DEBRA DILLON, .

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Grievant, .

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v. . Docket No. 95-HHR-044

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WEST VIRGINIA DEPARTMENT OF HEALTH .

AND HUMAN RESOURCES at CHILD ADVOCATE .

OFFICE / WEST VIRGINIA DIVISION OF .

PERSONNEL .

.

Employer. .

D E C I S I O N

Debra Dillon (hereinafter Grievant) appealed the instant complaint to level four of the Grievance Procedure, W.Va. Code §§29-6A-1, et seq., on January 25, 1995. A hearing was held on March 20, 1995, thereafter, the case became mature for decision. Grievant's basic contention is that she is misclassified as an Office Assistant III because she performs the duties associated with and described by the West Virginia Division of Personnel classification specification of Secretary I. Grievant requests that her position be reallocated to that classification.

Grievant makes two arguments. First, she contends that the nature of the duties she normally performs falls within the description of duties for the classification specification of Secretary I, therefore, she should be so classified. Second, she asserts that she should have been reclassified as a Secretary I when certain employees of the Child Advocate Office (hereinafter CAO) were awarded that classification as a result of a settlement agreement entered into between the Department of

Health and Human Resources (hereinafter Health), the Division of Personnel (hereinafter Personnel) and various CAO employees. Grievant works for Child Advocate Attorney Leslie Bowen in Ms. Bowen's Logan County office. Ms. Bowen has an office in both Mingo and Logan Counties. The support person for Ms. Bowen assigned to the Mingo office was reclassified as a Secretary I via the settlement agreement referred to earlier. Grievant contends that this employee has less seniority, experience and skills than she; therefore, she argues that she should have been selected for the position of Secretary I, as opposed to or in addition to, this other employee.

Health presents no seperate defense to Grievant's claims; instead, it relies upon the arguments presented by Personnel in support of its claim that Grievant is correctly classified. Personnel asserts that Grievant's predominant duties do not fall within the nature of the duties contemplated by its Secretary I classification. It avers that Grievant does not have the requisite relationship to her supervisor that other state employees maintainwho are properly classified under the Secretary series. With regard to the settlement agreement at issue, it asserts that Health was expected to assign different duties to its various Office Assistant III positions to justify their reallocation to that of Secretary I. Personnel opined that without a change in duties, none of the COA support staff should be classified as Secretaries.

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 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 (W.Va. 1993).

Also, Section 4.04 of Personnel's Administrative Regulations, describing how class specifications are to be interpreted, contains the following relevant subsections:

(a)

> Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

(b)

> In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.

(c)

> A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied power of the appointing authority now or hereafter vested with the right to prescribe or alter the duties of any position.

(d)

> The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

These legislative rules are both helpful and instructive as to how classification specifications should be interpreted. If Grievant can prevail upon the basis of her first claim, there is no need to address her second argument. Therefore, 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.

The classification specifications at issue are reproduced herein as follows:

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. Necessity 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 isreviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non-routine and/or of a confidential or sensitive nature, 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.

It is determined that the main differences between the Secretary I specification and the Office Assistant III specification is based upon the incumbent's working relationship with his/her supervisor. The Secretary I specification anticipates that the employee must necessarily relieve his/her supervisor of both **clerical** and minor **administrative** duties while exercisingdiscretion and independent judgment. The Office Assistant III specification does not focus 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 anticipate that the incumbent will perform routine and complex clerical duties but the Secretary I position requires that the employee perform some of the minor duties which would otherwise be performed by his/her superior. An incumbent who is assigned the position of Office Assistant III is only held responsible for the performance of his/her own regularly scheduled, routine clerical work. Under the examples of work listed for the Secretary I classification, the following duties are considered indicative of the type of minor administrative duties a secretary must perform for his/her supervisor:

Responds to inquiries where knowledge of unit policy, procedure, and guidelines is required;

Signs, as directed, supervisor's name to routine correspondence;

Composes form letters, routine correspondence, and factual reports;

May attend meetings, take notes and relay information;

typically would not interpret information or speak on behalf of supervisor.

Grievant testified at level three concerning the duties which she performs. She also stated that at various times during her tenure with the CAO she has been the only secretary for both the Mingo and Logan County offices. She stated that the majority of the administrative functions for the two-county region were performed in her office. She testified that she prepares ordersand court-related documents, takes dictation and, in her opinion, acts as lead secretary for the other employee in the Mingo office, who is now classified as a Secretary I.

