charleston, West Virginia on May 9, 1994; the case became mature for decision thereafter.

In order for 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 that 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 the 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 his required duties. Simmons v. W.Va. Dept. of HHR/Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The "best fit" analysis is based primarily upon a consideration of the position's predominant duties and responsibilities as they are class-controlling. Broaddus v. W.Va. Div. of Human Services, Docket No.s. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of theclassification 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).

The classification specifications at issue herein are reproduced, in relevant part, as follows:

OFFICE ASSISTANT II

Nature of Work:

Under general supervision, performs full-performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics:

Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the understanding of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

Examples of Work:

Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction, division or multiplication); corrects errors if the answer is readily available or easily determined.

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

Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.

Receives, sorts and distributes incoming and outgoing mail.

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

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

dictation.

Collects, receipts, counts and deposits money.

Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.

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

May compile records and reports for supervisor.

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.

CHILD ADVOCATE ADMINISTRATIVE ASSISTANT

Nature of Work:

Under limited supervision, assists an attorney in the rendition of professional services in connection with the establishment and enforcement of paternity and support. Performs difficult and complex work involving locating absent parents and employers of absent parents, assisting in the development of cases for presentation to an attorney who will identify necessary legal actions. May be responsible for

supervision of line staff, assignment of tasks and oversight of tasks, as delegated by an attorney. May assist persons in applying for services and secure such supporting data as may be necessary to ensure provision of services is delivered equitably. Performs other duties in the area of child support and enforcement as determined necessary by an attorney, consistent with applicable laws, regulations and Child Advocate Office policy. Work is reviewed by an attorney through conferences and by detailed reports made by employee. Supports the child advocate program, andassists in publicizing the services available through the program. May assist in special projects and initiatives and, on an as-needed basis, assist in delivering services in more than one regional office. Performs related work as required.

Examples of Work:

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May train, direct, coordinate, and evaluate work of Child Advocate Office non-legal staff, under the supervision of an attorney.

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May assist in the formulation of policy and procedures in the Child Advocate Office.

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Analyzes information on forms and other necessary documents for financial determinations and ability to support; determines the completeness, consistency, and arithmetic accuracy of such information.

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Attends hearings before the Family Law Master, Circuit Court, or the Supreme Court of Appeals to assist the attorney as appropriate.

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Writes abstracts of evidence and summaries of information on hearings or claims, under the direction of an attorney.

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Reviews and assesses case files, under the guidance of an attorney, to assist in determining the legal remedies, if any, appropriate for that case and to assist in preparing the case for legal action.

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Compiles such information as may be needed to develop the case, by inquiries and referrals to appropriate agency personnel, interviews, and conferences with obligees, obligors or others, review of public records, or development of other sources.

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Receives questions and/or complaints about support payments and responds accordingly.

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Maintains records, data, furnishes necessary reports.

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May identify the need for additional services or assistance provided by the Department of Health and Human Resources and arrange for consultation between appropriate agency staff and obligee or obligor.

The following findings of fact are properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant is employed within the Department of Health and Human Services' Child Advocate Office in Charleston, West Virginia.

2. Grievant works within the Parent Locate Unit of that Office.

3. The majority of Grievant's responsibilities revolve around his functioning in a support role by assisting the Child Advocate's Area Child Support Staff in gathering and verifying residential and employment addresses on all "absent parents" and "putative fathers" whose names are referred to

his office from various federal and state sources. Grievant spends approximately thirty-two hours per week on duties associated with this responsibility.

4. Grievant spends the majority of his time using computer systems to communicate, receive, identify, sort, verify, log and secure the parental information that both his office and he are concerned with obtaining.

5. Grievant is not directly supervised by an attorney.

6. Grievant performs "multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations" at a "full-performance level."

Discussion

Grievant contends that he should be classified as a Child Advocate Administrative Assistant because he "[p]erforms difficult and complex work involving locating absent parents and employers of absent parents," and because he assists in the "development of cases for presentation to an attorney who will identify necessary legal actions." He avers that he is supervised by an attorney, albeit indirectly, because the Director of the program is anattorney. Personnel argues that Grievant's position is correctly classified as an Office Assistant II because of the level and complexity of the work. Further, it interprets the Child Advocate Administrative Assistant classification specification to require that an employee in such a position must be directly supervised by an attorney.

Pursuant to Personnel's Administrative Regulations, Section 4, (1993 Amended), classification specifications are created to be a general description of the positions only and, in order to ascertain the proper assignment of a classification specification to a position, said description must be viewed as a whole. After reviewing the Nature of Work section of the Child Advocate Administrative Position as a whole, it is clear that said specification contemplates that the incumbent must work directly under the supervision of an attorney within a Child Advocate Office. This conclusion is drawn from the following phrases: "assists an attorney is the rendition of professional services," "assisting in the development of cases for presentation to an attorney," and "work is reviewed by an attorney through conferences and by detailed reports." Further, three of the examples of work in said specification reference direct involvement with an attorney. Grievant's position does not have such a reporting relationship.

Grievant's position's duties and responsibilities are more appropriately described by the

classification specification for Office Assistant II. It states under the DistinguishingCharacteristics section of that specification that a predominant portion of the job is the performance of tasks requiring an interpretation and adaptation of office procedures. This is consistent with the nature of Grievant's routine duties. Further, the types of clerical duties used as examples of the work performed within the Office Assistant II position is similar to the type of duties Grievant performs via computer operation. Although Grievant may perform some of the work described in the Examples of Work section of the classification he seeks, said fact is not dispositive of the issue presented herein. The Examples of Work sections of Personnel's classification specifications are descriptive only and the examples contained therein are not limited to only one classification. In conclusion, the record cannot support the finding that Grievant is responsible for the type of "difficult and complex work" required of an incumbant in the position of Child Advocate Office Assistant. Therefore, it is determined that the Office Assistant II classification is the "best fit" for Grievant's position.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant has failed to establish that Personnel's interpretation of the classification specification at issue herein is clearly wrong. Blankenship.

2. Grievant has failed to establish sufficient facts to warrant a finding that he should be classified as a Child Advocate Administrative Assistant. Based upon the record presented, the predominant duties and responsibilities of Grievant's position are best described by the classification specification of Office Assistant II. Broaddus.

Therefore, this grievance is hereby **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.

ALBERT C. DUNN, JR.

Administrative Law Judge

August 29, 1994