

SUSAN L. PERKINS

v. Docket No. 94-MBOT-733

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY-PARKERSBURG

DECISION

Grievant, Susan L. Perkins, alleges she was misclassified as a Financial Aid Assistant II, Pay Grade 10, under the "Mercer reclassification," and seeks to be classified as a Financial Aid Assistant III, Pay Grade 13, 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 June 3, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by both parties on or before August 14, 1996.

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

Findings of Fact

1. Grievant is employed by the Board of Trustees (BOT) as a Financial Aid Assistant II at West Virginia University-Parkersburg (WVU-P).
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 II, Pay Grade 10, effective January 1, 1994.
4. Grievant's primary job duties prior to January 1, 1994, were creating, and maintaining all student financial aid files, training, scheduling and supervising student assistants, screening and routing mail. Additionally, Grievant screened all incoming calls, correspondence, and walk-ins. She

disseminated information, and assisted students and parents when appropriate, making referrals as necessary. Grievant scheduled and gathered information relating to meetings and appointments, drafted and prepared correspondence for signature. Grievant prepared payment vouchers for students, calculated office time sheets, ordered office supplies and maintained records.

5. The general function of a Financial Aid Assistant II is to assist students in obtaining financial aid through the preparation and maintenance of student records necessary for the evaluation and disbursement of financial aid, and to perform various duties of a clerical nature in support of the Financial Aid Office. This individual reviews applications and verifies eligibility of recipients, ensures that award letters are mailed and replies are processed in a timely manner, responds to inquiries regarding financial aid programs and policies, and supervises student workers. This position requires a high school diploma or GED equivalency and one year of related experience.

6. A position description used for the posting of a vacant position of Financial Aid Assistant III at WVU-Morgantown, indicates that the employee prepares and maintains student financial aid records in both paper and electronic forms, reviews applications, verifies student eligibility by comparing tax returns and other supporting documents to the financial aid application, computes eligibility by entering data into a computer program that performs the needs analysis methodology, reviews documents received for completeness and signatures, and directs the documents to the appropriate place for further processing and evaluation. An Assistant III is also responsible for the accurate input and maintenance of a major part of the electronic file systems in the Financial Aid Office (i.e., Student Aid Management System, PHEAA Automatic Loan System, and the PHEAA Pell Electronic Data Exchange) by entering and monitoring data on an IBM compatible PC linked with the mainframe at WVNET, responds to inquiries, advises students, and supervises student workers in the Financial Aid Office. An Associate's degree and over one year and up to two years of financial aid experience are required.

7. The Financial Aid Assistant II job title received 1476 total points from the following degree levels in each of the thirteen point factors ([See footnote 2](#)): 3.0 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasytems Contacts, Nature of Contact; 2.0 in Intrasytems Contacts, Level; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised,

Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands.

8. The point range for Pay Grade 10 is from 1475 points to 1560 points.

9. The point range for Pay Grade 13 is from 1756 points to 1865 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 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. [\(See footnote 3\)](#). 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 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 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 his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. ([See footnote 4](#))

B. Comparison of Grievant's Duties to Financial Aid Assistant III

___The record reflects that the general function of Financial Aid Assistants II and III are somewhat similar in that both assist students in obtaining financial aid, prepare and maintain student records for evaluation and disbursement of financial aid, and perform various duties in support of the office. Characteristic duties and responsibilities of both positions include maintaining student financial aid records, reviewing applications and verifying eligibility of recipients, ensuring that award letters are mailed to recipients and replies are processed in a timely manner, and answering inquiries regarding financial aid programs and policies.

In this instance, the PIQ completed by Grievant and a position description for a Financial Aid Assistant III vacancy at WVU are illustrative. On her PIQ, Grievant stated that 40 per cent of her time is consumed in the maintenance of the student financial aid files, including periodic review to monitor status, and coordinating the work flow in the Financial Aid Office, including supervising and scheduling the work-study students, and screening and processing all mail. Another 40 per cent of her time is dedicated to screening incoming calls and walk-ins, providing information, assisting students and parents and making referrals when necessary, scheduling and gathering background information for meetings and appointments, drafting correspondence, preparing payment vouchers for financial aid recipients, calculating office time sheets, preparing and ordering all office supplies. Advising and counseling students accounts for 20 per cent of Grievant's time.

By comparison, the position description for the Financial Aid Assistant III indicates that 30 per cent of his or her time is spent in the preparation and maintenance of the student financial aid files, verifying eligibility, reviewing documents for completeness and directing said documents for further processing. Another 30 per cent of the Assistant III's time is spent entering and monitoring data into the computer system for various programs and resources. The Financial Aid Assistant III answers inquiries regarding the financial aid application process, advises and assists students and parents in the completion of applications and refers them to appropriate agencies or departments, if necessary, 10 per cent of his time. Composing correspondence and ensuring that correspondence is mailed and

replies processed in a timely manner, either by performing the function or supervising the work of student workers, consumes 15 per cent of the time. Processing written requests from other institutions for student financial aid transcripts consumes 7 per cent, and supervision of student workers 5 per cent of the time. Serving as a backup for other assistants and the office receptionist, sorting and distributing the mail completes the remaining 3 per cent of the Financial Aid Assistant III's job.

To properly determine whether Grievant is correctly classified, the comparison of Grievant's job duties to those of the Financial Aid Assistant III requires a more comprehensive review of the degree levels assigned to the two positions in the challenged point factors.

C. 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 /Impact of Actions, External Contacts/Nature of Contact, Direct Supervision Exercised/Number and Level, and Physical Coordination. [\(See footnote 5\)](#) Following are the degree levels assigned the point factors for the Financial Aid Assistant II, which Grievant contests, and the degree levels which Grievant argues are proper for her position and would place her in the Financial Aid Assistant III classification.

	<u>FAA-II</u>	<u>FAA-III</u>
Knowledge	3	5
Complexity and Problem Solving		2 3
Freedom of Action	2	4
Scope and Effect/Impact of Actions		1 2
External Contacts/Nature of Contact		2 3
Direct Supervision Exercised/Number		1 3
Direct Supervision Exercised/Level		1 3
Physical Coordination	2	3

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 II was assigned a degree level of 3.0, defined by the Plan as:

Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

Grievant asserts that her duties merit a degree level of 5.0, defined in 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.

While Grievant has 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. As in virtually all cases, an employee with a higher degree of education might perform the duties 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 a high school diploma or GED.

This conclusion is supported by Grievant's own testimony that she began working in the Financial Aid Office as a student at WVU-Parkersburg in 1989. In February 1990 she was hired as Secretary to the Dean of Students and Secretary to the Financial Aid Director. In 1991, Grievant received her Associate's degree. Following a reorganization in 1993 she assumed full-time responsibilities in the Financial Aid Office. Grievant stated that she acquired the information needed to perform her duties by asking questions and listening. This type of learning period is entirely consistent with the expectations of the classification plan. