SUE ELLEN BUSTER

v. **Docket No. 94-HHR-071**

DEPARTMENT OF HEALTH AND HUMAN
RESOURCES/OFFICE OF WORK AND TRAINING
and DIVISION OF PERSONNEL

D E C I S I O N

Sue Ellen Buster, Grievant, grieves her classification as a Health and Human Resources Specialist, Senior ("Specialist, Sr.") and seeks to be reclassified as a Program Manager II ("PM II"). Grievant works for the Department of Health and Human Resources in the Office of Work and Training ("OW&T"). Her working title is Policy Coordinator. This grievance was waived at Levels I and II and denied at Level III. The Grievant appealed to Level IV and hearings were held on June 2, 1994 and July 14, 1994 (See footnote 1). This case became mature for decision on September 15, 1994.

The pertinent sections of the class specifications at issue are written 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 a major 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.

As previously stated the Grievant works in the OW&T and her major responsibility is the coordination and development of policy for the JOBS (See footnote 2) and State Food Stamp and Employee Training Program. This coordination includes the writing of the state plan for these programs to ensure they meet state and federal rules and regulations. Grievant also reviews, coordinates, and interprets policies for the regional administrators and their staff on the local level. Additionally, Grievant acts as a legislative liaison and works with office hearing examiners to assure compliance with federal and state rules and regulations. Grievant works with many individuals both within and without her office, but does not directly supervise anyone. She reports directly to Sharon Paterno who is the Director of the OW&T.

Ms. Paterno testified at Level III and stated she reviewed the Specialist, Sr. and PM I and II

positions before she recommended Grievant be classified as a Specialist, Sr. as this position most closely matched her position. Ms. Paterno testified Grievant performed all the Examples of Work ("EOW") listed under the Specialist, Sr. classification but did not perform at least three of the EOWs listed under the PM II. Ms. Paterno noted Grievant did not supervise any staff and did not monitor and evaluate program administration and the development of services to clients.

At Level IV, Mr. Lowell Basford, Assistant Director of Classification and Compensation of the Division of Personnel ("DOP"), was recognized as an expert witness. He stated the Specialist, Sr. classification was the "best fit" for the Grievant. Mr. Basford testified a review of whether an individual is properly classified begins with the title of the position. He noted Grievant did not manage a major program component or supervise the work of others. He further testified that PM II's work is done through subordinate staff whether the supervisees are clerical, professional, or staff individuals.

Mr. Basford noted the Specialist, Sr. position is an important one involving work at an advanced level including administration coordination and complex technical assistance. He stated this is what Grievant did when she coordinated the state plans and provided technical consultation with the field staff about rules and regulations and their implementation. Mr. Basford also stated Grievant served in a support capacity for those implementing theprogram in the field. He stated Grievant coordinated policy, engaged in planning and data collection, but did not manage a program.

Grievant testified she performed the same duties as other PM IIs, but did not identify these individuals or their titles. Additionally, she stated she performed all the EOW's listed in the PM II job description. She testified she interacted with many people, and if her title was not the same status as their title she would not be respected or listened to by them. Grievant further testified she did not understand what the Position Description Form ("PDF") would be used for when she filled it out. She stated if she had known she would have filled it out more completely.

On cross examination Grievant stated that neither under her old title nor her current title had she been prevented from functioning effectively in her job. Additionally, on cross examination the Grievant noted the first paragraph on the PDF stated, "(y)our job will be classified based primarily on the information you provide on the form." The form then went on to state it is "extremely important" to give "an accurate and complete description of your job work." The 1990 PDF used by DOP is quite lengthy and clearly specifies Grievant's duties. Grievant also completed another PDF for this grievance but noted that few of her job duties have changed in the intervening three years.

Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of theevidence that her duties for the relevant period more closely matched another cited Personnel classification specification than the one 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. 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 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 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 forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial obstacleto overcome in attempting to establish that they are currently misclassified. In the instant case, the Grievant has failed to demonstrate that DOP's determination that the Specialist, Sr. is the "best fit" for her duties is "clearly wrong." While Grievant's duties are important, and indeed essential, to the functioning of the OW&T, these duties are in the area of support, consultation, and technical assistance. Grievant does not manage a major program component, thus she cannot be classified as a PM II.

In addition to the foregoing the undersigned makes the following finding of fact and conclusion of law.

Finding of Fact

Grievant functions as a policy coordinator, legislative liaison, and technical advisor to the OW&T. She does not manage a major program component or supervise the work of others.

Conclusion of Law

The Grievant has not met her burden of proving by a preponderance of the evidence that the position classification of PM II is the best fit for her normal 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 30, 1994

Footnote: 1 This case was consolidated with Docket No. 94-HHR-072 for hearing only.

Footnote: 2 This acronym was not clarified but apparently has something to do with providing training to and day care for unemployed individuals receiving public assistance.