At level four, James Boomer, Esq., Director of the CAO's field offices and supervising attorney, testified extensively concerning the nature of the organization of the CAOs throughout the state, his powers, duties and responsibilities as they relate to staffing those various offices, and as to his opinion of Grievant's duties, knowledge, skills and abilities. Mr. Boomer opined that Grievant should be classified as a Secretary I given his understanding of the nature of her duties in comparison to a reading of the Secretary I classification. He also opined that Ms. Bowen needs and should have two secretaries to work with her given that she maintains two offices. Mr. Boomer also stated that Grievant is generally viewed as Ms. Bowen's secretary by the public who deal frequently with her.

Lowell D. Basford, Assistant Director in charge of Personnel's Classification and Compensation Division, testified as to Personnel's interpretation of the two classification specifications at issue. He opined that Grievant is properly classified as an Office Assistant III. He further testified concerning the background leading to the clerical employee in Mingo County being assigned the classification of

Secretary I as a result of the settlement discussed earlier. He stated that it was his understanding that Health had been given the authority to designate one support person for each Child Advocate Attorney as a SecretaryI. He also stated that the CAO would have to make changes in the duty assignments of the various Office Assistant IIIs as a result of this agreement. He testified that the CAO did not have incumbents performing secretarial duties prior to this agreement. Finally, Mr. Basford cited to this Grievance Board's prior decision in Arno v. W.Va. Dept. of Health/Div. of Personnel, Docket No. 93 HHR-407 (Apr. 27, 1994), wherein the Undersigned denied a similar grievance filed by an Office Assistant III claiming that she should be classified as a Secretary I.

It should be first noted that Personnel's reliance on this Board's earlier decision in Arno is not dispositive of the issue of whether Grievant is correctly classified. The denial of the grievant's claim in that case cannot support the blanket argument that clerical staff employed by the CAO perform secretarial duties. The grievant in Arno did not prove sufficient facts to support a finding that she was misclassified. Other cases involving similar claims must be based upon their own merit, as the ultimate question in a misclassification case is generally fact dependent.

Here, Grievant, like the grievant in Arno, has attempted to demonstrate that she should be classified as a secretary by offering evidence as to the nature and complexity of the duties she performs. There is little question that Grievant's knowledge, skills and abilities are widely appreciated by her superiors, something of which Grievant can be very proud. Ronald Porter, Ms. Bowen's Administrative Assistant who works mainly in the Logan office, testified that he has been delegated the authority tosupervise the administrative duties of the clerical and legal staff under Ms. Bowen. He testified that almost all of the mail for Ms. Bowen is received in the Logan office, and the majority of paralegals and support staff are likewise housed in that office. He opined that Grievant performs duties consistent with the Secretary I classification specification, and that the Logan office staff perform the majority of the administrative duties for this CAO region. He testified that Grievant is viewed as the senior secretary who may fill in for him if he is absent from the office. Finally, on cross examination, he stated that the majority of the duties Grievant performs for him involve typing forms, letters, reports and memoranda.

After a careful review of the evidence of record, it is determined that Grievant has not met her burden of proving by a preponderance of the evidence that her position's duties are secretarial in nature. Grievant spends the majority of her time typing various documents both for Ms. Bowen and

Mr. Porter. Although Mr. Boomer opined that Grievant has the authority to speak for Ms. Bowen and that she functions as her secretary, the evidence cannot support a finding that Grievant relieves Ms. Bowen of administrative duties beyond, those of various scheduling duties which are required in any legal office. Grievant's predominant duties appear to be clerical in nature and consistent with the nature of duties described by the Office Assistant III classification. It must be remembered that the Office Assistant III classification also contemplates that an incumbent may performtasks which require communication to the general public of interpretations and adaptations of office procedures, policies and practices. Grievant's ability to speak for Ms. Bowen can fit within this description of duties.

Grievant's second argument must now be addressed. Personnel completed its reclassification of the all the classified positions in the CAO sometime around the end of 1992. (See footnote 1) Thereafter, employees of the CAO in Kanawha County classified as Office Assistant IIIs filed a grievance contending that they should have been classified as Secretaries. In an attempt to settle this grievance, Personnel agreed to classify one Office Assistant III for each Child Advocate Attorney as a Secretary I. Personnel intended for the COA to select which positions would be made the "lead secretary" or "principal support person" for each attorney and to change the duties of the incumbents in those positions.

