EVELYN H. McCLELLAN

v. Docket No. 94-CORR-1052

WEST VIRGINIA DIVISION OF CORRECTION/

WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant, Evelyn H. McClellan, employed by the Division of Corrections (Corrections or Respondent), initiated grievance proceedings on August 9, 1994, when she complained "I believe I was incorrectly classified under the new reclassification system. I feel my current responsibilities/duties are more than a case manager. Also I feel that even if classified as "Case Manager" that prior merit raises, etc., should have been considered . . . ." Grievant requested that she either be reclassified as "Program Manager I" or another appropriate job title, and/or that her prior salary advancements be applied to her current position. Both parties agreed to waive consideration at levels one and two. The grievance was denied at level three and appeal was made to level four on November 10, 1994. An evidentiary hearing was conducted on December 28, 1994; no proposedfindings of fact or conclusions of law were submitted by either party. (See footnote 1)

The facts of this matter are not in dispute. Grievant has been employed by Respondent since February 1982. Since that time she has held classification titles of Interviewer, Counselor I, Counselor II, and most recently, Corrections Case Manager. Grievant argues that her present classification, implemented pursuant to a state-wide reclassification program, fails to accurately reflect the duties and responsibilities of her position. A second issue raised by Grievant is that the present classification/compensation system effectively deprived her of salary advancements which she had received under the prior system.

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 portion of Grievant's current classification specifications are as follows:

CORRECTIONS CASE MANAGER

Nature of Work:

Under general supervision of the Corrections Unit Manager functions as a member of a team providing services to the assigned caseload of inmates living in the unit. The work of the unit involves providing security, inmate counseling, treatment services, developing case histories and recommendations regarding inmate behavior and performance, controlling inmate movement, and acting as role models for the inmates. Compiles information, analyzes causal factors for the inmate's involvement in crime and criminal activities, and recommends a correctional self-improvement program to assist the inmate in controlling and overcoming problems. Performs related work as required.

Examples of Work:

Collects, verifies and analyzes factual material in preparation of classification summaries for inmates housed in the unit.

Determines the accuracy of available information concerning the inmates.

Develops and formulates appropriate individual program goals.

Prepares written reports based on a review of the written record and adjustment to the facility and the program.

Meets with the inmate periodically to discuss the inmate's progress and attitude or any particular

problem within the facility or in selecting an appropriate program.

Informs inmates of programs available along with any special services which may be used in addressing problems.

Guides a group of inmates in identifying individual or group problems that may affect behavior and attitudes.

Guides discussion in order to effectively and efficientlyutilize available time.

Knowledge, Skills, and Abilities:

Knowledge of the policies, procedures and regulations of the Department of Corrections and the assigned institution.

Knowledge of counseling and guidance principles and techniques.

Knowledge of inmate rights.

Knowledge of basic principles of personality, deviant behavior, delinquency, criminology and corrections.

Ability to interview personnel for case evaluation.

Ability to perform routine counseling activities.

Ability to identify personal and adjustment problems and to explore solutions to these problems.

Ability to communicate effectively, both orally and in writing.

Grievant asserts that her duties and responsibilities more closely fit the position description for Corrections Program Manager I. The relevant portions of that classification specification follow:

CORRECTIONS PROGRAM MANAGER I

Nature of Work:

Under general supervision, performs managerial work in coordinating and evaluating operational and special services programs for the Division of Corrections or Regional Jail and Correctional Facility Authority. Programs administered are typically major organizational units at the largest correctional institutions or special services of a comparable size and complexity. Responsibilities include program implementation and evaluation, direction of supervisory, professional and support

staff and the maintenance of required records and reports. Performs in accordance with established policies and procedures in the functional area; limited authority to vary work methods and procedures. Performs related work as required.

Distinguishing Characteristics:

Positions assigned to this level would typically be responsible for a major unit at the largest correctional facilities or statewide programs or grants of a specialized nature with small staffs.

Examples of Work:

Assists in the development of policies and procedures in the area of assignment or program specialty.

Coordinates the program or grant area with agency units and institution and with state, federal and local agencies.

Plans and evaluates the work of subordinate staff.

Develops and implements specialized treatment programs such as drug/alcohol programming on a statewide basis.

Develops and implements specialized staff training in the area of assignment.

Oversees major functional units in correctional facilities such as security, inmate services or equivalent programs.

Assists in the recruitment and selection of staff; recommends discipline, staff development and other personnel matters.

Monitors and evaluates program or unit operations and the services provided to inmates.

Cooperates with educational, social service, health and rehabilitation agencies in program/service delivery.

Develops curricula and training programs for correctional officers and other staff; administers corrections academy budget.

Maintains records in program area; prepares regular and special reports for area of assignment.

Knowledge, Skills and Abilities:

Knowledge of modern theories, principles and practices of corrections.

Knowledge of state and federal laws and regulations relating to corrections.

Knowledge of correctional education and rehabilitation programs; classification methods and techniques.

Ability to develop policies and procedures in the area of assignment.

Ability to coordinate program/services on an inter- and intra- agency level.

Ability to plan and evaluate the work of supervisors and other staff.

Ability to develop and maintain effective working relationships with educational, health, social service and rehabilitation agencies.

Ability to maintain records of program operations.

Ability to communicate effectively, orally and in writing.

These Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the differentsections 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 in November 1991, states that she is in charge of the Sexual Offender Treatment Program at the Huttonsville Correctional Center. Her duties are more specifically described as providing individual and group therapy for sexual offenders. Grievant indicated that approximately thirteen hours per week is allocated to providing individual therapy. Group therapy requires an additional eight hours.

