ALPHA WHITT

v. **Docket No. 93-BEP-030**

BUREAU OF EMPLOYMENT PROGRAMS/

DIVISION OF PERSONNEL

DECISION

The grievant, Alpha Whitt, is employed by the Bureau of Employment Programs (BEP) as an Employment Program Interviewer (EPI) in the agency's Williamson Job Service Office. She initiated a grievance at Level I July 23, 1992 alleging that her position was misclassified and should be classified as Employment Program Worker, Senior (EPISR). Her immediate supervisor was without authority to grant relief as was an intermediate supervisor at Level II. The grievance was denied at Level III following a hearing held December 7, 1992 and an appeal to Level IV was made January 13, 1993. By order dated February 26, 1993, the West Virginia Department of Personnel (Personnel) was joined as an indispensable party. (See footnote 1) The parties subsequently agreed to submitthe case for decision on the record developed at the lower levels. (See footnote 2) The grievant's and BOP's proposed findings of fact and conclusions of law were submitted by September 21, 1993. Personnel declined to do so.

The classification specifications at issue are reproduced herein as follows:

EMPLOYMENT PROGRAMS INTERVIEWER

Nature of work

Under general supervision, performs work at the full-performance level, using standardized interviewing methods to obtain, verify, or interpret information from applicants, claimants, and employers in a local employment office or an itinerant point. Performs related work as required.

Distinguishing Characteristics

Work at this level is characterized by the emphasis placed on the use of general knowledge rather than specialized program knowledge. Typically, duties at this level do not involve lead work.

Examples of Work

Interviews applicants to obtain or verify employment history and complete or update applications.

Assigns occupational title and code to application using the Dictionary of Occupational Titles.

Takes job information from prospective employers by telephone, mail or in person, and writes job orders.

Searches files for qualified applicants to fill job orders.

Enters, updates, and deletes information in the computer system.

Interviews claimants to obtain or verify reason for unemployment.

Consults printed guidelines to determine eligibility of claimant.

Assists claimants in completing proper claims forms.

Verifies claimants' continued availability for employment.

Knowledge, Skills and Abilities

Knowledge of variety of occupations and their required qualifications.

Knowledge of the functions and objectives of public employment offices.

Ability to learn unemployment claims office routine.

Ability to learn the state and federal laws pertaining to the agency.

Ability to learn approved interviewing techniques.

Ability to conduct an effective interview to obtain necessary information from applicants and employers.

Ability to analyze job requirements and evaluate applicants' qualifications.

Ability to interpret agency regulations to others.

Ability to understand and follow oral and written instructions and guidelines.

EMPLOYMENT PROGRAMS INTERVIEWER, SENIOR

Nature of Work

Under general supervision, performs advanced level work, planning and carrying out an employer relations program, and/or acting as lead worker in placement programs, applications, and initial claim taking. May perform alternate deputy duties and/or perform supervisor/managerial duties in supervisor's absence. In an

unemployment compensation office, may be in charge of a specialized function, i.e., the intake process, continued claims, placement process, etc. Performs related work as required.

Distinguishing Characteristics

Work at this level is characterized by the emphasis placed on more specialized program knowledge and/or lead-work duties.

Examples of Work

Interviews applicants to obtain or verify employment history, complete or update applications, or obtain or verify reason for unemployment.

Assigns occupational title and code to application using the Dictionary of Occupational Titles.

Takes job information from prospective employers by telephone, mail or in person and writes job orders.

Consults printed guidelines to determine eligibility of claimant.

Assists claimants in completing proper claims forms. Coordinates referral activities on job orders.

Conducts meetings to train or discuss procedural changes.

Assigns work to lower level employees, reviews work of others.

Interprets policies and guidelines.

Maintains records and compiles reports.

Knowledge, Skills and Abilities

Knowledge of a variety of occupations and their required qualifications.

Knowledge of the functions and objectives of public employment offices.

Knowledge of the state and federal laws pertaining to the agency.

Knowledge of approved interviewing techniques.

Knowledge of unemployment claims office routines.

Ability to conduct an effective interview to obtain necessary information from applicants and employers.

Ability to record and evaluate a variety of factual information and prepare reports.

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 that 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. 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 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 inquestion 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 the language of such 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).

It is apparent from a review of the pertinent specifications for the Interviewer positions that the distinguishing characteristic between the two is that the EPISR functions as a lead worker or works in a specialized program. Although a percentage of the grievant's time is spent performing duties associated with the Job Training Partnership Act (JTPA) program in the Office's Job Service section, (See footnote 3) she does not assert and the record does not support that those duties entitle her to the higher classification. Her claim is grounded on duties she characterizes as those of a lead worker. (See footnote 4) BOP and Personnel (See footnote 5) maintain thoseduties are encompassed by the EPI specifications and the grievant has otherwise failed to establish by the applicable standard that her position is misclassified. For reasons hereinafter discussed, the undersigned agrees with the respondents' position.

