KAREN K. BURGESS OTEY,

Grievant,

v. Docket No. 94-RS-538

WEST VIRGINIA DIVISION OF

REHABILITATION SERVICES, and,

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

This grievance was initiated July 1, 1993, by Karen K. Burgess Otey ("Grievant") against the West Virginia Division of Rehabilitation Services ("DRS"). The grievance states that Mrs. Otey was reclassified from Rehabilitation Administrator I to Public Information Specialist II on August 16, 1992, as a result of the statewide reclassification project conducted by the West Virginia Division of Personnel ("Personnel"). The grievance further states that Grievant appealed the decision on her reclassification, and she received notice on June 19, 1993, that her appeal "had been denied." (See footnote 1) Mrs. Otey sought as relief:

> to be made whole through reclassification retroactive to 8-16-92 to an appropriate classification such as Rehabilitation Services Specialist or another appropriate classification. I also reserve the right to receive any and all benefits and pay which may have accrued subsequent to an appropriate classification decision on or after 8-16-92.

A hearing was held at Level III on April 20, 1994. On August 3, 1994, John Panza, Executive Director of the Division of Rehabilitation Services, adopted the recommended decision of the Level III hearing examiner denying the grievance.

Grievant appealed to Level IV on September 2, 1994. Personnel was joined as an indispensable party on September 22, 1994. On October 14, 1994, Grievant asked that this case be submitted for decision on the record, and no party objected. This case became mature for decision on November

18, 1994, with the parties declining to submit written argument, proposed findings of fact or conclusions of law.

Based upon the findings of fact and conclusions of law set forth below, the undersigned finds that the Grievant has not met her burden of proof in this case.

EVIDENCE PRESENTED

Grievant is employed by the West Virginia Division of Rehabilitation Services, and works primarily with the Rehabilitation Services Section. In support of her request for reclassification, Grievant presented into evidence the job specifications for her classification (Public Information Specialist II), and for the two other classifications which she believed more closely matched her job duties: Rehabilitation Services Specialist and RehabilitationProgram Specialist. The relevant portions of the job specifications for each of these classifications, effective at the time of Grievant's reclassification, are as follows:

PUBLIC INFORMATION SPECIALIST II

Nature of Work

Under general supervision, at the full-performance level, writes, edits, and produces or assists in the production of a variety of educational, informational, and promotional multi-media materials. Plans and participates in public hearings and press opportunities. Communication with print and audio/visual press may frequently be necessary. Develops ideas from inception to finished form. Performs related work are [sic] required.

Distinguishing Characteristics

Work at this level is subject to general administrative review and/or revision. Subjects dealt with generally are of a sensitive or controversial nature, or work is within a highly visible division/agency.

Examples of Work

> Writes and edits brochures, newsletters, departmental publications, consumer and other informational materials; prepares or assists with the preparation of graphics compositions and layout.

Collects information from a variety of sources and writes news releases covering regular and periodic activities of the department or division for daily and/or weekly newspapers and for non-print news releases.

Obtains story and feature materials through personal interviews with officials and others.

Plans and participates in public hearings, press opportunities.

Produces and presents, under direction from supervisors, radio and television programs and slide presentations concerning educational, informational, or promotional activities and services.

Answers correspondence and telephone calls pertaining to promotional, informational, or educational matters.

May assign and lead work of professional and/or clerical staff.

Attends public meetings and events to gather information for materials written.

REHABILITATION SERVICES SPECIALIST

Nature of Work

Under general supervision, performs work at the full-performance level by monitoring and providing complex technical assistance with a particular component of a statewide program, or a major technical area specific to or characteristic of the Division of Rehabilitation Services. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Rehabilitation Services Specialist is distinguished from the Rehabilitation Services Associate by the complex analysis and interpretation necessary to administer programs and assist participants. This class is distinguished from the Rehabilitation Program Specialist by the participation in or oversight of smaller, less complex program components and supervision of smaller staffs.

Examples of Work

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.

Interprets laws and regulations governing program or technical area for participants and staff.