One to two hours per week are spent supervising other staff members regarding inmates' reassignments, strategies for individual sessions, providing homework materials and acting as a consultant for sexual offender placement in community based settings. An education module consumes two and one-half hours per week and the preparation of psychological evaluations for regular and sixty day commitments requiresanother twelve hours per week. Grievant allocates one hour per week for the preparation of progress reports for the Parole Board. Four hours per week are spent acting as the Counselor of the Day and two hours are spent working with the classification

committee and performing miscellaneous duties such as answering the telephone or door, assessments, etc.

Grievant asserts that since she obtained a Masters degree in counseling in December 1991, her responsibilities have changed. For example, she now may screen inmates prior to their referral to a psychiatrist. Grievant is one of only three employees at HCC with the credentials to perform this screening.

Documentation also confirms that Grievant has actively participated in state and national programs relating to the treatment of sexual offenders, including several programs offered by the U.S. Department of Justice. Grievant has been recognized for her work in the treatment of sexual offenders and served as a panel member, presenter, and group leader at various professional meetings. She also serves as a consultant for the National Institute of Justice.

Grievant claims that she has developed and implemented the sexual offender treatment program at HCC. Grievant stated that she has compiled the lecture materials for the education module which she teaches. She continues to research materials and to refine the program design as time permits. This project requires that she provide training and supervision forother employees at HCC, and she periodically shares the information and provides assistance to staff members assigned to other facilities in the state. Grievant concedes that while she performs some of the duties required of a Case Manager, she believes that many of her responsibilities exceed that classification and, overall, her work is more in line with that of a Program Manager.

Personnel argues that the classification of Case Manager includes the specialized counseling performed by Grievant. Further, Personnel finds that Grievant's position does not fall within the classification of Program Manager because her primary duties are neither managerial nor supervisory in nature. Further, Corrections has no organizational unit for sexual offenders; therefore, no slot for Program Manager exists in that agency.

Personnel also argues that consistent with its Rules and Regulations, §4.04(b), it is necessary to consider the relationship of the position held by Grievant with other positions. Case Manager is assigned to pay grade 11. The position held by Grievant's supervisor is assigned to pay grade 12. Program Manager is compensated at pay grade 15. Personnel urges that the complexity and responsibility required of Grievant is not comparable to that of her supervisor, or other individuals such as the chief correctional officer.

A review of the record in its entirety establishes thatsince she began her employment with Corrections Grievant has by choice and/or necessity expended considerable personal effort and finances into becoming an expert in the area of sexual offenders. The development, implementation, and maintenance of the sexual offenders program at HCC, the dispensation of her work product, and her assistance to employees in other state facilities, would appear to exceed the rather generic duties and responsibilities required of a Case Manager. However, Grievant unquestionably does not coordinate, manage, supervise, or evaluate a statewide program in the role of a Program Manager I. It may easily be determined that some of the factors listed in the Nature of Work section and some Examples of Work for the classification of Program Manager I apply to Grievant. However, this alone does not render an employee misclassified. Dooley v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). In consideration of all the foregoing, it cannot be determined that Personnel's evaluation of Grievant's position is clearly erroneous.

Grievant also complains that the statewide reclassification program has penalized her by not recognizing tenure or educational level. Grievant notes that she has earned considerable seniority and an advanced educational degree, both of which enhance the quality and quantity of her work. Throughout her employment, Grievant has received several salary enhancements in the form of merit raises andpromotions so that prior to the reclassification her salary was considerably higher than other counselors. As a result of the revised compensation system, Grievant's salary is more closely that of a new employee.

Although the new classification/compensation system may aid in recruitment of new employees, and may provide an enhanced classification schedule to all employees by ultimately allowing them to earn higher salaries, the immediate effect upon long-term employees such as Grievant, is more negative than positive. While she has not suffered a pay reduction, her perception that she has lost prior advancements, particularly in light of the higher salaries paid to new employees, is not without merit. Unfortunately, while the new system may assist in recruitment of new employees it may simultaneously generate a loss of experienced personnel. Minimally, the failure to compensate long-term, productive employees at a rate commensurate with their years of service, education, etc., will have a demoralizing effect throughout the system. Notwithstanding this fact, Grievant does not allege that any violation of law, statute, rules or regulations has occurred as a result of the new compensation system, and the undersigned is aware of none.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed by the Division of Corrections since February 1982. She has received several merit raises and promotions throughout her tenure.

2. Effective April 1, 1994, Corrections implemented the statewide reclassification system; Grievant's classification remained Corrections Case Manager.

3. Although the facts indicate that Grievant performs at a level beyond that required of the basic Case Manager, she is not responsible for managing a statewide program and does not meet the criteria for classification as a Program Manager I.

4. Due to the revised compensation schedule implemented along with the reclassification, Grievant now earns a salary comparable to new employees. Previously, merit raises and promotions had increased Grievant's salary considerably above the entry level.

CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Program Manager I 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 Case Manager and ProgramManager I, 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 has failed to prove any violation of law, statute, rule or regulation occurred as a result of the revised compensation system implemented with the statewide reclassification.

Accordingly, the grievance is DENIED.

DATED: March 31, 1995 Sue Keller, Senior Admn. Law Judge

Footnote: 1The record has been held open for approximately ninety days to allow Corrections an opportunity to review and evaluate Grievant's assignment. Because the undersigned has not been advised of any possible settlement, the record will be closed and a decision issued. Both parties are encouraged to continue negotiations which would be beneficial to all involved.