JO ANN GREENE, et al.,

Grievants,

v.

DOCKET NO. 93-BEP-435

WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS/WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Diana Wilson, Jo Ann Greene, Nyola DeBolt, Shirley Parrish, Margaret Morris, Jane Hogue and Jill Legg (hereinafter Grievants), employed by the West Virginia Workers' Compensation Division, Office of Judges, filed a level four grievance appeal on October 18, 1993, alleging that they are misclassified as Secretary Is. (See footnote 1) Grievants assert that, based upon the duties which they perform, their proper classification is Secretary II. Thegrievance was submitted on the record below, and the parties submitted Proposed Findings of Fact and Conclusions of Law on or about March 17, 1994, at which time the case became mature for decision. (See footnote 2)

The classification specifications at issue are reproduced herein as follows:

SECRETARY I

Nature of Work

Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as

required.

Distinguishing Characteristics

This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.

At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks are defined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non-routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Examples of Work

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

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

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

Schedules appointments and makes travel arrangements and reservations for supervisor.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports.

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

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

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

May maintain basic bookkeeping records for grants, contract or state appropriated funds.

May prepare payrolls, keep sick and annual leave records, act as receptionist and

perform other clerical duties as needed.

May attend meetings take notes and relay information; typically would not interpret information or speak on behalf of supervisor.

Knowledge, Skills and Abilities

Knowledge of general office procedures including typing, filing, and the use of variety of office equipment.

Knowledge of the correct use of English grammar.

Knowledge of the basic bookkeeping.

Ability to arrange efficient work schedules.

Ability to learn the policies and procedures of the unit and the organization.

Ability to type accurately, using a typewriter and/or word processor.

Ability to communicate well, both orally and in writing.

Ability to assign and check the work of others.

Ability to take and transcribe dictation where required.

Ability to greet the public and work well with others.

Minimum Qualifications

TRAINING Graduation from a standard high school or the equivalent.

EXPERIENCE Four years of full-time or equivalent part-time paid experience performing clerical duties including typing, which must have included screeningand routing telephone calls and correspondence, and composing routine correspondence.

SUBSTITUTION College hours or related business school or vocational training may be substituted through an established formula for up to two years of the required experience.

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 performed. 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 timeframes for individual work assignments. Work is typically reviewed randomly upon completion for adherence to guidelines. Contacts at this level are frequent, typically varied and 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/section/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 correspondence, 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.

Knowledge, Skills and Abilities

Knowledge of general office procedures including typing, filing, and the use of a variety of office equipment.

Knowledge of the correct use of English grammar.

Knowledge of basic bookkeeping.

Knowledge of basic research techniques.

Ability to arrange efficient work schedules.

Ability to learn the policies and procedures of the unit and the organization.

Ability to type accurately, using a typewriter and/or word processor.

Ability to communicate well, both orally and in writing.

Ability to assign and check the work of others.

Ability to take and transcribe dictation where required.

Ability to greet the public and work well with others.

Minimum Qualifications

TRAINING Graduation from a standard high school or the equivalent.

EXPERIENCE Five years of full-time or equivalent part-time paid experience performing clerical duties encompassing a wide range of office practices, which must have in included typing, screening and routing telephone calls and correspondence, and composing routine correspondence.

SUBSTITUTION College hours or related business school or vocational training may be substituted through an established formula for up to two years of the required experience.

Discussion

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited Personnel classification specification than that under which they are 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. 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 the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for their 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, 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 (W. Va. 1993).

The first task is to draw a meaningful distinction between the classification specifications at issue by reviewing the documents from the top down. The Secretary I's primary function, in addition to typing and dictation, is to provide clerical and minor administrative relief to the supervisor. The distinguishing characteristics of a Secretary I include composing correspondence, screening calls and visitors and responding to inquiries.

The Secretary II's primary function is to provide clerical and administrative relief. The Secretary II may sign the supervisor's name to routine correspondence, memoranda and forms. The Secretary II attends meetings in the supervisor's absence or on the supervisor's behalf. The distinguishing characteristic of a Secretary II is in the level of administrative support performed, with the Secretary II classification involving more section-wide activities, and closer work with the supervisor.