Monitors changes in laws and regulations and advises participants and other staff.

Confers with inter- and intra-agency personnel to transact business or discuss information.

Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.

Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.

Represents the program in the area of assignment with the agency and outside entities.

Contacts with federal, state, local program representatives and participants, or technical area personnel.

Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.

May oversee the work of support staff or other specialists in relation to the completion of specific assignments.

REHABILITATION PROGRAM SPECIALIST

Nature of Work

Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a large or multi-faceted component of a major statewide program, a statewide program in it [sic] entirety, or a major technical area specific to or characteristic of the Division of Rehabilitation Services. 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. 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. Performs related work as required.

Distinguishing Characteristics

The Rehabilitation Program Specialist is distinguished from the Rehabilitation Services Specialist by the broader scope of administrative oversight and responsibility for planning and operational aspects of program or technical area. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes.

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.

Contacts with federal, state, local program representatives and officials, Division of Rehabilitation Services management and staff, and legislature.

Plans and develops budget requests and short- and long-range work plans.

May lead or supervise professional and/or support staff.

On October 4, 1990, Grievant completed a position description form describing her job duties (Employee Exhibit No. 5). On that form Grievant stated that in her position, 55% of the time she would "compose and transmit agency technical material such as operating and procedural manuals and internal staff guidance." Her remaining duties were listed as preparation of and assistance on requests for proposals and other information relating to application for public and private funds, designing and revising agency forms and instructions, correspondence, assistance with management and budget documents, briefing staff and consumers on legislation, and service as acting section supervisor in his absence. This form became part of the information base utilized by Personnel in Grievant's reclassification. T. 45-46. **(See footnote 2)**

Grievant's supervisor in 1990, through sometime in 1991, Michael Meadows, verified that the work performed by Grievant in 1990 was accurately set forth on Employee Exhibit No. 5. T. 15-16, 41. Mr. Meadows stated that Grievant did not provide assistance with one particular component of a statewide program, but providedassistance in the entire field program in the areas of policy, procedure and forms. T. 16. Mr. Meadows explained that Grievant did not form policy, but worked closely with the Rehabilitation Services Section staff to determine whether proposed policies and procedures would work in practice. Grievant would propose improvements, modifications, or clarifications, and expand upon the principles. Grievant was not responsible for making administrative decisions, but she did frequently provide assistance in complex, technical areas. T. 17-18. All policy manuals put together by Grievant were subject to review, editing and approval by Mr. Meadows, the Rehabilitation Services Section (which Mr. Meadows referred to as Grievant's "customers"), and finally, the director of DRS. T. 18-24. Mr. Meadows stated that Grievant was required to be aware of the law and applicable regulations, and to make recommendations where interpretations were necessary. T. 24-25.

Mr. Meadows testified that Grievant's primary contacts were within the agency, in

particular the Rehabilitation Services Section, and that only on occasion would she have contact with persons outside the agency who were seeking information on the meaning of particular policy language. T. 25-27, 28. Mr. Meadows stated, "[H]er [Grievant's] position was responsible for supporting primarily supporting the internal staff rather than providing operating guidance." T. 29. As part of her support role, Mr. Meadows stated that Grievant would occasionally be asked to draft memoranda or correspondence for signature by one of the agency deputies or the director. T. 34-35.

James E. Jones, Deputy Director of Program Operations, DRS, testified that he has been Grievant's supervisor since January 1, 1993. DT. 3, 14. (See footnote 3) **Mr. Jones stated that Grievant prepares and maintains all three DRS policy procedural manuals, and designs, revises, and maintains the official register of agency forms. Mr. Jones stated that these manuals set forth policies, procedures, and practices regarding agency administration, support services, service delivery to clients, and fee schedules; and are referred to by various DRS employees, including counselors and other professional staff, on a daily to weekly basis for operational and administrative policy and procedure. DT. 4-7. Mr. Jones stated that Grievant assists in the interpretation of federal and state laws and regulations in the preparation of the DRS manuals. DT. 7.**

Mr. Jones stated that Grievant does not write brochures, newsletters, or news releases for DRS, does not participate in DRS press opportunities, and does not produce and present radio and television programs and slide presentations for DRS. DT. 9.

