

WILLIAM LETRENT,

Grievant,

v.

DOCKET NO. 94-MBOT-723

BOARD OF TRUSTEES,

POTOMAC STATE COLLEGE,

Respondent.

DECISION

Grievant William Letrent alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 1\)](#). Grievant specifically challenges his classification as a Director/Upward Bound Special Services at a Pay Grade of 19 and seeks classification as a Director/Federal Trio Programs at a Pay Grade 21, effective January 1, 1994, with backpay to January 1, 1994. Grievant challenges the degree levels received in several point factors. A Level IV hearing was held on May 6, 1996. This matter became mature for decision on June 6, 1996, with receipt of Respondent's fact/law proposals. [\(See footnote 2\)](#)

The following Findings of Fact are properly made from the record developed at Level IV.

FINDINGS OF FACT

1. In 1991, Grievant was working at Potomac State College under the official title "Senior Tutor-Counselor." His duties consisted of implementation, direction, and supervision of two federal grants, namely Upward Bound and Student Support Services.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"), prior to implementation of the Mercer reclassification. Employees were to describe the duties, responsibilities and requirements for their respective positions on the PIQ by answering a series of questions. Employees were further asked to rate various aspects of their positions pursuant to a scale set forth in the Mercer Job Evaluation Plan, the mechanics of the Plan being known as the "Point Factor Methodology." Grievant filled out a PIQ in 1991.

3. The Job Evaluation Committee ("JEC") ultimately determined that Grievant should be classified

as a Director/Upward Bound Special Services at a Pay Grade of 19. This classification was based upon a total of 2620 points from the following degree levels in the thirteen point factors [\(See footnote 3\)](#): 7.0 in Knowledge; 4.0 in Experience; 4.0 in Complexity and Problem Solving; 4.0 in Freedom of Action; 4.0 in Scope and Effect, Impact of Actions; 4.0 in Scope and Effect, Nature of Actions; 2.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level; 3.0 in External Contacts, Nature; 3.0 in External Contacts, Level; 4.0 in Direct Supervision Exercised, Number; 6.0 in Direct Supervision Exercised, Level; 5.0 in Indirect Supervision Exercised, Number; 2.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands.

- 4. The point range for a Pay Grade 19 is from 2574 points to 2755 points.
- 5. Prior to January 1, 1994, Grievant's duties and responsibilities were to write, implement and supervise grants for Upward Bound and Student Support Services. Each of these programs provides assistance, counseling, and other services to disadvantaged or disabled high school and junior college students, respectively, in order to help them achieve success in completion of a college education. Grievant was required to administer and supervise all aspects of the programs, including supervision of counselors and other staff, budgetary planning and implementation, and daily involvement in the personal and academic problems of the students receiving services.
- 6. Grievant seeks to be classified as Director/Federal Trio Programs at a Pay Grade 21. Only Concord College has a Director of Trio Programs, which was created after the Mercer reclassification, at a Pay Grade of 19.

7. Grievant challenged the degree levels received in the point factors Experience, Complexity and Problem Solving, and Freedom of Action. Following are the differences between the degree levels assigned to these specific point factors by the JEC and the degree levels Grievant argues he should have received:

	EX	CPS	FA
JEC Evaluation	4	4	4
Grievant's Argument	5	5	5

- 8. Grievant's position requires a minimum of two to three years of experience before entering the job.
- 9. Grievant's position involves complex and varied problems, and Grievant must use analytical

skills to interpret policies and procedures to reach solutions. Grievant does not regularly encounter unusual problems requiring development of new policies and procedures in order to solve them.

10. Grievant's decisions are governed generally by the provisions of applicable policies and guidelines.

11. Grievant reports to his direct supervisor on a regular and continuous basis, and his job duties are minimally structured.

DISCUSSION

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 4\)](#). While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 459S.E.2d 374 (W. Va. 1995); Burke, supra. However, no

interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 5\)](#)

B. Reclassification to Director of Federal Trio Programs

It appears that Grievant's challenge to his classification is based chiefly upon the fact the he was the only individual within the state's higher education system who supervised both the Upward Bound and Student Support Services programs. He seeks to be given an institution-specific title of Director of Federal Trio Programs. Grievant's testimony at Level IV is somewhat ambiguous regarding exactly what the Trio Programs are, but he did state that there are six separate programs, including the two he directed. Grievant did a poor job of explaining why his duties entitle him to such a title and why he would be classified at a higher pay grade under such a classification. As noted above in Finding of Fact 6, the only institution which has a Director of Federal Trio Programs classified that individual at a Pay Grade 19, identical to Grievant's pay level as Director/Upward Bound Special Services. There is no evidence establishing what duties and responsibilities that individual performs. In addition, Grievant testified that, since he has been directing only Student SupportServices, he has had the same amount of responsibility as he had while directing two programs.