Job classifications focus primarily on the actual functions performed by the employees. Lisa Hanson, grievants' supervisor, testified that they perform under general supervision. Ninety-percent (90%) of grievants' time consists of direct dictation of the judges' decisions. The remaining ten percent (10%) of theirtime is spent typing correspondence, letters and memoranda. Grievants also enter daily and monthly time sheets on the computer system. They must be familiar with legal and medical terms, and know basic legal research. Grievants, specifically Jo Ann Greene and Nyola DeBolt, attend meetings for Ms. Hanson in her absence. They assign tasks such as creating and sorting alphabetical files, and transcription of hearing tapes, to subordinate employees.

Robert J. Smith, Chief Administrative Law Judge of the West Virginia Workers' Compensation Division, testified that Grievants' duties have grown and expanded since the Office of Judges began operations in July 1991. Mr. Smith testified that his secretaries are required to take and screen the judges' phone calls, respond to grievants and lawyers' questions about their claims, arrange for the judges' travel and clear the judges' calendars. He perceived the Grievants as higher skilled and in more demanding positions than the original classification as Word Processors.

Diana Wilson, the grievant who was reclassified as Secretary II at Level III, was awarded that classification because she was considered a "lead" worker. Ms. Wilson attends meetings for her supervisor, and provides administrative support for her supervisor. She has been required to make management decisions such as personnel hiring. Ms. Wilson testified that while she does these things, the other Grievants could do them just as well. The issue, however, is not whether the grievants could perform a task but whether they do perform the task.

The Secretary II level is characterized by the level of administrative support performed. It was determined at Level III that Ms. Wilson performed more administrative functions than the other Grievants and thus she was awarded a Secretary II classification. The administrative work performed by the Grievants (10%) is only a minor part of their job duties, as compared with the direct dictation duties (90%). The "Nature of Work" section of the Secretary I job specification indicates that the position "relieves supervisor of . . . minor administrative duties." (Emphasis added). The classification of Grievants as Secretary Is is not clearly wrong, taking into consideration their actual job functions and comparing those to the functions of others in their office.

The following findings of fact are derived from the record developed by the parties.

Findings of Fact

1. Grievants are employed as Secretary Is within the Office of Judges of the Workers' Compensation Division, Bureau of Employment Programs.

2. The Office of Judges was formed and began operation in July, 1991.

2. Grievants are assigned directly to the administrative law judges for the Workers' Compensation Division.

3. Grievants are responsible for direct dictation of judges' orders, preparing correspondence, screening phone calls, responding to inquiries from grievants and lawyers, and travel arrangements.

4. Grievants assign filing and tape transcription to subordinate employees.

5. Grievants perform minor administrative support functions, including occasionally attending meetings on behalf of their supervisor.

6. Grievants do not perform the same level of administrative support as the lead worker in their office, who is classified as a Secretary II.

Conclusions of Law

1. Grievants have failed to prove by a preponderance of the evidence that they are improperly classified as Secretary Is based upon a review of their normally assigned duties and responsibilities.

2. Personnel's interpretation of the two classification specifications at issue in this case is not clearly wrong as applied to the facts established by the Grievants. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Accordingly, the relief Grievants obtained at Level III is appropriate, and 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.

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MARY JO ALLEN

Administrative Law Judge

Date: May 20, 1994

Footnote: 1 *Grievants initially were classified as Word Processors, with the exception of Margaret Morris, who was classified as an Office Assistant II, as a result of the reclassification undertaken by the Division of Personnel. Personnel conceded at Level III that Grievants were misclassified and agreed to reclassify all of the grievants, except Diana Wilson, as Secretary Is. Ms. Wilson was reclassified as a Secretary II. She was satisfied with the Level III decision and withdrew her name from this grievance.*

The Level III hearing examiner held that Grievants should be reclassified as Secretary Is with full back pay and benefits of that classification as of December 1991, or their date of hire into the Office of Judges, whichever occurred later.

Footnote: 2 *This case was transferred for administrative reasons to the undersigned from another Administrative Law Judge.*