On cross-examination Mr. Jones stated that Grievant does not perform all the tasks listed in Employee Exhibit No. 5 (Grievant's position description submitted in 1990), but he did not identify those items in the exhibit which were no longer applicable. DT. 11. Mr. Jones stated that Grievant gathers information to write manuals and policies, and disseminates information. Mr. Jones pointed out that Grievant discusses policies and guidelines with those staff who determine and administer DRS policies and guidelines, and receives their input. Grievant gathers information from other people to assist in policy formulation, and then shares that information with the staff who decide policy, and a decision is made on policy. Grievant exercises some independent judgement in committing policy to writing. DT 12-14. The staff who decide policy review Grievant's written work product, then the written policy is

reviewed and approved by the Assistant Director of DRS, and then the Director. DT. 13. Mr. Jones stated that Grievant does not provide direct services to clients of DRS. DT. 13.

Mr. Jones does not believe Grievant was properly classified. He believes she would be more properly classified in a category "involved more substantially with the internal activities of the agency, dealing with internal staff, working with them in policy development, policy interpretation. And presenting information and interpretations of the existing policies and so forth." DT. 10. Mr. Jones did not identify what the proper classification for Grievant would be.

Lowell D. Basford, Assistant Director, Personnel, testified that he is in charge of classification and compensation, and supervised the Statewide Reclassification Project which resulted in Grievant's reclassification as a Public Information Specialist II. T. 44.

Mr. Basford explained that the position of Public Information Specialist II, pay grade 10, was the best fit for Grievant because Personnel sees "the position as primarily an information producing function." Mr. Basford noted that the position involves "a significant element of writing composition and also the development of forms and policies and procedures". Mr. Basford described the role of the Public Information Specialist II as "a support function". Mr. Basford distinguished this position from Rehabilitation Program Specialist, explaining that the Public Information Specialist II did not provide direct services to clients, but rather supports those who provide direct services to clients. T. 46-47. Mr. Basford pointed out that the Public Information Specialist II would obtain the information necessary to write policy manuals, for example, by consulting with those persons who develop policy. The Public Information Specialist II would not develop policy, but would operate in the role of support staff to those who do develop policy by collecting the policy information and producing it in written form. T. 52-56. Mr. Basford stated that Grievant does not supervise other employees, as that term is used in classifications, because she assigns work to and reviews the work of one person, whereas a supervisor has a much broaderrole, including performance evaluations. T. 56-57. Grievant did not dispute that this was the extent of her supervisory functions.

DISCUSSION

W. Va. Code §29-6-10 authorizes Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as DRS,

which utilize such positions must adhere to that plan in making assignments to their employees. Toney v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-460 (June 17, 1994), at 12.

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 match those of another cited classification specification than the classification to which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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 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). Importantly, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dept. of Health v. Blankenship, 189 W.Va. 342, 431 S.E.2d 681, 687 (1993).

The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting her classification with a substantial obstacle to overcome in attempting to establish that she is misclassified. In this case, Grievant has failed to establish that Personnel was clearly wrong in its determination that the Public Information Specialist II classification is the "best fit" for her duties.

Personnel's interpretation of the job specifications for Public Information Specialist II, as espoused by Mr. Basford at the Level III hearing, mirrors the duties of Grievant from the time

preceding her reclassification through the date of the hearing. Grievant has not decided or administered policy. Her role has been to collect information necessary to policy development, to discuss policy development with those responsible for policy development and implementation, and then to digest and assimilate thisinformation and direction into the written policy. Her work has then been subject to review, revision and implementation by those responsible for developing the agency's policy.

