EDGAR BUSTER

v. **Docket No. 94-HHR-072**

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/OFFICE OF WORK AND TRAINING

and DIVISION OF PERSONNEL

D E C I S I O N

Mr. Edgar Buster, Grievant, is a Health and Human Services Specialist, Senior ("Specialist, Sr.") in the Office of Work and Training ("OW&T"). He grieves his classification and seeks reclassification as a Program Manager II ("PM II"). This grievance was waived at Levels I and II and denied at Level III. Grievant appealed this case to Level IV and hearings were held on June 2, 1994 and July 14, 1994. This case became mature for decision on September 15, 1994. (See footnote 1)

The pertinent sections of the two classification specifications at issue are quoted below:

HEALTH AND HUMAN RESOURCES SPECIALIST, SENIOR

Nature of Work

Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of amajor statewide program, a statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi-program operations. May consult on highly complex individual situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and

abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides others in developing and utilizing plans and recommends methods of improvement.

Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or delivery of service.

Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long-range work plans.

May lead or supervise professional and support staff.

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER II

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human services. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Surveillance and Disease Control, Family and Children Services, Quality Control, and other organizational units with similar size, scope and complexity.

Examples of Work

Supervises professional, technical and clerical staff; make assignments and reviews and approves plans of operation.

Provides administrative and program direction; enforces agency objectives, policies and procedures.

Responsible for management of recruitment/selection process, staff development, disciplinary matters, and other related actions in assigned area.

Responsible for developing collaborative efforts among health or human services agencies.

Performs research and analysis of legislation, work activities or other issues to develop policies, standards and procedures.

Monitors and evaluates program administration, and the delivery to services to clients.

Provides technical consultation and policy interpretation to staff, supervisor, public officials, and advocacy groups.

Plans and implements programs for the training of professional, technical and clerical staff.

Grievant's working title is Data Systems Coordinator. His role is to maintain, develop, coordinate, and modify the data systems in order to allow the staff in the OW&T to comply with State and Federal guidelines, to enhance productivity, and to simplify required paperwork. Although Grievant interacts with numerous people at the State and regional level he does not supervise anyone. His position is seen as one of support to the OW&T.

Grievant's immediate supervisor, Sharon Paterno, testified at Level III. She stated she reviewed the job descriptions in both the Specialist and Program Manager series before she recommended Grievant be classified as a Specialist, Sr. At the Level III hearing she reviewed the two classifications at issue and testified Grievant did all the "Examples of Work" listed under Specialist, Sr. and did some of the "Examples of Work" listed under PM II. She stated Grievant's duties were technical not managerial. This testimony is consistent with the statement Ms. Paterno filled out on Grievant's

Position Description Form submitted for the reclassification project. She stated Grievant's function was to "evaluate and analyze data system's [sic] capabilities andfederal/state reporting requirements. Work with computer services and field staff to implement appropriate modifications to the data system." DOP Exh. 2. Ms. Paterno stated that the Specialist, Sr. position description more accurately described Grievant's duties.

Mr. Lowell Basford, Assistant Director of Classification and Compensation with Division of Personnel ("DOP"), testified as an expert witness. He stated Grievant was classified correctly as a Specialist, Sr. He further stated the Specialist, Sr. was an important position requiring an individual to work at an "advanced level" and to provide complex administrative and technical assistance within a component of a statewide program. He characterized Grievant's work as a support function for the individuals who implemented the OW&T program. He compared the job descriptions and noted Grievant was not in charge of a major program, did not supervise employees, and did not manage the work of others. He also testified Grievant was not in charge of program planning and did not have responsibility for the development of a program component.

Grievant disagreed with Mr. Basford and Ms. Paterno and testified stating his position was broader than that of Specialist, Sr. because he worked with multiple groups and multiple programs and did all aspects of the data systems, including selection and purchasing of equipment and training on the computer program. He characterized his position as one of support and stated he consults on technical aspects and policy interpretation as it relates to the data system.

Discussion

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 the one 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 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 his 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 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. 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.

Grievant has not met his burden of proving the PM II classification constituted the "best fit" for his required duties. While it is obvious Grievant performs valuable and essential functions to maintain the data system and to increase the efficiency of OW&T staff, this function is one of support as opposed to program management. See, Flanagan v. Dept. of Health and Human Resources/Office of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-028 (Sept. 29, 1994). A review of the two position description forms and the testimony and exhibits at hearing demonstrates Grievant is currently classified correctly as a Specialist, Sr.

Finding of Fact

Grievant monitors, develops, and maintains the data systems in the OW&T to ensure compliance with State and Federal regulations and to increase the effectiveness of the field staff. He provides support functions, has no supervisees, and does not manage a program component.

Conclusion of Law

Grievant has not met his burden of proving by a preponderance of the evidence that the position classification of PM II is the "best fit" for his duties.

Accordingly, this grievance is **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.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: November 29, 1994

Footnote: 1This grievance was consolidated with Docket No. 94-HHR-071 for the purposes of hearing only.