KAREN WHITE,

Grievant,

v. DOCKET NO. 94-RS-275

DIVISION OF REHABILITATION SERVICES/DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Karen White, an employee of Respondent Division of Rehabilitation Services, challenges her classification as "Rehabilitation Office Supervisor" by Respondent Division of Personnel. Grievant contends she should be properly classified as a "Rehabilitation Services Manager I". (See footnote 1) This grievance was initiated on July 23, 1993. A Level III evidentiary hearing was held on March 24, 1994. The Level III grievance evaluator denied the grievance on June 9, 1994, and appeal to Level IV was perfected on July 11, 1994. A hearing was thereafter conducted on September 27, 1994, at which time this case became mature for decision.

Background

Grievant is currently classified as a Rehabilitation Office Supervisor with the Division of Rehabilitation Services. Her working title is Client Service Supervisor (CSS). Grievant is responsible for client services within District One, comprised of Kanawha, Putnam, Jackson, Roane, Boone, and Logan counties. Tr., p. 11. District One comprises 20% of the entire State's population.

Grievant supervises all of the professional staff within District One, including branch office supervisors, employer service representatives, vocational evaluators, counselor trainees, rehabilitation counselors, and senior rehabilitation counselors. There are five branch offices within District One, and each office has a branch office supervisor. Grievant's current classification, Rehabilitation Office Supervisor, is the same as that of the branch office supervisors.

Grievant works in the District One office in Charleston with the District Supervisor, Judy Reed. Grievant has the same authority as the District Supervisor to authorize services to both clients and employees alike. The District Supervisor's classification is Rehabilitation Services Manager I. The District Supervisor is responsible for the entire district. Grievant is part of a team with the district supervisor which plans district conferences to keep staff updated on necessary information and knowledge. She analyzes various statistics within the district to be sure things are running smoothly.

Quality assurance is a major part of Grievant's job. Her job is to ensure that all rehabilitation clients get quality services. As part of that job, she reviews every counselor's territory within her district once every two years. She is a member of a statewide audit team in which she reviews the casework of counselors in districts other than her own. The purpose of the audit team is to monitor the quality of service given statewide.

She is responsible for working with employees to improve problem areas and designs and implements plans of remediation for those employees. Level II Tr., p. 22. She works with the branch office supervisors in completing the annual performance evaluations of the staff within each of the branches. She also works with the District Supervisor to determine the performance ratings for the branch office supervisors.

As the District's CSS, Grievant is the number one answer person for the District. She meets with counselors and families and travels to each branch office on a regular basis to assist the staff with client services. Grievant develops, maintains, and coordinates all client service support programs within the District. Tr., p. 27. She directly supervises new employees for one year until they are ready to be released to the branch offices. Tr., p. 28.

Grievant serves as the District One liaison to the Regional Educational Service Agency III regional interagency meeting as well as with other entities in District One such as Shawnee Hills and West Virginia State College. Tr., p. 33-37.

It is apparent from the many exhibits offered by Grievant as examples of work performed that the District Supervisor and the CSS are consistently given identical authority in many areas of supervision of the District One office. The District Supervisor and the CSS jointly author memoranda to the branch office supervisors and others wherein they assign themselves equal responsibility for various areas, including reviewing the work of the branch office supervisors. Exs. 18, 19.

Especially important for purposes of this analysis is a memorandum dated December 2, 1983 from

Q. J. Humphreys, the Assistant Director, Rehabilitation Services, regarding the role of the Client Service Supervisor. Ex. 44. Testimony established that the description of the position has not changed since the issuance of the memorandum.

The memorandum establishes that the CSS' have line authority over the branch office supervisors and other counselors within their respective districts in the area of client services. The CSS functions as the training coordinator within the district responsible for staff development. The CSS has direct supervisory authority over all professional staff within the district.

The memorandum notes that there has been confusion over the role of the CSS vis-a-vis the District Supervisor, and clearly states that while the CSS is the "number two" person within the district in matters relating to client services, the CSS is not to become an assistant district supervisor: "To cast the Client Service Supervisor into this role would serve to weaken both theDistrict Supervisor and the Client Service Supervisor positions and probably detract from the present quality of services we now are striving for in the area of client services." Ex. 44.

It is in the context of the foregoing that a comparison must be made of the relevant job classifications at issue in this matter.

