JUDITH KAY WILLIAMS, .

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Grievant, .

.

.

v. . Docket No. 93-T&R-498

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WEST VIRGINIA DEPARTMENT OF .

TAX AND REVENUE / WEST VIRGINIA .

DIVISION OF PERSONNEL, .

.

Employer. .

D E C I S I O N

Judith Williams (hereinafter Grievant) filed this grievance at level one of the Grievance Procedure for State Employees, W.Va. Code §29-6A-1 et seq., on September 23, 1993, alleging as follows:

> I believe my position was misclassified as a result of the Department of Tax and Revenue's reclassification project. I feel my classification of Office Assistant I, pay grade 2, is inappropriate for my responsibilities.
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> RELIEF SOUGHT: Reallocation of my position from Office Assistant I, pay grade 2, to Office Assistant II, pay grade 4.

Grievant's complaint was denied at levels one through three and an appeal to level four was received by this Grievance Board on December 2, 1993. The parties agreed that this Decision could be based upon the evidence developed through level three and abriefing schedule was established declaring that the case would become mature on or about February 23, 1994. A representative of the Division

of Personnel (hereinafter Personnel) was not present at the level three hearing nor was a post-hearing brief submitted on its behalf at level four. (See footnote 1)

Because this case involves an issue of classification, Personnel's classification specifications at issue are reproduced herein as follows:

Office Assistant I

Nature of Work

Under close supervision, performs entry level work in a variety of routine clerical tasks with prescribed procedures and guidelines. Performs related work as required.

Distinguishing Characteristics

Performs routine clerical tasks as a predominant portion of the job. Tasks may include sorting and distributing mail. May enter data using a video display terminal and make inquiries into the system; data work is limited to a few simple applications.

At this level, the predominant tasks are of a routine nature with well-structured directives for completing the work. Work is learned through repetition and requires ability to learn steps in the series of related tasks, which are typically a part of a broader work function. Work is reviewed for completeness and accuracy or provides an inherent system of checks. Contacts are typically informational; position is limited in authority for independent action.

Examples of Work

Sorts and files documents numerically, alphabetically or according to other predetermined classification criteria; pulls material from files upon request.

Types routine correspondence, forms, and labels.

Operates office equipment such as adding machines, electrical calculating or copying machine or other machines requiring no special previous training.

Answers telephone; takes messages; routes calls; answers general information questions.

Receives, sorts and distributes incoming and outgoing mail and performs messenger work.

Inventories, stocks and distributes office supplies.

Counts, collates, codes, sorts, staples and inserts forms in envelopes.

Posts information to log or ledger for record keeping purposes.

May record and maintain time/attendance records for unit or section.

May enter data into video display terminal; may inquiries into system; may run a mailing list.

May microfilm documents for record maintenance.

Office Assistant II

Nature of Work

Under general supervision, performs full-performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the understanding of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety or related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The steps of each taskallow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

Examples of Work

Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction, division or multiplication); corrects errors if the answer is readily available or easily determined.

Maintains, processes, sorts and files documents numerically, alphabetically, or

according to other predetermined classification criteria; reviews files for data and collects information or statistics such as materials used or attendance information.

Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as adding machine, calculator, copying machine or other machines requiring no special previous training.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Collects, receipts, counts and deposits money.

Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.

Posts records of transactions, attendance, etc., and writes reports.

May compile records and reports for supervisor.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database.

The following findings of facts are also deduced from the record.

Findings of Fact

1. Grievant is employed by the West Virginia Department of Tax and Revenue (hereinafter T&R) as an Office Assistant I within its Revenue Division.

2. Grievant spends approximately eighty-five percent of her work day using a page search reader printer and a personal computer, in conjunction with various notebooks, tapes and ledgers, in order to retrieve tax documents for various sections within T&R or other governmental entities.

3. Grievant works with very little direct contact with her supervisor.

4. The majority of Grievant's contacts and requests are from intra-agency divisions and/or employees.

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 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 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/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 (1993).

As noted, Personnel's interpretation of the language of its classification specifications at issue in misclassification cases is entitled to deference unless clearly wrong. However, no interpretation of the general and ambiguous language at issue herein has been provided because no one from Personnel appeared at the level three hearing or submitted a post-hearing brief. Therefore, the undersigned has to perform the difficult and unenviable task of analyzing the facts as presented, in relation to the language of the classification specifications at issue, without the benefit of an expert opinion having been given.

Based upon Grievant's description of her duties, it is hereby determined that she is properly classified as an Office Assistant I. Grievant performs the very narrow and exact function of searching for documents through established computer and hard-copy sources. She performs this function repeatedly throughout each work day indicating that the nature of her search is clerical and routine. The mere fact that Grievant is working both with taxdocuments and with computers does not directly indicate that her duties are complex or involve multiple, clerical steps. She does operate within a "well structured" environment and the accuracy of her work is easily determined from the outcome of the search which she performs. Even though she does not have a supervisor looking over her shoulder or checking on the progress of her work numerous times per day, does not mean that she works under general supervision. Grievant is not responsible for performing the type of work which involves the exercise of independent judgment necessitating that she be supervised frequently. Further, she has not established that she is responsible for performing tasks which require an "interpretation and application of office procedures rules and regulations." In conclusion, it is determined that the nature of Grievant's work is contemplated by the classification specification of Office Assistant I and not that of Office Assistant II.

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 by a preponderance of the evidence that she should be classified as an Office Assistant II based upon the nature of the duties and responsibilities which she performs as a predominant part of her job. Broaddus v. W.Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

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

May 17, 1994

Footnote: 1A memorandum was submitted by Lowell D. Basford on behalf of Personnel at level three in support of its arguments. It was determined by the Grievance Evaluator that this memorandum was inadmissible as evidence and, therefore, it was excluded from consideration and from the record. It is doubtful that this memorandum was meant to be considered for evidentiary purposes by Personnel, and therefore, the document should have been included in the record sent to level four. However, Personnel was given an opportunity to file a post-hearing brief in support of its legal argument but did not do so. Therefore, it is determined that Personnel has not been prejudiced in this proceeding.