KATHLEEN MAYLE

v. Docket No. 95-BCHD-117

BARBOUR COUNTY HEALTH DEPARTMENT/

WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant, Kathleen Mayle, employed by the Barbour County Health Department (BCHD) as a Clerk II, filed a level one grievance on December 23, 1991, in which she complained that she had been improperly denied promotion to Clerk III. Grievant prevailed at levels one, two, and three; however, the Division of Personnel (Personnel) denied the promotion and the matter was advanced to level four. A decision issued in Mayle v. Barbour County Health Dept./ W.Va. Div. of Personnel, Docket No. 92-BCHD-066, on August 28, 1992, held that employees of county health departments were not "employees" within the contemplation of W.Va. Code §§29-6A-1, et seq., and the Grievance Board lacked authority to hear the complaint. This decision was reversed by the Circuit Court of Barbour County by Order entered February 21, 1995, and the grievance remanded to level four for reconsideration. The partiesagreed to submit the matter for decision based upon the record made at the level four hearing on May 22, 1992. The grievance became mature for decision with the submission of Grievant's proposed findings of fact and conclusion of law and a final written comment by the BCHD on or before July 6, 1995.

The facts of this matter are as follows. Grievant has been employed by the BCHD for an unspecified number of years and was classified as a Clerk II in June 1991. The BCHD approved a recommended promotion for Grievant, effective July 1, 1991, with a half-step increase in her salary from paygrade four, step eight-a to paygrade four, step eight-b. The Local Health Department Personnel Action form listed the type of change to be "salary advancement/merit." Other documentation indicates that Grievant had been recommended for promotion at that time to Clerk III. Personnel denied the change in classification and the present grievance ensued.

Grievant argues that she is entitled to the classification of Clerk III based upon the years of service required, her experience, excellent and above average evaluations, and because she assumed a 274% increase in workload from Home Health services during the 1990-91 fiscal year. The levels one and three decisions corroborate that the promotion was recommended due to Grievant's increased workload. The level three decision additionally refers to increased responsibilities assumed by Grievant. Personnel denies that Grievant is entitled to a promotion, and assertsthat the complexity and difficulty of the work she performs establishes her proper classification as Clerk II.

In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that her duties are those of a classification higher than the one assigned, as described by the specifications for that classification promulgated by the West Virginia Division of Personnel. Bannister v. W.Va. Dept. of Human Services, Docket No. 89-DHS-251 (Nov. 3, 1989). The analysis is focused upon 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), and must include deference to Personnel's interpretation and explanation of the classification specifications at issue. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W.Va. 1993).

The relevant portions of the classification specifications for Clerk II and III are as follows:

Clerk II

Nature of Work:

An employee in this class performs clerical tasks calling for interpretation and adaptation of office procedures, rules and regulations. Appropriate procedures must be selected from among several suggested by the supervisor or established by precedent. Positions in this class are further distinguished by the requirement for making initial decisions in compliance with regulations, standards and instructions. Results are reviewed critically only when unusual problems are involved. The work requires frequent contacts with immediate supervisors on problems of unit organizations, work methods and standards.

Examples of Work Performed:

Types correspondence, invoices, and reports.

Alphabetizes and codes materials in maintaining a filing system and keeps records of materials usage, or payroll information.

Answers telephone, screening calls, taking messages and complaints and giving information to the caller when possible.

Posts information concerning payroll, materials usage, or equipment rental to a log or ledger.

Films informational materials for microfilm films.

Operates copier or mimeograph to reproduce materials.

Opens, sorts and distributes mail.

Performs related work as required.

Required Knowledge, Skills and Abilities:

Knowledge of office methods and procedures.

Knowledge of business English, spelling, and arithmetic.

Ability to maintain effective working relationships with other employees and the public.

Ability to use common office machines and other office equipment.

Ability to understand and follow oral and written instructions.

Clerk III

Nature of Work:

An employee in this class performs complex assignments often of a technical nature requiring the interpretation of application of office policies and practices to a number of specific work situations. Assignments requiring the establishment of new or revised procedures on policies are discussed with an administrative or technical superior. Before a final decision is made work problems relating to the application of these policies or standards will be resolved by the employee. Work may also include the incidental supervision of a small office staff and relaying instructions where such supervisory responsibility is not the primary part of the job.

