PAMELA KAY JOHNSON,

Grievant,

v. DOCKET NO. 94-VA-593

DIVISION OF VETERANS AFFAIRS
AND DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Pamela Kay Johnson, employed by the Division of Veterans Affairs, following adverse decisions at the lower levels, filed a level four appeal on September 30, 1994, alleging that she is misclassified as a Recreation Assistant. Grievant asserts that her duties and responsibilities more closely match those of a Recreation Specialist. A hearing was held on February 9, 1995, at which time the case became mature for decision.

The classification specifications at issue are reproduced herein as follows:

RECREATION SPECIALIST

Nature of Work: Under general supervision, at the full-performance level, performs recreation planning and participation work at a state health or rehabilitation facility. Plans and gathers materials, and leads activities for patients or clients. Ensures that activities are in compliance with court orders, certification guidelines and/or facility policy. Work may involve irregular hours. The position has significant latitude for planning activities withinbudgetary and programmatic limitations. Performs related work as required.

Examples of Work

Plans weekly and monthly activities to provide structural group or individual recreation for patients or clients.

Instructs groups in team sports, arts and crafts, and group activities such as board games or aerobics.

Oversees recreation room during leisure activities; instructs individuals in the safe use of equipment such as weights.

Gathers and dispenses equipment, materials, and supplies.

Organizes staff or volunteers to ensure adequate supervision and support services for activities such as day camping and special occasion parties.

Evaluates activity-related injuries; applies first aid knowledge and/or contacts medical staff.

Documents patient or client participation and behavior; plans individual activities to encourage or reinforce patient or client behavior.

Monitors equipment usage; orders repairs or recommends replacement of equipment.

Purchases materials used for activities.

May drive buses or vans; may teach swimming, gardening, music, or other specialty area.

May care for pets used in pet therapy.

May attend staffings and treatment meetings; may conduct intake interviews with individuals arriving at the facility.

Knowledge, Skills and Abilities

Knowledge of a variety of games, sports, and leisure time activities.

Knowledge of basic first aid and general safety.

Knowledge of sports equipment, its uses and benefits.

Ability to plan activities and determine necessary equipment and supplies.

Ability to encourage and motivate patients, clients, and volunteers.

Ability to follow oral and written instructions.

Ability to communicate effectively, both orally and in writing.

RECREATION ASSISTANT

Nature of Work: Under close supervision performs entry level recreation work in carrying out individual and group recreational activities in a state hospital, rehabilitation center or penal institution. The employee works with clients individually and in groups supervisingthem in sports, games and musical and dramatic activities, according to instructions received from program supervisor. The employee receives on-the-job training in recreation work from a specialist or supervisor. Performs related work as required.

Distinguishing Characteristics: This level of the Recreation Specialist series is the entry level. The work performed is done so under the direction of a Recreation Specialist, Recreation Specialist, Certified, or a unit supervisor. There is only a small degree of independence exercised in choosing methods and techniques used. Carries out specific instructions for segments of individualized therapeutic recreation programs as assigned by Recreation Specialist.

Examples of Work

Oversees indoor and outdoor games, teams and athletic events.

Assists in planning group entertainment such as pageants, talent shows and special holiday activities.

Works with special groups of clients.

Escorts and/or chaperons clients to off-grounds activities.

Cleans and may perform minor repairs on athletic and recreational equipment. May operate movie projector.

Observes effect of recreational activities on clients and documents observations in appropriate records.

Knowledge, Skills and Abilities

Knowledge of a variety of recreational and leisure activities.

Knowledge of basic first aid.

Ability to learn behavior management techniques and first aid procedures.

Ability to instruct and lead clients in recreational activities.

Ability to record observations and clearly communicate ideas to treatment team.

Ability to walk and stand for extended periods of time.

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 matchanother 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. Atchison v. W. Va. Dept. of Health, Docket No. 90-H-444 (Apr. 22, 1991); 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 Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if the 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).

Grievant is employed at the West Virginia Veterans' Home in Barboursville, West Virginia. Grievant is responsible for scheduling, providing and encouraging participation in recreationalactivities at the Home which are felt to be of therapeutic benefit to the residents. Grievant

has been employed at the Home for 13 years and was a Recreation Supervisor I for 5 years prior to the Statewide Reclassification Project. Grievant was reclassified as a Recreation Assistant, which she claims places her in a position of performing duties outside and above her classification. G. Ex. 9.

A review of Grievant's performance evaluations since she began working in recreation indicates that her duties and responsibilities have generally remained the same. G. Ex. 6. The majority of Grievant's time is spent scheduling, planning and overseeing activities on the recreation activities schedule. G. Ex. 9.

Lowell D. Basford, Assistant Director of Personnel for Classification and Compensation, testified that Grievant's duties and responsibilities when she was a Recreation Supervisor I fell at the beginning or entry level of the recreation class series. Grievant's duties have not changed and she was placed at the beginning level of the new recreation class series, i.e., Recreation Assistant. Mr. Basford explained that "entry level" is relative to the entire class series in terms of complexity and difficulty, and is not necessarily limited to new or entry level employees.

Mr. Basford testified that the major difference between the two subject classification specifications at issue is the level of therapeutic intervention involved in the positions' duties. ARecreation Specialist is determined to be responsible for intense therapeutic intervention, not just pre-planned recreation programs. The Recreation Assistant position involves supervising and scheduling of pre-planned, routine or cyclical activities and, while the nature of work section indicates that this is done under close supervision, that does not mean that someone is looking over Grievant's shoulder as she works. Close supervision in this context merely refers to the pre-planned nature of the activities.

It is undisputed, and Grievant's performance evaluations support, that her performance has been excellent throughout her tenure at the Home and that she is considered an invaluable employee by her peers and supervisor. However, Grievant has not proven by a preponderance of the evidence that her job duties and responsibilities more closely match those of a Recreation Specialist than that of Recreation Assistant. There is some overlap between the classification specifications, but the fact that Grievant performs some duties outside of her classification does not alone render her misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991).

It is appropriate to make the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant is employed as a Recreation Assistant within the Division of Veterans Affairs.
2. Grievant is responsible for scheduling, planning, and overseeing participation of recreational activities for residents of the Home.
3. The old Recreation Supervisor I classification and the new Recreation Assistant classification designate the work performed as "entry" level, signifying the level of complexity and difficulty of the duties performed.
4. Grievant's duties and responsibilities have not substantially changed since she began working in recreation as a Recreation Supervisor I.

Conclusions of Law

1. Grievant has failed to prove by a preponderance of the evidence that she is improperly classified as a Recreation Assistant based upon a review of her duties and responsibilities.
2. Personnel's interpretation of the two classification specifications at issue in this case is not clearly wrong as applied to the facts established by the Grievant. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: February 23, 1995