ESTHER J. PACK and .

ANGELA K. WELLMAN, .

Grievants, .

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.

.

v. . Docket No. 93-HHR-377

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES at CHILD .

ADVOCATE OFFICE, and WEST VIRGINIA .

DIVISION OF PERSONNEL .

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Employer. .

D E C I S I O N

Esther Pack and Angela Wellman are both classified as Office Assistant IIIs within the West Virginia Department of Health and Human Resource's Child Advocate Office at Huntington, West Virginia. Grievants contend that they are misclassified because they perform duties which more closely match those included in the civil service classification of Secretary I. They contend that even though they perform all of the work described by the Examples of Work section of both classification specifications at issue, the Office Assistant classification specification more closely describes the nature of their duties and responsibilities. Grievants' supervisor, Administrative Assistant Sharon Winkler-Serena, concurs with their assessment of the classifications.

The West Virginia Division of Personnel (hereinafter Personnel) was represented by Virginia

Fitzwater, senior personnel classification specialist, at both the level three and four hearings in this matter. Ms. Fitzwater testified that it was Personnel's opinion that Grievants are properly classified because they perform complex clerical duties which involve an abundance of typing similar to that performed in the old "typing pool" setting. She also opined that the Child Advocate Office in Huntington is not considered to be a "division" or "section"; therefore, Grievants cannot be classified as Secretary Is. The testimony taken at both levels of hearing in the case has been considered for purposes of this Decision. The following findings of fact are deduced from the record.

Findings of Fact

1. Grievants work directly for the Cabell County Child Advocate Attorney and his Administrative Assistant.
2. Grievants take direction from both superiors. The work which is delegated by the attorney is generally legal in nature while the work assigned by the Administrative Assistant is more administrative or clerical.
3. Grievants perform their respective duties for the attorney within an assigned caseload. According to a March 24, 1993 memo from Ms. Winkler-Serena to the staff (Gr. Exh. 3), the following duties are required of the Grievants:

Preparation of petitions, complaints, etc.;

Hearing notices;

Setting hearings;

Contact with other attorneys

Letters to Family Law Master, Judges, etc.;

Notifying and scheduling of blood tests;

Typing of orders, etc.;

Logging and processing entered orders

Completing the legal process log;

Typing of suggestions, writs of execution, and logging of abstracts of judgements;

Typing of URESA's;

Legal Assistant correspondence;

Forms;

General typing for Legal Assistants;

Backup for wage withholdings;

Confirm the docket with Circuit Judges secretaries;

Type and distribute the docket;

Pull files and distribute to Legal Assistants;

Reschedule hearings and notify parties.

Angela Wellman

Personnel:

PO-1A's;

Support work for interviewing and selection of candidates;

Checking intern's time sheets;

CATS;

Quik Mail;

Administrative files;

Incoming Mail;

Round Robbins;

Teleconference Preparation;

Office Plan Sheet;

Billing and invoices;

Hospital Paternity Project;

Administrative correspondence.

Esther Pack

Expense Accounts;

Supplies and equipment;

Forms Orders;

Outgoing mail;

Round Robbins;

TR-10 and 10A's for training;

Bob' Plan Sheet;

Monthly report;

Personnel filing;

Court mail:

sort and log

Divide by caseload

Administrative correspondence.

The duties listed on this memo are basically consistent with the duties Grievants listed on their last completed position description forms.

4. While it is obvious from the record that each and every duty listed above was not described in detail, Grievants' predominant duties involve typing, word processing, correspondence, maintaining a supervisor's docket and interacting with the public.

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. 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/Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of theposition 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).

The relevant sections of the Personnel classification specifications at issue in this case are

reproduced herein:

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. Necessary 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 sensitivenature, requiring tact and the ability to judge which inquires can be answered or must be referred.

Examples of Work

Responds to inquires 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 routing 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 from 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.

Office Assistant III

Nature of Work

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics

Perform tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

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

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

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

Files records and reports.

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 database and analyze data for management.

In analyzing cases of this nature, the first task is to draw a meaningful distinction between the classification specifications at issue by reviewing the documents from top down. On some occasions, it is not only helpful but necessary to review the specifications as a whole in order to comprehend the subtle differences between the two jobs described. In this case, the difference between the Secretary I specification and the Office Assistant III specification appears to be based upon the incumbent's relationship to his/her supervisor. The Secretary I specification anticipates that the employee necessarily relieves a supervisor of both **clerical** and minor **administrative** duties whileexercising discretion and independent judgment. The Office Assistant specification focuses not on any level of supervisory relationship but upon the performance of complex clerical tasks involving the interpretation and application of office policies and procedures. Both specifications allow the employee to perform routine and complex clerical duties but the Secretary I position requires duties normally performed by a superior to be performed by the incumbent while the person holding the position of Office Assistant III is responsible for the performance of their own regularly scheduled

work. It is true that any time a subordinate performs clerical work, that employee's supervisor is relieved of the work; however, this is not the same simple relationship contemplated by the Secretary I classification specification.

There is no question that both Grievants perform minor administrative tasks which could generally be performed by their Administrative Assistant. The question becomes whether Grievants spend a predominant portion of their time in performing such tasks by exercising independent judgment. This question is not an easy one to be answered. Grievants both are responsible for an abundance of clerical work involving many different substantive matters, and it is very difficult to try to generalize about the nature of someone's duties when they do as many different things as Grievants do in this case. A very large portion of their time is spent typing legal documents upon the request of the attorney, typing memoranda and forms, correspondence and reports. They also perform a wide variety of other clerical functions such asanswering phones, keeping calendars and schedules, and handling mail. This work can be described as clerical. Grievants also perform various tasks which can be described as administrative; however, it has not been established that they perform these administrative duties by exercising the level of independent judgment required by Personnel to be classified as a Secretary I. The majority of these administrative duties are simply performed in a routine, clerical nature, not independent from the review of Ms. Winkler-Serena. This is also consistent with an interpretation of the duties described in Grievants' position description forms.

Grievants are obviously competent in the performance of their assigned duties and they, like many other clerical staff, form the "backbone" of the Child Advocate Office in Huntington. They have not, however, established by a preponderance of the evidence that they are improperly classified as Office Assistant IIIs. Personnel's interpretation of its own classification specifications in this case, as ambiguous and overlapping as they may be, is entitled to deference. Grievants have not established that Personnel's interpretation in this case is clearly wrong. Therefore, they cannot prevail in their claim.

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.

Conclusions of Law

1. Grievants have failed to prove by a preponderance of the evidence that they are improperly

classified as Office AssistantIIIs 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 developed by the Grievants. Blankenship, supra.

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

February 28, 1994