Examples of Work Performed:

Keeps records on materials usage, equipment rentals or personnel and payroll transactions and posting information to logs and ledgers.

Maintains and updates a filing system of letters, memos or statistical information and may prepare reports from files.

Answers telephone, taking complaints, and giving information when possible regarding the services and procedures of the organizational unit.

Prepares and/or composes routine correspondence.

May train and supervise lower level personnel in routine duties, relaying instructions and information.

May operate office equipment such as a copier, mimeograph or postage machine; or more complex equipment, e.g., telecopier or two-way radio.

May assist in preparing reports, performing necessary arithmetic computations.

Performs related duties as required.

Required Knowledge, Skills and Abilities:

Knowledge of office methods of procedures.

Knowledge of business English and spelling and commercial arithmetic.

Ability to plan, organize, assign, and review the work of subordinate employees.

Ability to maintain or supervise the maintenance of records of some complexity and to prepare reports and tabulations from these records.

These 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). The key to the analysis is to ascertain the predominant duties of the position in question insofar as they are class controlling. Broaddus v. W.Va. Div. of Human Serv., Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

The "Description of Work" section on Grievant's position description, completed July 1, 1991, relates that she performs the following tasks:

1. Maintain computer information (Admit new patients, enter SN, Aide Pt. visits, supplies,

discharges, information for certification, medical updates, payments received from medicare, medicaid, etc. Billing medicare, medicaid, etc. Submit claims to appropriate agencies.

2. Keep records of visits made by SN, Aide & Pt. to be posted in computer.

3. Screen incoming phone calls and refer to appropriate person/program.
4. Maintain filing for Home Health.
5. Prepare charts for admissions and close out charts for discharges.
6. Review certifications and medical updates for missed fields.
7. Make copies of records.
8. Mail certifications and change of orders to physicians for signatures.
9. Make copies of forms to be mailed.
10. Prepare monthly reports.
11. Compile information for cost reports.
12. Type memos, letters, etc.
13. Type reconsiderations for medicare.
14. Maintain vehicle schedule.

It is accepted that prior to 1991 Grievant was required to obtain and utilize computer skills and that she assumed a heavier workload which included some additional duties. However, neither the acquisition of skills necessary to complete the performance of one's duties, nor the assumption of additional duties, similar or identical to those already performed, entitle an employee to a promotion. The position description completed by Grievant in 1991 indicates that 90% of her workday is consumed with typing. Grievant's testimony at level four establishes that she must also consult withvarious sources to obtain information necessary for the completion of some of her tasks. Overall, it appears that Grievant works with a certain amount of independence and responsibility as defined by the classification of Clerk II. This is not to say that Grievant may not perform some duties listed on the position description for Clerk III; however, this factor alone would not render her misclassified. Dooley v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H- 498 (Mar. 19, 1991). Generally, it appears that Grievant's duties are completed within prescribed procedures and guidelines and are not of the complex level required of a Clerk III. (See footnote 1)

In addition to the foregoing narration it is appropriate to make the following formal findings of fact

and conclusions of law.

FINDINGS OF FACT

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1. Grievant is employed by the Barbour County Health Department as a Clerk II.

2. Grievant's primary duty is typing, which consumes approximatey ninety percent of her day. She also maintains records, prepares charts, reviews certifications and medicalupdates prepares monthly reports, compiles information for cost reports, and maintains a vehicle schedule.

3. Although Grievant works with minimal supervision, Grievant's duties are generally routine in nature, and are completed within prescribed procedures and guidelines.

CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Clerk III constitutes the "best fit" for the duties she performs. See Simmons v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Personnel's interpretation of the classification specifications for the positions of Clerk II and Clerk III, as they apply to the duties being performed by Grievant, are not clearly erroneous and should be accorded great weight. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

3. Grievant's job duties, as demonstrated by a preponderance of the evidence, best fit within the classification specification for Clerk II.

Accordingly, the grievance is **DENIED.**

September 28, 1995 SUE KELLER

SR ALJ

Footnote: 1

It is noted that the BCHD has never asserted that Grievant's duties more closely match those of Clerk III. BCHD acknowledges Grievant's acquisition of computer skills and increased workload and has repeatedly indicated a desire to

reward her with a salary increase.