JOYCELYN A. KYTE, .

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Grievant, .

.

v. . DOCKET NO. 94-HHR-030

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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

Joycelyn A. Kyte (Grievant), an employee of the Respondent Department of Health and Human Resources (DHHR), challenges her reclassification as a "Secretary II" by the Respondent Division of Personnel (DOP). Grievant contends she should be properly classified as an "Administrative Secretary." This grievance was initiated on January 7, 1993, and amended on June 9, 1993. (See footnote 1) Grievant's supervisor at Level I was unable to grant the relief requested and the grievance was waived to Level III where an evidentiary hearing was conducted on August 23, 1993. On January13, 1994, Jeffrey K. Matherly, General Counsel to the Respondent, issued a decision denying the grievance at Level III. Accordingly, Grievant elected to appeal to Level IV and a hearing was conducted in the Board's Charleston office on April 7, 1994. Thereafter, this matter became mature for decision on April 29, 1994, upon expiration of the time for submission of post-hearing briefs.

Background

The facts in this case are substantially uncontroverted. Grievant's duties within the Legal Division were described by Jeffrey K. Matherly, currently DHHR's General Counsel and formerly Grievant's

immediate supervisor as a Deputy Attorney General assigned to DHHR's Legal Division. The Legal Division is staffed by attorneys from the Attorney General's office to provide legal support services to DHHR. Mr. Matherly approved the current position description for Grievant on June 12, 1992. G Ex 1 at L II. Prior to reclassification, Grievant was classified as a Secretary III, a classification which was eliminated in the course of the reclassification effort by DOP.

Mr. Matherly noted that, due to Grievant's extensive tenure in the Legal Division, she is an invaluable resource in locating the correct individual or agency within DHHR to contact to obtain information concerning the myriad programs administered by the Department. Grievant also provides a significant "corporate memory" in regard to prior litigation involving DHHR. These capabilities are particularly beneficial to DHHR, given the turnover of attorneys assigned to the Legal Division. Because ofGrievant's long-term experience, Mr. Matherly estimated it would take up to a year before an otherwise qualified secretary could be trained to match Grievant's level of performance. Consequently, Grievant requires minimal supervision in performing her assigned duties.

Grievant maintains calendars for the division attorneys and makes appointments for the division chief. She screens incoming telephone calls, handling many calls that might otherwise have to be dealt with by the attorneys. Grievant has been responsible for training new clerical personnel, as well as orienting new attorneys and supervising the work of summer hires. Consistent with established procedures, Grievant distributes assigned work to staff attorneys and maintains records to monitor the status of these assignments. Grievant also refers incoming correspondence to the appropriate attorney or, in some cases, another department or agency. Grievant developed many of the procedures used to maintain the flow of work through the division on her own initiative. All of the files and work performed within the division involve matters of a confidential nature.

Mr. Matherly estimated that approximately fifty percent of Grievant's time was spent typing documents, correspondence and other paperwork. Grievant's position description indicates that she spends approximately twenty-five per cent of her time typing. G Ex 1 at L II. Grievant testified that the amount stated on her position description was less than Mr. Matherly's estimate because the attorneys assigned to DHHR at that point did more of their owntyping. On occasion, Grievant performs certain paralegal functions, such as going to the law library to locate and copy certain cases identified by her supervisor or a staff attorney, gathering documents and information, and filing legal documents in various courts. However, Grievant does not normally conduct independent legal

research although she has done some basic legal research on occasion. Mr. Matherly concluded that Grievant primarily performs secretarial duties while performing adjunct administrative duties.

Grievant also presented evidence from Thomas M. Woodward who has been Grievant's immediate supervisor in DHHR's legal division since December 1992. Mr. Woodward agreed that Grievant primarily performed secretarial duties, including answering phones, typing and assisting attorneys with various clerical tasks including scheduling meetings. Mr. Woodward's testimony was generally consistent with that of Mr. Matherly. He noted that Grievant no longer prepares correspondence to be sent to the Board of Risk Management as that correspondence is now handled through the DHHR General Counsel's Office.

Grievant presented evidence at Level III from Phyllis Carter, a former Assistant Attorney General who supervised Grievant, describing the various duties Grievant performed from October 1987 through January 1989. This evidence was not substantially different from the duties described by Mr. Matherly and Mr. Woodward. Grievant testified that she oriented and trained new paralegals, as well as trained and assigned duties to certain temporary clerical employees.

Virginia Fitzwater, a DOP employee in the Classification and Compensation Section, testified that the classification of "Executive Secretary" sought by Grievant in her amended grievance of June 9, 1993 did not exist prior to December 16, 1992.

Classification Specifications at Issue

The relevant portions of the classification specifications for the Administrative Secretary and Secretary II positions at issue in this case are reproduced herein as follows:

ADMINISTRATIVE SECRETARY

Nature of Work

Under general direction, performs advanced level work by assuming responsibility for adjunctive administrative duties under the guidance of an administrator. Applies in-depth knowledge of program areas, the mission of the division, and the administrator's jurisdiction, policies and views. Provides support services to administrator by supplying specific information, composing reports and correspondence, and taking initiative to recommend actions, or by taking action in modifying and/or improving unit procedures, policies, rules and regulations. Depending on size of organizational unit, may offer some clerical support to administrative superior, often in matters which must remain

confidential. Typically performs administrative support for an agency/division administrator. Performs related work as required.

Distinguishing Characteristics

The paraprofessional work at this level is generally confidential and requires a working knowledge of program areas within the division or organizational unit to which assigned. Administrative support duties are predominant; clerical/secretarial duties typically comprise less than 20% of work time.

Examples of Work

Attends meetings for supervisor to take notes and offer input vis-a-vis supervisor's views, or is briefed on meetings after the fact in order to assist the implementation of new procedures.