Grievant has failed to prove by a preponderance of the evidence that he was entitled to be classified as Director of Federal Trio Programs. The evidence does not show that Respondent acted in an arbitrary or capricious manner or was clearly wrong in refusing to classify Grievant under such an institution-specific title.

C. Application of the Point Factor Methodology

As set forth in Finding of Fact 7, above, Grievant has challenged the degree levels he received in the point factors Experience, Complexity and Problem Solving, and Freedom of Action. The JEC assigned a degree level of four to each of these factors, and the Grievant believes he should have received a five for each factor. Each of the point factors challenged by Grievant will be discussed separately below. [\(See footnote 6\)](#)

1. Experience

The Job Evaluation Plan ("the Plan") defines Experience as follows:

This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievant received a 4.0 in this point factor, which is defined as "[o]ver two years and up to three years of experience." He contends he should have been given a 5.0, which is defined in the Plan as "[o]ver three years and up to four years of experience." Luann Moore, a senior compensation analyst for West Virginia University, testified at the Level IV hearing regarding the Mercer classification project generally and also discussed the specific point factors challenged by the Grievant. As to the degree level of 4.0 assigned to the Grievant for Experience, she explained that Grievant had marked an experience requirement of only two to three years on his initial PIQ, ([See footnote 7](#)) which constitutes a level 4.0 in the Plan. Accordingly, Ms. Moore believed this degree level was appropriate.

The Grievant testified that, in writing each of the grants for the two federally-funded programs he supervised, he specified that each director should have at least three years of experience (which would qualify for a degree level of 5.0 in the Plan). Grievant stated that the experience level for program directors was a subjective judgment made by him at the time he wrote the grants. He gave no explanation for the discrepancy between the degree level for experience he marked in his PIQs and the higher level dictated by the grants.

All of the evidence presented supports the JEC's assessment regarding this point factor as applied to Grievant. Grievant simply has not proven that Respondent was clearly wrong in determining that two to three years of experience, a degree level of 4.0, was the minimum required for performance of Grievant's job duties.

2. Complexity and Problem Solving

Grievant received a degree level of 4.0 in this point factor and again asserts that he should have been given a 5.0. The Plan describes Complexity and Problem Solving as follows:

This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

A degree level of 4.0 is defined in the Plan as follows:

Problems encountered are complex and varied due to incomplete and/or conflicting

data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

A degree level of 5.0 is defined in the Plan as follows:

Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valiative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

As to the degree of complexity involved in performing his job duties, Grievant testified that he was required to constantly interpret complex federal and state regulations and that it was "very difficult" to achieve success with students having special needs. If Grievant did not attain a sufficient degree of success in these programs, the grants could be lost, which amount to \$170,000 per year for Student Services and \$200,000 per year for Upward Bound. He also testified that his regular duties involved dealing with the social, academic and special needs problems of students, along with promulgating and working within a budget. Additionally, Grievant was responsible for supervision of five full-time professionals, two part-time secretaries, and two student workers.

Testifying on behalf of Grievant at Level IV was Paul Kesner, Dean of Student Affairs at Potomac State College, who had been Grievant's supervisor since approximately 1989. He reiterated Grievant's basic description of his duties in writing, supervising, and administering the grants. Dean Kesner pointed out that Grievant was performing functions which could have been divided into two positions for two separate individuals, which did ultimately occur after the Mercer reclassification.

Luann Moore testified that she was not aware whether or not any other person in Grievant's position directed two programs, and she believed that the degree level given to Grievant in this point factor was appropriate.

When considering all of the evidence, it does not appear that Respondent erred in assigning a degree level of 4.0 to the Grievant in this point factor. Grievant simply has not proven that his duties as a grant director regularly involved "unusual circumstances" which required the "development of new methods" in order to carry out the work, which is needed for a level 5.0 rating.

