

SHIELA M. COSTILOW

v. Docket No. 94-MBOT-949

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY-POTOMAC STATE COLLEGE

DECISION

Grievant, Shiela M. Costilow, alleges she was misclassified as a Financial Aid Assistant III, Pay Grade 13, under the "Mercer reclassification," and seeks to be classified as a Financial Aid Counselor, Pay Grade 16, with backpay, effective January 1, 1994, the date the classification system was implemented. [\(See footnote 1\)](#) Grievant challenges the degree levels received in several point factors. A level four hearing was conducted on July 2, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by both parties on October 1, 1996.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. Grievant has been employed by the Board of Trustees (BOT) for approximately 21 years and has been assigned, at all times pertinent to this matter, to the Potomac State College (PSC) campus.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

3. As a result of the Mercer reclassification, Grievant was classified as a Financial Aid Assistant III, Pay Grade 13, effective January 1, 1994.

4. Grievant's primary job duties prior to January 1, 1994, included counseling students, prospective students, and parents, regarding all aspects of financial aid; analyzing and entering financial aid information into the computer system and correcting discrepancies; determining eligibility for the various financial aid programs utilizing her knowledge of state and federal regulations

governing student financial aid; completing pre-semester financial aid packaging; preparing various reports regarding financial aid; conducting workshops at local high schools and community groups regarding financial aid; assigning students to the work-study program and dealing with problems regarding placement of these students; preparing complex correspondence and financial aid transcripts; and performing other related duties.

6. A position description for Financial Aid Counselor lists the general function of these employees as “[p]rovides general counseling to student applicants and recipients of financial aid, processes applications and assists in administering financial aid programs.” Characteristic duties and responsibilities include: Counsels students regarding financial aid application procedures, student income verification requirements, etc., analyzes and inputs student and family financial information from various documentation, determines eligibility, awards or disburses aid, reviews, interprets and ensures compliance with federal and state regulations concerning financial aid, assists in implementation of re-semester packaging, awarding, and appropriation of financial aid notification and disbursements, processes financial aid application to determine the amount for which students may be approved, assists with orientation and registration, monitors satisfactory academic progress policies, and may supervise financial aid support staff.

7. The Financial Aid Assistant III job title received 1846 total points from the following degree levels in each of the thirteen point factors [\(See footnote 2\)](#): 5.0 in Knowledge; 3.0 in Experience; 3.0 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 3.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 3.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands.

8. The point range for Pay Grade 13 is from 1756 points to 1865 points.

9. The point range for Pay Grade 16 is from 2114 points to 2254 points.

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 §4.1; 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 she feels she 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 her 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 she is challenging, and the degree level she believes she should have received. [\(See footnote 3\)](#) 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 her 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 a grievant is 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 Found., 459 S.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 her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. [\(See footnote 4\)](#)

To determine whether Grievant is correctly classified, the comparison of Grievant's job duties to those of the Financial Aid Counselor requires a comprehensive review of the degree levels assigned to the two positions in the challenged point factors. B. Application of the Point Factor Methodology

Grievant challenged the degree levels received in the point factors Knowledge, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature; Breadth of Responsibility, Intrasytems Contacts/Level, and Working Conditions. Following are the degree levels assigned the

point factors for the Financial Aid Assistant III, which Grievant contests, and the degree levels which Grievant argues are proper for her position and would place her in the Financial Aid Counselor classification.

	<u>FAA-III</u>	<u>FAC</u>
Knowledge	5	6
Complexity and Problem Solving		3 4
Freedom of Action	2.5	4
Scope and Effect/Nature	2	4
Breadth of Responsibility		1 3
Intrasystems Contacts/Level	2	3
Working Conditions	1	2

Each of the point factors challenged by Grievant will be addressed separately.

1. Knowledge

This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Financial Aid Assistant III was assigned a degree level of 5.0, defined by the Plan as:

Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievant asserts that her duties merit a degree level of 6.0, defined in the Plan as:

Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant argues that the higher degree level is warranted because she must answer questions regarding financial aid to people at various levels of understanding, and she must possess knowledge of the highly technical field of financial aid and the computer systems used in processing financial aid

applications. Respondent asserts that a degree level of 5.0 provides for the type and level of knowledge required by an entry-level employee, and that it may not consider Grievant's personal qualifications.

While Grievant established that she has gained a considerable amount of skill and ability in completing the duties of her position, this factor is intended to measure only the minimum requirements for an entry level employee to perform the job at an acceptable level, keeping in mind that a training period would be necessary for all employees. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996). As in virtually all cases, an employee with a higher degree of education might attain maximum performance level with a shorter training period, and offer the employer other benefits of additional knowledge. The evidence of record establishes, however, that the duties related to Grievant's position could be satisfactorily performed by an individual with up to three years of post-secondary education.

This conclusion is supported by Grievant's own testimony that she possessed a high school level education when she began working in the Financial Aid Office, and acquired an Associate of Arts degree in 1991. Grievant is to be commended for currently pursuing a Board of Regents baccalaureate degree. It appears that Grievant has gained much knowledge from on-the-job training, and that her duties and responsibilities have expanded over the years. However, if a four year degree was the minimum level of knowledge required, Grievant would be ineligible to hold the position. Based upon the foregoing, it cannot be determined that the JEC's allocation of 5.0 was incorrect.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

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.

The JEC assigned Financial Aid Assistant III a degree level of 3.0, defined in the Plan as:

Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant asserts that the proper degree level for the position is 4.0, defined in the Plan as:

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 guideline; 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.

Grievant asserts that she frequently faces complex problems involving variable information on documents. While federal government regulations require that there be no conflicting data on financial aid applications, there are no specific guidelines addressing how to correct discrepancies, leaving her to research and document information, and then make corrections using her best judgment. Further, financial aid regulations are constantly undergoing changes. Even with the regulations, she must have the knowledge to locate the appropriate regulation for the situation at hand. Testifying on behalf of Respondent, Senior Compensation Analyst LuAnn Moore stated that the very reliance upon guidelines supported a degree level of 3.0 in this point factor.

Although Grievant faces somewhat complex situations at times, her work is strictly governed by guidelines and procedures, requiring that she apply the most appropriate options to individual cases. While Grievant must locate the appropriate guideline for any given situation, much of her work is routine. When she encounters situations which she cannot resolve, Grievant may refer the matter to the Financial Aid Director. Although Grievant works with multitudinous guidelines and procedures, their very number insures coverage of virtually all matters relating to Grievant's duties. The exercise of judgment to select which guidelines best fit any situation falls squarely within the 2.0 degree level.

3. Freedom of Action

The Plan defines Freedom of Action as:

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.

Financial Aid Assistant III was accorded a degree level of 2.5. Half levels were not defined by the Plan; however, level 2.0 was defined as:

Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

Level 3.0 was defined by the Plan as:

Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

Grievant argues that her duties are more properly defined at a 4.0 level, defined in the Plan show that at a degree level of 4.0:

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.

It was the testimony of both Grievant and her supervisor that she works independently, prioritizes her activities, determines and finalizes awards of student aid, and has "signature authority" on school verification loan forms, done through the computerized system. Ms. Moore stated that a degree level of 2.5 more accurately reflected Grievant's position in that it provides credit for dealing with some unusual situations independently while recognizing that many of her tasks are structured to such an extent that she can function autonomously at times. Ms. Moore also noted that it is the Financial Aid Director who is ultimately responsible for the work product of the office.

Grievant works without constant supervision but exercises minimal freedom of action in that her position is highly structured and controlled by regulations and guidelines. Grievant deals with some unusual situations independently, but does not work in a minimally structured setting or from broad goals. Procedures, practices, precedents, regulations, and time schedules limit Grievant's freedom of action in performing tasks. She is not required to establish objectives, deadlines, and projects. Although Grievant may determine and finalize awards of financial aid without review or authorization by the Financial Aid Director, he is ultimately responsible for those decisions. Thus, the evidence supports Respondent's determination that a level of 2.5 is appropriate for this point factor.

4. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

___Grievant challenges the Nature section of this point factor. The JEC awarded her a degree level of 2.0, defined by the Plan as “[w]ork contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.”

Grievant requests a degree level of 4.0, defined by the Plan as “[w]ork contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial costs, inconveniences, and disruption of services within the affected area.”

Grievant argues that the higher degree level is proper because financial aid significantly impacts on Potomac State College in that errors could result in thousands of dollars in liability. Additionally, because more than 70% of the students receive some form of financial aid, the work she performs contributes to the effective operation of the entire institution. Respondent asserts that if an error is made, such as a student receiving too much money, the student is liable for repayment to the school. In respect to mistakes generally, the Financial Aid Director would be responsible, not Grievant.

Grievant has assumed much responsibility in the Financial Aid Office and it is obvious that she performs her responsibilities with utmost care and attention. However, should she make an error which is not due to “sabotage, mischief, or lack of reasonable attention and care” it would be

correctable with little impact on the overall mission of the institution. This factor does not measure the degree of harm that an employee could intentionally inflict, but rather errors which might occur unintentionally during the course of otherwise satisfactory performance. A degree level of 2.0 is appropriate for this point factor.

5. Breadth of Responsibility

This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts.]

The JEC awarded the position of Financial Aid Assistant a degree level of 1.0, defined by the Plan as "[a]ccountable for only immediate work assignments but not for a functional area." Grievant requests a degree level of 3.0, defined by the Plan as "[i]n-depth knowledge of and accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations."

Grievant argues that the higher level is correct because she works closely with the Business office and shares responsibility with the Financial Aid Director. Respondent argues that a degree level of 1.0 is proper because Grievant's responsibilities are limited to one functional area.

Although Grievant may work with employees in the Business Office, she has no formal and ongoing accountability in that area. A degree level of 1.0 is correct for this point factor. Further, Grievant is accountable for only her immediate work assignments. While the scope of these assignments may be quite broad, Grievant does not bear accountability for the Financial Aid Office. A degree level of 1.0 was correct for this point factor.

6. Intrasystems Contacts

The Plan defines Intrasystems Contacts as the

factor which appraises the responsibility for working with or through other people within the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring, and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor has two components, "Nature of Contact" and "Level of Regular, Recurring, and Essential Contact." Grievant challenges only the Level component. The JEC awarded her position a degree level of 2.0, defined by the Plan as "[s]taff and faculty outside the immediate work unit." Grievant requests a degree level of 3.0, defined as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office."

Grievant states that she deals regularly with the Director of Admissions regarding students receipt of, or eligibility for, financial aid. While completing her duties relating to the assignment of work-study students, Grievant communicates with the Director of the Student Union, the Maintenance Supervisor, and Chairs of the various academic departments. Respondent argues that much of the contact cited by Grievant is with staff and faculty, and that her contact with the Director of Admissions is not regular, recurring, and essential.

Considering the purpose of Grievant's contact with the cited individuals, it appears that her contact may be limited to once a semester when assigning work-study students. Additional contacts may be required if the placement is not acceptable, but this contact is limited to an as-needed basis and may not take place at all. Similarly, Grievant's contact with the Dean of Admissions would logically take place at the beginning and/or end of the semesters, and again, such contact is not mandatory but will occur only if necessary. Because Grievant has failed to prove that the contacts are regular and recurring, it cannot be determined that the JEC's allocation of a degree level of 2.0 in this point factor is clearly wrong.

7. Working Conditions

This factor was considered in conjunction with Physical Demands and is defined in the Plan as "the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions." The JEC awarded the position of Financial Aid Assistant III a degree level of 1.0, defined by the Plan as "[n]o major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilation problems." Grievant requests a degree level of 2.0, defined by the Plan as "[o]ccasional minor discomforts from exposure to less-than-optimal temperature and air conditions. May involve dealing

with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video display terminal.”

Grievant bases her request regarding this point factor on the fact that she had to pass by a fallen ceiling, which contained asbestos, two times a day for a week until the area was sealed, and that she has no privacy in her office. Respondent asserts that 1.0 is proper because only “normal conditions” are considered. Additionally, Ms. Moore noted that privacy issues are not taken into consideration by the classification system.

Grievant offered no testimony to establish that she works with any major source of discomfort on a daily basis. The situation to which she referred was clearly unique and appears to have had no direct impact on Grievant as she performed her daily responsibilities. Although Grievant's complaint that she has no privacy in her office was undisputed, it is noted that a lack of privacy is not unusual and is not a factor detrimental to the quality of the conditions in which this Grievant works. A degree level of 1.0 was proper for this point factor.

D. Summary

___ Grievant has failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner by failing to classify her as a Financial Aid Counselor, at pay grade 16. Grievant further failed to prove that the degree levels assigned to her job title in the cited point factors were clearly wrong or were assigned in an arbitrary and capricious manner by the JEC.

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§4.1. 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, if one exists, 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 Found., 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. Grievant failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of degree levels to the cited point factors was clearly wrong or arbitrary and capricious.

5. Grievant has failed to prove that her duties and responsibilities warrant classification as a Financial Aid Counselor.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mineral 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.

Date: December 19, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[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](#)

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: 3](#)

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. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ.,

Docket No. 94-MBOT-817(Dec. 12, 1995).

[Footnote: 4](#)

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.