BARBARA FORTNER, .

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Grievant, .

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v. . Docket No. 93-HHR-289

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES at HUNTINGTON .

STATE HOSPITAL and WEST VIRGINIA .

DIVISION OF PERSONNEL, .

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Employer. .

D E C I S I O N

Barbara Fortner (hereinafter Grievant) is employed at Huntington State Hospital (hereinafter Hospital) as a Guard I. She, along with seven other employees classified as Guard Is, filed the instant grievance in January 1993, claiming that they should be classified as Guard IIs. Levels one and two of the Grievance Procedure for State Employees were waived and a hearing was held at level three on May 26, 1993. A decision denying the claim was issued on July 19, 1993, and Grievant alone appealed to level four by appeal form dated July 27, 1993. After three continuances were granted, a level four hearing was held on November 4, 1993. At this hearing, the parties entered into a stipulation as to thelegal issue involved and agreed to have this Decision based upon the testimonial evidence and exhibits produced at level three.

The classification specifications at issue in this case are reproduced herein, in pertinent part,

Guard I

Nature of Work

Under general supervision, performs full-performance level work monitoring state property by making periodic rounds of assigned areas to inspect or alter equipment operation; detect fire, theft, vandalism, and illegal entry and secure areas. Irregular circumstances are reported to proper authority. May be required to work rotating shifts and holidays. Performs related work as required.

Distinguishing Characteristics

Work at this level is distinguished by the predominance of duties involving or related to the securing or security of the facility. The extent of legal authority with regard to unauthorized activities is limited. There is no authority granted to carry a weapon.

Examples of Work

Patrols building and grounds to make routine checks of equipment, grounds and property, and to check for danger from fire, theft, or other hazards; punches time clock to verify that rounds are made regularly and punctually.

Sounds alarm in case of fire or other emergency and/or dangerous situation.

Reports emergency phone calls to proper supervisor.

Takes daily receipts to bank.

Warns violators of rule infractions.

Performs routine duties in building, such as checking water level of the boiler, or taking fuel readings.

Controls traffic flow and parking on state property.

Turns on security lights, alarms.

May take identification pictures of clients admitted and new employees.

May require use of physical force in apprehending or detaining escapees or trespassers.

Guard II

Nature of Work

Under general supervision, performs full-performance work monitoring state property by making periodic inspection of assigned areas to inspect or alter equipment operation; detects fire, theft, vandalism, and illegal entry; secures areas. Issues warrants for criminal offenses and follows up with court proceedings when necessary. May be required to work rotating shifts, nights, evenings and/or holidays. Performs related work as required.

Distinguishing Characteristics

Work at this level is distinguished by the predominance of duties involving the security or security of the facility. The extent of legal authority with regard to unauthorized activities includes carrying a firearm in the performance of the work, swearing-out warrants and appearing in court.

Examples of Work

Patrols building and grounds to make routine checks of equipment, grounds and property, and to check for danger from fire, theft, or other hazards.

Reports emergency phone calls to proper supervisor.

Responds to calls for assistance from individuals or groups, such as patients on facility grounds.

Maintains order and prevents disturbances.

Sounds alarm in case of fire or other emergency and/or dangerous situation.

reports irregular or unauthorized activities, property damage, safety hazards, and malfunctioning equipment.

May be required to use physical force in apprehending or detaining escapees or trespassers.

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 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 "pyramidfashion," 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 her required duties. Simmons v. W.Va. Dept. of HHR/Division 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.s. 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).

The following relevant and material facts are deduced from the record and from the stipulation entered into between the parties at the level four hearing:

Findings of Fact

1. Grievant performs duties as described by all of the "examples of work performed" in both of the classification specifications at issue in this case.

2. Grievant "issues warrants for criminal offenses and follows up with court proceedings if necessary." (See footnote 1)

3. Grievant has not been given the permission by the Hospital to carry a firearm.

4. The Hospital is bonded by the West Virginia State Board of Insurance and Risk Management to allow its guards to carry firearms.

5. No Guard I at the Hospital is authorized to carry a firearm.

Discussion

The Division of Personnel contends that the overall distinguishing characteristic of the two classification specifications at issue is that the Guard II specification contemplates the incumbent carrying a firearm in the performance of his/her duties. The Employer has established that it is not its policy to have guards carry firearms. Grievant contends that because she performs all of the work described by the Guard II classification and is also bonded to carry a firearm through the Hospital, she should be classified as a Guard II.

According to the clear and unambiguous language of the two specifications at issue, the Guard II specification is clearlydistinguished from the Guard I specification by the following two duties: carrying a firearm in the performance of duties and "swearing out" warrants and appearing in court. Personnel's interpretation of the Guard II specification is not entitled to deference in this case because the language of the two class specifications is not ambiguous and must speak for themselves. If, Personnel's interpretation were to be considered it would be determined to be clearly wrong because its interpretation is inconsistent with the plain language of the classification specification. In any event, Grievant performs only one of the two duties which sets the Guard II position apart from that of Guard I. Therefore, the evidence cannot support a finding that Grievant is improperly classified as a Guard I under the current circumstances of her employment and this grievance must be denied.

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

Conclusion of Law

Grievant has failed to establish that she is improperly classified as a Guard I according to the language of the West Virginia Division of Personnel's classification specification.

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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

March 30, 1994

Footnote: 1*The undersigned does not know whether the classification specification for Guard II actually contemplates the incumbent's ability to present evidence to establish probable cause for a warrant to a magistrate of competent jurisdiction in order for a warrant to be properly issued or whether it envisions that a Guard II may issue "citations" or "tickets" on the Hospital grounds to violators of its rules and regulations. For the purposes of this Decision, the distinction is of no importance.*