REHABILITATION OFFICE SUPERVISOR

Nature of Work

Under administrative direction, performs administrative and supervisory work in charge of a local Rehabilitation Services or Disability Determination Services office or a comparable unit at the West Virginia Rehabilitation Center. Supervises the work of professional, clerical, and support staff in providing rehabilitation services or disability determination services to client population. Performs related work as required.

Distinguishing Characteristics

This class is established for positions having supervisory responsibility for a branch office in rehabilitation services, disability evaluation services, or a comparable unit at the West Virginia Rehabilitation Center. Typically, the position involves a significant amount of time in supervision of professional, clerical and support staff. Excluded from this class are satellite or branch offices having one Rehabilitation Counselor and support staff.

Examples of Work

Plans, supervises and coordinates the work activities of professional/technical, consultative and clerical employees in a branch office.

Develops, maintains and coordinates client service support programs in the area of assignment.

Maintains current awareness of overall trends of vocational rehabilitation and new approaches, techniques and equipment in rehabilitation services.

Serves in a liaison capacity with appropriate allied agencies, organizations and client advocacy groups.

Oversees the identification of program needs, goals and the development of new programs in rehabilitation services.

Maintains good public relations with the local community and allied organizations through public speaking engagements and consultative work with such organizations; oversees the development and dissemination of informative literature in the area of assignment.

Oversees and participates in staff development activities in the area of assignment.

Participates in the development of budget requests and supports the upgrading of personnel and program resources in area of assignment.

Explains programs and provides information to clients and public.

REHABILITATION SERVICES MANAGER I

Nature of Work

Under administrative direction, performs complex administrative, managerial and supervisory work with responsibility for a major rehabilitation services program component or geographic area. Reports to the Rehabilitation Services Manager in charge of Rehabilitation Field Services, Disability Evaluation Services, or the Administrator of the West Virginia Rehabilitation Center. Performs related work as required.

Distinguishing Characteristics

The scope of responsibility in this class typically includes the Deputy Administrator and Assistant Administrator of Admissions and Counseling; Client Services; Medical Services or Instructional Services at the Rehabilitation Center as the Deputy Administrator or as District Supervisor in Disability Evaluation Services; Chief, Rehabilitation Services or District Supervisor in Rehabilitation Services. This class is further distinguished from the Rehabilitation Program Specialist class by scope and complexity of program and the number and level of employees managed.

Examples of Work

Plans, supervises and coordinates the work activities supervisory, professional/technical, consultative and clerical employees in the area of assignment.

Develops, maintains and coordinates client service support programs in the area of assignment.

Maintains current awareness of overall trends of vocational rehabilitation and new approaches, techniques and equipment in rehabilitation services.

Serves in a liaison capacity with appropriate allied agencies, organizations and client advocacy groups.

Oversees statewide planning for the evaluation of existing rehabilitation programs and the development of new rehabilitation programs.

Oversees the identification of program needs, goals and the development of new programs in rehabilitation services.

Maintains good public relations with the local community and allied organizations through public speaking engagements and consultative work with such organizations; oversees the development and dissemination of informative literature in the area of assignment.

Oversees and participates in staff development activities in the area of assignment.

Participates in the development of budget requests and supports the upgrading of personnel and program resources in area of assignment.

Discussion

In order for Grievant to prevail upon a claim of misclas-sification, 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 "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. Dept. 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 theanalysis 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 Nos. 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. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the foregoing 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.

The two classification specifications at issue are extremely similar and there is consequently much overlap in the duties of both positions. In fact, the "Examples of Work" section of the two specifications are virtually identical and there is no dispute that Grievant performs all of the examples of work on both of the classification specifications.

The "Nature of Work" section of the Rehabilitation Office Supervisor contemplates administrative and supervisory work in charge of a local Rehabilitation Services office. The "Distinguishing Characteristics" section of that classification specifies that the class was established for positions

havingsupervisory responsibility for a branch office in rehabilitation services.

The "Nature of Work" section of the Rehabilitation Services Manager I position contemplates complex administrative, managerial and supervisory work with responsibility for a major rehabilitation services program component or geographic area. The "Distinguishing Characteristics" section of that classification specifies that the class "typically" includes, among others, a District Supervisor in Rehabilitation Services.