By memorandum dated May 17, 1994, Mr. Basford informed Martha Hill, CAO Director, of this proposed solution to the grievance. This memo indicated that the various child advocate attorneys should be polled in order to determine which positions throughout the State should receive the benefit of this settlement agreement. The evidence of record supports various findings inconsistent with the plan discussed above.

The Child Advocate Attorneys who serve more than one county have a designated "home" office for the purpose of reimbursing them for business-related travel expenses. The CAO's personnel office sent a form settlement agreement to one Office Assistant in each of the offices which had previously been designated as the home office for that employee's Child Advocate Attorney. Within this settlement agreement it was stated, in part,

> WHEREAS, Employee is employed by the West Virginia Department of Health and Human Resources/Child Advocate Office as a Office Assistant 3 at Paygrade 6.

> WHEREAS, The Division of Personnel has determined that the lead employee who works for the Child Advocate Attorney should have been reclassified from Office Assistant 3 to Secretary I effective December 16, 1992 at noon, the date of the Reclassification Plan Implementation.

Neither Ms. Hill, Mr. Boomer nor any of the various Child Advocate Attorneys or administrative assistants were polled as to the nature of the duties of any of the agency's Office Assistants or as to which support staff should be reallocated to the classification of Secretary I. Apparently, the CAO's personnel office, after consultation with Personnel, simply sent a settlement form to one Office Assistant in each county's home office. (See footnote 2) Further, the various support staff who benefited from this settlement agreement did not have their duties changed. In Ms. Bowen's area, an individual classified as an Office Assistant II was assigned the classification of Secretary.

Grievant finds much fault with the manner in which this settlement was implemented, but her basic disagreement is that the decision to reclassify the various support staff was not based upon the nature of the duties of the incumbents. She contends that had said decision been so based, her position would have been reallocated to the position of Secretary I. Personnel contends that because it did not make the decision as to which position would be reallocated, it did not err in this case. Further, it contends that there cannot be more than one person classified as a Secretary I for each attorney; therefore, Grievant's request for relief is improper. Health offered no defense to Grievant's claim.

Grievant's concerns are well-founded. The reallocation of the various Office Assistant positions to the classification of Secretary I was not based upon any comparison of the duties of those positions. Tellingly, Mr. Basford testified that it was Personnel's belief that the duties of those support staff who were to have their positions reallocated would need to be changed in order to justify the Secretary classification; there is no evidence that such occurred. Further, the testimony is that the decision as to who would benefit from this reallocation was not made by anyone with knowledge of the incumbents' duties. The obvious inference is that the positions reallocated were the ones in the offices where the attorneys are located, even though the majority of the work for that attorney may not be performed within that office.

While it is conceivable that someone with Personnel instructed the personnel office of the CAO to send the settlement agreementonly to those employees in the offices where the attorneys are assigned, no such finding can be supported by the record. The conclusion which can be drawn from

this evidence is that this decision was not based upon all of the relevant facts at hand, and therefore, was the result of arbitrary and capricious decision-making on behalf of the CAO. Further, when Mr. Basford was asked at the hearing whether an administrator could possibly have more than one Secretary I assigned to them if that administrator works out of two offices, he responded in the negative. This opinion is inconsistent with the language of the classification specification for the Secretary I position and the principle that positions are to be classified based upon their own predominant duties.

Nowhere within the Secretary I classification specification is it stated that one supervisor may have only one Secretary. It does not seem reasonable to conclude that more than one person may not be assigned duties consistent with the nature of the work of this position. Obviously, if a supervisor has two complete and independent offices, that supervisor may assign support staff in both offices to relieve him/her of both clerical and minor administrative duties. This assignment would justify that the incumbent be assigned to the Secretary I classification. Further, the classification does not contain the provision that the incumbent must be the **one** lead clerical person for the supervisor. Recognizing that the employer is the entity responsible forassigning the job duties to its employees, (See footnote 3) which directly impacts upon the classification of the position, the position that one Child Advocate Attorney may not have more than one Secretary position under his/her supervision is rejected.

Given the above discussion, it is hereby determined that the appropriate relief to be granted in this case is to order the CAO to reassess the assignment of duties to its Office Assistant IIIs within the Logan-Mingo County region and to comply with the stated purpose behind the settlement agreement proposed by Personnel. The CAO should assign appropriate duties to its support staff in this region based upon determinations of which and how many of them should be classified as Secretary Is.