Grievant's responsibilities more appropriately fit within the level 4.0 description. His supervisory

and administrative roles, along with interpretation of federal and state regulations, may have made his job complex at times, but Grievant did have general guidelines and policies to govern his decisions. The evidence presented does not show that, in order to solve problems, Grievant had to implement new programs, procedures, or methods. Once a grant was written and approved, Grievant's responsibilities would generally be dictated by the provisions of the grant, and it would seem that new programs or procedures would be inappropriate if adherence to the grant were to be accomplished. Likewise, the ultimate decision whether the grant programs would cease to exist was not within Grievant's control, but would be determined by the United States Department of Education.

The undersigned finds that Grievant's position and associated responsibilities do not rise to the level of complexity necessary for a level 5.0 in this point factor, so Respondent is found not to have been clearly wrong in assigning a degree level of 4.0 in Complexity and Problem Solving.

3. Freedom of Action

Finally, Grievant maintains he should have been granted a degree level of 5.0 in Freedom of Action, rather than the 4.0 which the JEC assigned.

Freedom of Action is defined in the Plan as follows:

This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines, and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

A degree level of 4.0 is defined as follows:

Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

A degree level of 5.0 is defined as follows:

Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets

goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Grievant argues that his entitlement to a level 5.0 in this point factor is demonstrated by the degree of independence he possessed in the daily performance of his duties. He was given responsibility for the hiring, firing and supervision of several subordinates, and the grants were specifically designed to run independently.

Dean Kesner and Grievant both testified that Grievant normally reported to Mr. Kesner about twice weekly, but that they must have an open dialogue potential between them on a daily basis if the necessity were to arise. Unfortunately, neither Grievant nor his supervisor gave any detailed description of what their relationship involved. Therefore, it is unknown how closely or in what regard Grievant was supervised by Dean Kesner.

In her testimony, Luann Moore pointed out that there are only five degree levels in the Freedom of Action category, so a 4.0 is very high. She also noted that the people who received 5.0 ratings in this category were usually associate deans.

As discussed previously, Grievant has the burden of proof and must establish that the JEC's classification was arbitrary and capricious or not supported by the evidence. Grievant has failed to provide any factual basis for his entitlement to a higher rating in this pointfactor. The evidence indicates that Grievant is required to report to his supervisor frequently and regularly, which would not appear to place him in the category of an employee whose contact with his supervisor is limited only to financial issues or the ultimate fulfillment of objectives, as with the 5.0 degree level. Thus, the Respondent's rating of Grievant in this point factor was appropriate and supported by the evidence of record.

D. Summary

Grievant has not proven by a preponderance of the evidence that Respondent was clearly wrong or acted in an arbitrary or capricious manner by failing to create a new job title of Director of Federal Trio Programs at a Pay Grade 21. Likewise, Grievant did not prove that the degree levels assigned by Respondent in the point factors of Experience, Complexity and Problem Solving, and Freedom of Action were clearly wrong or arbitrary and capricious.

CONCLUSIONS OF LAW

1. The governing boards are required by W.Va. Code § 18B-9-4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.
2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).
3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).
4. The Job Evaluation Committee's finding that Grievant was not entitled to an institution-specific title of Director of Federal Trio Programs was not arbitrary and capricious or clearly wrong in view of the evidence of record.
5. The Job Evaluation Committee's assignment of degree levels to the point factors for Director/Upward Bound Special Services was not clearly wrong or arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Mineral County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. 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.

DENISE MANNING

Administrative Law Judge

Dated: September 17, 1996

[Footnote: 1](#)

The reader is referred to Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

[Footnote: 2](#)

Grievant represented himself in this proceeding, made oral argument at the conclusion of the Level IV hearing, and declined to submit written argument.

[Footnote: 3](#)

The thirteen point factors are set forth in 128 C.S.R. 62 §2.27 and 131 C.S.R. 62 § 2.27. Burke, supra.

[Footnote: 4](#)

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

[Footnote: 5](#)

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

[Footnote: 6](#)

Grievant is not challenging the degree levels he received in the other ten point factors, so those factors will not be discussed herein.

[Footnote: 7](#)

Grievant filed two PIQs, one dated October 23, 1991, which seems to describe his duties as director of the Student Support Services program, and another dated March 18, 1993, which apparently applies to his duties as director of Upward Bound. However, the descriptions regarding minimum requirements in the areas challenged by Grievant are virtually identical on both PIQs.