Thus, the primary difference between the two specifications appears to be the size of the area supervised, and the complexity of the administrative, managerial and supervisory work. It has been clearly established by the testimony and evidence in this case that Grievant supervises all of District One, which constitutes a major geographic area. Grievant is responsible for more than one branch office. Therefore, the resolution of this grievance rests upon an analysis of the complexity and level of administrative, managerial and supervisory work which Grievant performs.

William Tanzey, Assistant Director, Rehabilitation Services, testified that the dichotomy between the District Supervisor and the Client Service Supervisor has always been present. The District Supervisor has line authority over day-to-day personnel matters and office administrative matters within the District. The CSS has line authority over policy, budget, professional judgment, training and case service within the District. The CSS has the same day-to-day duties as the District Supervisor with regard tothe new trainees for a period of one year until they are released to the branch offices. Mr. Tanzey testified that the duties of the CSS are so important that it was determined that they should not be burdened with the day-to-day office matters. Mr. Tanzey testified that CSS' are not branch office supervisors; they have line authority over all of the branch office supervisors within the district.

Mr. Lowell Basford, Division of Personnel, testified that the CSS position is a supervisory position, not a managerial one, and thus, Grievant is more appropriately placed in the Rehabilitation Office Supervisor classification. Mr. Basford stated that there are two types of supervision: Administrative and technical. The CSS' have technical supervision, while the District Supervisors have administrative supervision, therefore, the District Supervisors were placed in a higher classification than the CSS. However, Mr. Basford went on to say that the branch office supervisors also have both administrative and technical supervision. Yet, it has been clearly established that the CSS' have line authority <u>over</u> the branch office supervisors.

Mr. Basford also argues that the technical supervisory authority of the CSS is, in effect, cancelled out by the administrative supervisory authority of the branch office supervisors, thus placing them on equal footing. However, the same is true of the supervisory relationship between the CSS and District Supervisor. Mr. Basford testified that it was his opinion that a CSS should not be on the same level as his/her boss. However, the branch office supervisors are on the same level as their supervisor, the CSS.

Grievant has established through her testimony, the testimony of Mr. Tanzey, and the exhibits admitted into evidence, that the responsibility and authority of the CSS involves complex administrative, managerial and supervisory duties. Mr. Basford's argument that because a CSS' supervisory work is technical and a District Supervisor's work is administrative, the CSS should receive a lower classification, is not supported by any evidence. Rather, the evidence suggests that the CSS performs both administrative and technical supervisory work on an equal basis with the District Supervisor.

Further, Mr. Tanzey's testimony establishes that the CSS and the District Supervisor were meant to work in conjunction and be viewed by their staff as equals with distinct responsibilities within the District.

Findings of Fact

1. Grievant is employed as a Client Service Supervisor for District 1 in the Division of Rehabilitation Services.

2. Grievant is presently classified as a Rehabilitation Office Supervisor.

3. The classification specifications for Rehabilitation Office Supervisor and Rehabilitation Services Manager I are virtually identical, except with regard to the complexity of supervision and the size of the area supervised.

4. Grievant performs all of the duties identified in the Rehabilitation Services Manager I classification specification.

5. Grievant is responsible for client services and quality control for District 1, a major geographic area comprising 20% of the population of the State of West Virginia.

6. Grievant performs complex administrative, managerial and supervisory duties as a CSS within in District 1.

Conclusions of Law

1. Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit within the classification specification for Rehabilitation Services Manager I.

2. Grievant has proven by a preponderance of the evidence that the classification of Rehabilitation Services Manager I 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).

3. Personnel's interpretations of the classification specifications for the positions of Rehabilitation Office Supervisor and Rehabilitation Services Manager I, as they apply to the duties being performed by Grievant, are clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

Accordingly, the grievance is GRANTED. Respondent is hereby ORDERED to reclassify Grievant as a Rehabilitation Services Manager I retroactive to the date of Grievant's classification as Rehabilitation Office Supervisor, and to compensate Grievant with back pay, if applicable, based upon the difference betweenGrievant's current pay as a Rehabilitation Office Supervisor and that of a Rehabilitation Services Manager I for the relevant time period.

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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MARY JO ALLEN

Administrative Law Judge

Dated: November 29, 1994

Footnote: 1 *The Grievant originally stated that no position was created during the reclassification project that*

accurately reflected the type of work she performs. Grievant was directed at Level III that she had to pick an existing position which she felt most closely fit her work. Thus, Grievant chose the Rehabilitation Services Manager I position.