Personnel's interpretation is consistent with the "Nature of Work" section of the job specifications for Public Information Specialist II. That section provides that a Public Information Specialist II works under the direction of others, and the role is that of a writer of agency promotional, educational and informational materials. A Rehabilitation Services Specialist, however, has responsibility in the area of implementation of policy through assuring compliance with the law, monitoring a component of a statewide program, and providing complex technical assistance. A Rehabilitation Program Specialist provides administrative coordination of, and complex technical assistance in, components of a statewide program. The role of these two classifications clearly falls within the area of actual program administration.

Grievant does not contend that she is, or has been, a program administrator with authority to implement policy, or that she has monitored or coordinated components of a statewide program. Grievant admits that her primary job duty has been to collect information, discuss policy with those responsible for policy development, and at their direction, to produce that policy and procedure in written form for their review and implementation.

Grievant did present evidence that she provided "complex technical assistance" **(See footnote 4)** **to those within DRS. Personnel's interpretation of this aspect of the "Nature of Work" of a Rehabilitation Services Specialist and Rehabilitation Program Specialist, is apparently that the complex technical assistance is provided to clients; whereas the assistance Grievant provided was as support to DRS Rehabilitation Services staff. This is a reasonable interpretation of the job specifications when the specifications are read as a whole. Further, while one aspect of Grievant's job may well be to provide complex technical assistance to someone, as noted above, Grievant admits that this is not her predominant duty. Finally, the distinguishing characteristic of these two job classifications is not the provision**

of complex technical assistance, but the role in program administration.

Grievant's point is that in the job specifications, the "Examples of Work" for a Public Information Specialist II do not specifically include any reference to writing policy and procedure manuals, but rather focus on writing less formal informational materials, such as brochures, newsletters, departmental publications, consumer information, and news releases. However, the "Examples of Work" section for both the Rehabilitation Services Specialist and the Rehabilitation Program Specialist specifically includes writing, editing and contributing to policy and proceduremanuals, as well as interpretation of laws and regulations. Grievant also pointed out at the Level III hearing that a significant portion of the job specifications for Public Information Specialist II refers to contacts with the media, while Grievant has not had any contact with the media. Grievant has not written brochures, newsletters, or news releases for DRS, has not participated in DRS press opportunities, and has not produced and presented radio and television programs and slide presentations for DRS. DT. 9. No evidence was presented on whether anyone has performed these functions at DRS, or whether the agency has had much media exposure.

In determining the "best fit" for Grievant, the "Nature of Work" section of the job specifications is clearly the guiding factor. While the "Examples of Work" section is not irrelevant, "even if a staff member performs only a few of the listed 'Examples,' he nevertheless might well be correctly classified if his position reasonably closely matches the 'Nature of Work' information." Dollison at 6-7.

Although Grievant has performed some of the duties listed under the "Examples of Work" for both a Rehabilitation Services Specialist and a Rehabilitation Program Specialist, the predominant duties she has performed, when considered as a whole, are consistent with the "Nature of Work" of a Public Information Specialist II. Personnel's administrative rules for classification plans address this situation as follows:

> **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. (Div. of Personnel Administrative Rules, Series I (Amended), §4.04(d) (1993).)**

Personnel's interpretation of the job specifications is consistent with the "Nature of Work" of each of the three classifications discussed herein, and its reclassification of Grievant as a Public Information Specialist II is not clearly wrong. Although Public Information Specialist II does not describe exactly Grievant's job duties, it is the best fit of these three classifications. The following findings of fact and conclusions of law are made to complete this analysis.

FINDINGS OF FACT

1. Grievant is employed by the West Virginia Division of Rehabilitation Services.

2. Grievant was reclassified from a Rehabilitation Administrator I to a Public Information Specialist II on August 16, 1992, pursuant to the Statewide Reclassification Project by Personnel. T. 16.

3. The classifications identified by Grievant as more appropriate for her were Rehabilitation Services Specialist or Rehabilitation Program Specialist.

4. Grievant's primary duties at the time of reclassification continuing through the date of the Level III hearing, were to collect and disseminate information utilized by those responsible for developing and implementing policy, for their use in policydevelopment; to discuss and assist in policy development; and to commit decisions made on policy to written form. Grievant does not have authority to decide or implement policy, and the policies she drafts are subject to review and approval by those responsible for development and implementation of policy. Grievant is not responsible for administration of any DRS programs, she does not provide services to DRS clients, and she is not a supervisor. Grievant is support staff to those who are responsible for development of DRS policy, primarily the Rehabilitation Services Section.