The following findings of fact are derived from the record developed by the parties.

Findings of Fact

1. Grievant is employed as an Office Assistant III and has held that classification since the Division of Personnel completed its statewide reclassification project within the Department of Health and Human Resources. Prior to this reclassification project, Grievant was classified as a Secretary I under Personnel's former classified plan.

2. Grievant works in the CAO's Logan County office and her supervising Child Advocate Attorney is Leslie K. Bowen, Esq. The CAOs in both Logan and Mingo County are under Ms. Bowen'sjurisdiction and, therefore, she has offices in both counties. This two-office configuration is referred to as one CAO region.

3. Grievant takes work assignments from either Ms. Bowen or her Administrative Assistant.

4. Ms. Bowen has legal assistants assigned to her and she has at least one clerical person in each of her two offices. Grievant is classified as an Office Assistant III. Ms. Johnson was classified as an Office Assistant II prior to being reclassified as a Secretary I.

5. Grievant coordinates the scheduling of blood tests with in-state and out-of-state laboratories for individuals and representatives involved in paternity suits. She also prepares various legal orders and motions for Ms. Bowen's signature.

6. Grievant answers the phone in her office. She communicates with various attorneys, court personnel and other individuals concerning the scheduling of court hearings, dates for legal submissions and other activities involving Ms. Bowen's caseload.

7. Grievant attends the CAO's local team management meetings when either Ms. Bowen, the administrative assistant, or one of the legal assistants cannot attend them.

8. Grievant types using a word processor, takes dictation, receives, distributes and screens mail, composes form letters and memoranda, and gathers information from a variety of sources.

9. Grievant has the apparent authority to speak for Ms. Bowen on matters relating to her caseload. Grievant is authorizedto interpret the CAO's policies and procedures for individuals not within her office.

10. In the Summer, 1993, employees of the CAO located in its Kanawha County office, classified as Office Assistant IIIs, filed a grievance contending that they were improperly classified.

11. In an attempt to settle this grievance, Personnel agreed that if the CAO would change the duties of one of its Office Assistant IIIs in each of its main and branch offices, thereby making that employee the "principal support" person for his/her attorney, it would reallocate that incumbent's position to the classification of Secretary I.

12. As a result, the personnel office of the CAO informed one clerical employee in each office where an attorney is assigned that they would be receiving the classification of Secretary I. No duties of any of the incumbents were changed. Further, this decision was not based, in total, upon a review

of the incumbents' duties.

13. Grievant's position was not reallocated even though she performs the same, if not quantitatively and qualitatively more, duties performed by the person awarded the Secretary I classification who is located within the "home" office of the Child Advocate Attorney."

14. The Child Advocate Attorneys who serve more than one county usually have an office in each county they serve. Their chosen "home" office is declared to be the one within the County inwhich they live. This designation is only important for calculating travel expense reimbursement.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant has not proven by a preponderance of the evidence that she is improperly classified as an Office Assistant III based upon a review of her normally assigned duties and responsibilities.

2. Personnel's major interpretation of the two classification specifications at issue in this case is not determined to be clearly wrong as applied to the facts established by Grievant. Blankenship, supra.

3. Grievant has proven by a preponderance of the evidence that the CAO abused its discretion in determining which of its support staff should be reallocated by Personnel to the classification of Secretary III.

4. Personnel's opinion that no supervisor may be assigned more than one Secretary I position is clearly erroneous given a reading of the classification specification of said position and the Supreme Court of Appeal's holdings in Parsons v. W.Va. Bureau of Employment Programs, 428 S.E.2d 528 (W. Va. 1993).

Therefore, this grievance is hereby **DENIED IN PART AND GRANTED IN PART**. The Child Advocate Office is hereby **ORDERED** to comply with the mandates contained within the discussion section of thisDecision with regard to reevaluating which of its employees in the Logan-Mingo regional office should be classified as Secretary Is.

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

April 12, 1995

Footnote: 1Personnel began a statewide reclassification project in 1991 which ended in the spring, 1993. Health was one of the first agencies affected by Personnel's entirely new classification and pay plans.

Footnote: 2Some of these offices are only staffed with one clerical employee.

Footnote: 3See, Parsons v. W.Va. Bureau of Employment Programs, 428 S.E.2d 528 (W. Va. 1993).