Studies and analyzes operational procedures; prepares reports of findings and recommendations for implementation of new procedures or the modification of existing procedures.

Collects and prepares operating reports such as time and attendance records, terminations, new hires, transfers, budget expenditures, and statistical inquiries.

Receives telephone calls, personal callers and incoming mail.

Makes arrangements for conferences, including date, time, location and space.

Plans, schedules, assigns, and reviews the work of other employees.

Oversees office services such as the completion of maintenance reports, ordering of supplies, filing.

Supplies administrator with specific detailed information for completion of reports, speeches, etc.

Types a variety of documents, often confidential in nature.

May conduct initial job interviews and recommend candidates for employment.

May monitor particular programs, draft reports on programs status, assist in applications for grants or outside monies, and draft correspondence for division heads concerning the program areas.

May delegate work to other sections.

May write news releases and otherwise interact with the public on behalf of or in lieu of the

administrator.

SECRETARY II

Nature of Work

Under general supervision, at the full-performance level, provides clerical and administrative relief, exercising discretion and independent judgment. May sign supervisor's name to routine memorandums, correspondence and forms. Attends meeting in the supervisor's absence or on the supervisor's behalf. Necessity for dictation, familiarity with word processor and other special requirements vary depending upon supervisor's preference.

Distinguishing Characteristics

Work at this level is characterized by the level of administrative support preformed. Typically, duties such as researching a variety of sources (library, division archives, past-practice documents, outside private sources, etc.), attending meetings for supervisor where interpretation of information gathered is necessary, and coordinating the activities of section, unit, etc., are characteristic of this level.

At this level, the work requires the application of specific knowledge necessary to complete complex procedural or unusual assignments. Incumbent determines appropriate procedures from among various and variable methods, resources, and processes, or devises innovative methods to accomplish assignment. Incumbent is responsible for his/her own work, and may assign, direct, or supervise the work of others. Although some tasks are defined and self-explanatory, the incumbent works closely with supervisor to set objectives, priorities, and deadlines; may independently set goals and time frames for individual work assignments. Work is typically reviewed randomly upon completion for adherence to guidelines. Contacts at this level are frequent, typically variedand non-routine. Incumbent answers procedural or program inquiries, whenever possible, or refers. Contacts are frequently of a confidential or sensitive nature and require tact.

Examples of Work

Coordinates activities associated with the functions of the division/section/unit, planning and implementing office procedures.

Researches basic statistical work in the compilation of reports involving the activities of the division/sec tion/unit.

Responds to inquiries where considerable knowledge of unit policy, procedures, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Signs, as directed, supervisor's name to routine correspon dence, requisitions and other documents.

Attends meetings with or on behalf of supervisor to take notes or deliver basic information.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports requiring judgment and originality.

Gathers, requests, and/or provides factual information, requiring reference to a variety of sources.

Types, using standard typewriter or word processing equipment, reports, manuscripts, and correspondence; proofreads and corrects to finished form.

May delegate routine typing, filing and posting duties to subordinate clerical personnel.

May maintain bookkeeping records for grants, contract or state appropriated funds or related departmental accounts.

May prepare payrolls, keep sick and annual leave records, act as receptionist, and perform other clerical duties as needed.

May assign and review the work of others.

Discussion

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 closely matched another cited Personnel classification specification than the one 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. 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 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 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).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. In the instant matter, Grievant's evidence falls well short of demonstrating that DOP's determination that she is performing the duties of a Secretary II is "clearly wrong." WhileGrievant performs some of the functions normally done by an Administrative Secretary, these functions do not comprise a predominant portion of her assigned duties. Thus, Grievant's performance of certain duties outside her current classification as a Secretary II does not render her misclassified. See Darby v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-356/357 (Jan. 18, 1994); W. Va. Div. of Personnel Administrative Rules, Series I (Amended) § 4.04(d) (1993).

While Grievant properly points to various tasks which she accomplishes as falling within the Administrative Secretary classification, her predominant duties are included in the Secretary II class specification and these duties provide the controlling basis for classifying her position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990). Thus, although Grievant presented convincing evidence that she performs her assigned duties in an outstanding manner and has comprehensive knowledge of the legal operation in DHHR, allowing her to make a significant contribution to the effective operation of the office, these factors are not relevant in establishing her proper classification since positions and not persons are classified. For these

same reasons, Grievant failed to establish that, prior to December 16, 1992, she should have been classified as an Executive Secretary rather than a Secretary III.

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 as a Legal Secretary in the Legal Division of the Department of Health and Human Resources (DHHR).

2. Grievant is presently classified by the Division of Personnel as a Secretary II.

3. Grievant devotes at least twenty-five percent of her time to duties involving typing.

4. Grievant spends another twenty-five percent of her time receiving, screening and routing incoming phone calls.

5. Grievant performs a variety of administrative duties and performs some paralegal functions but the majority of her duties are of a secretarial or clerical nature.

CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Administrative Secretary constitutes the "best fit" for the duties she 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 her current classification as a Secretary II, this does not render her 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 Administrative Secretary and Secretary II, 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. Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit within the classification specification for Secretary II.

5. Grievant did not demonstrate that, prior to reclassification on December 16, 1992, she was performing the duties of an Executive Secretary rather than her then-current classification as a Secretary III.

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: September 21, 1994 LEWIS G. BREWER

Administrative Law Judge

Footnote: 1Respondent HHR objected to the timeliness of the June 1993 amendment at the Level IV hearing. However, this objection was not raised at the lower levels and the grievance was addressed as amended at Level III. Accordingly, the undersigned finds that this grievance as amended in June 1993 is properly before this Board. See W. Va. Dept. of Health & Human Resources v. Hess, 432 S.E.2d 27 (W. Va. 1993).