The testimony of Albert Totten, the grievant's supervisor, established that EPISR Gladys Burchett is the office's only designated lead worker who assumes his duties in his absence. Mr. Totten conceded that other workers frequently approach the grievant with work-related questions in his absence but asserted that such exchanges were just part of the operation of a small office. He would not concede that the grievant was responsible for training new workers and stated that she and other experienced workers shared that duty. Mr. Totten otherwise provided little testimony relevant to the grievant's claim.

Employment Security Counselor Jean Fodor confirmed that she and other employees in the Williamson office frequently approached the grievant with work-related problems because they

received "better answers" from her than Ms. Burchett. Ms. Fodor opined that the grievant did serve as a lead worker and explained that this conclusion was based on the grievant's responsibilities for training new workers and her willingness to assist others.

The grievant, in her testimony, provided few details on her day-to-day duties. She simply asserted that she was a lead worker and trained new workers. On cross-examination, she reviewed a job analysis questionnaire (See footnote 6) completed by her on September 9, 1990 and "updated" the percentages of time allocated to specific tasks listed thereon. According to the grievant, she spends twenty-five percent of her time interviewing job applicants and referring them to potential employment sites; five percent contacting employers to see if a referral was successful; twenty percent receiving calls from potential employers; twenty percent completing JTPA applications; five percent auditing other workers' daily time sheets; five percent typing and updating lists of potential jobs; and twenty percent receiving "job orders" from employers. She made no mention of training other workers during her review of the questionnaire.

Despite the grievant's failure to include her training duties during her examination of the questionnaire, it is accepted thatshe has assisted in the orientation of new workers. Her testimony and that of Ms. Fodor is sufficient to overcome the apparent omission. Further, it is recognized that an employee may meet the definition of lead worker if a sufficient amount of his or her time is spent on such duties. See Wolfe v. W.Va. Tax Dept., Docket No. T-88-011 (July 29, 1989). Here, however, the grievant did not present evidence to establish what percentage of her time is spent on such duties. Thus, it cannot be concluded that she has established entitlement to the EPISR classification on that basis.

Likewise, the grievant did not quantify the time she spends assisting other employees. As noted by the Level III evaluator, the record suggests that the assistance is only occasional and that it is more of an "interaction" between her and fellow employees than a function of her job.

It is concluded, therefore, that the grievant has failed to establish by a preponderance of the evidence, that she consistently acts as a lead worker in BOP's Williamson Job Service Office, or that her duties otherwise more closely match Personnel's classification specification for EPISR than that for EPI, under which she is officially categorized.

Accordingly, the 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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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: February 25, 1994

Footnote: 1*This action was taken pursuant to Education and State Employees Grievance Board Procedural Rule 4.11.*

Footnote: 2*The parties engaged in a July 7, 1993 mediation session but could not reach a settlement.*

Footnote: 3*The office apparently has two main divisions, job service and unemployment compensation. For the past four years the grievant has been assigned to the job service branch which is primarily concerned with the placement of unemployed individuals in jobs. JTPA is a facet of that division.*

Footnote: 4*At Level III the grievant asserted for the first time that she had also not been properly compensated in her present classification which became effective December 1, 1991. She contended that since Personnel's reclassification plan under which she was placed in the EPI classification had an effective approval date of October 16, 1990 her salary as such should have been retroactive to that date. The record was not well developed on this point and the Level III evaluator made no findings on the validity of the assertion. At Level IV, the grievant renewed this complaint in her submissions.*

It is doubtful that the issue is cognizable at Level IV since it was not made part of the original statement of the grievance and no decision was made at any level to permit an amendment thereto. See W. Va. Dept. of Health and Human Res. v. Hess, 432 S.E.2d 27 (W.Va. 1993). In any event, the sparse evidence of record relevant to the question suggests that Personnel established a new comprehensive pay plan effective October 16, 1990, which was ultimately to be applied to all state employees in the classified service but that a particular employee would not have the benefit of any increases in salary thereunder until that employee was actually reclassified and placed on a particular tier in the plan. Since the record establishes that the grievant was not reclassified until December 1, 1991, she was not entitled to any increases prior to that date.

Footnote: 5*As previously noted, Personnel did not submit proposed findings of fact and conclusions of law. The agency's*

legal position is gleaned from the opening and closing remarks of its representative at the Level III hearing.

Footnote: 6The questionnaire was part of Personnel's 1990 study to discern the nature of work of various BOP employees and determine their proper classifications.