5. The "Nature of Work" section of the job specifications for Public Information Specialist II provides, among other things, that a Public Information Specialist II works under the direction of others, and the role is that of a writer and producer of agency promotional, educational and informational materials.

6. The "Nature of Work" section of the job specifications for a Rehabilitation Services Specialist, however, provides that this position has responsibility for <u>implementation of policy through assuring compliance</u> with the law, and <u>monitoring and providing complex</u>

technical assistance with a component of a statewide program. A Rehabilitation Services Specialist has some responsibility for actual program administration.

7. The "Nature of Work" section of the job specifications for a Rehabilitation Program Specialist provides that this position coordinates components of statewide programs, and provides complex technical assistance in a program area. A Rehabilitation ProgramSpecialist has a "broader scope of administrative oversight and responsibility for planning and operational aspects of program or technical areas" than the Rehabilitation Services Specialist.

8. Personnel's interpretation of the job specification for a Public Information Specialist II, as explained by Lowell Basford, is that the position of Public Information Specialist II is "primarily an information producing function", which involves "a significant element of writing composition and also the development of forms and policies and procedures". Mr. Basford distinguished this position from Rehabilitation Program Specialist, explaining that the Public Information Specialist II did not provide direct services to clients, but rather supports those who provide direct services to clients. T. 46-47. The Public Information Specialist II would not develop policy, but operates in the role of support staff to those who do develop policy by collecting the policy information and producing it in written form. T. 52-56.

9. Personnel believes Public Information Specialist II is the best fit for Grievant.

CONCLUSIONS OF LAW

1. "The West Virginia Division of Personnel (Personnel) is authorized by W. Va. Code §29-6-10 to establish and maintain a position classification plan for all positions in the classified service. State agencies utilizing such positions must adhere to that plan in making assignments to their employees." Toney v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-460 (June 17, 1994), at 12.

2. In order to prevail in a misclassification claim, a Grievant must prove by a preponderance of the evidence that her duties for the relevant period more closely match those of another cited classification specification than the classification to which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. 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).

4. Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dept. of Health v. Blankenship, 189 W.Va. 342, 431 S.E.2d 681, 687 (1993).

5. Personnel's interpretation of the classification specifications for the position of Public Information Specialist II is not clearly wrong.

6. Grievant has failed to establish by a preponderance of the evidence that she was more properly classified in a cited position other than Public Information Specialist II.

Accordingly, this grievance is DENIED.

Any party 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 31, 1995

Footnote: 1 ***The record provides no further detail of the procedural history preceding the Level III hearing. It should be noted that no party raised timeliness of the grievance as an issue.***

Footnote: 2 ***All references to the transcript of the April 20, 1994, Level III hearing will be made as follows, with the page number of the transcript appearing in the blank space: "T. ."***

Footnote: 3 ***Mr. Jones was unavailable for the April 20, 1994, Level III hearing, and his testimony was taken by deposition on June 16, 1994, as agreed to by the parties at the April 20, 1994, hearing. There is some discrepancy as to whether the Level III hearing examiner had Mr. Jones' testimony available to her and considered his testimony in rendering her recommended decision. However, Mr. Jones' testimony merely confirms that Grievant was performing basically the same primary job duties as of the hearing date as she had in 1990 and 1991, as testified to by Mr. Meadows. Therefore, it is not necessary or desirable to remand this proceeding to Level III for consideration of Mr. Jones' testimony. All references to the Transcript of Mr. Jones' June 16, 1994, Deposition will be made as follows, with the page number of the transcript appearing in the blanks: "DT. __."***

Footnote: 4 ***Neither DRS nor Personnel attempted to define "complex technical assistance," nor did they dispute that Grievant's assistance to those within the agency is, in fact, "complex technical assistance."***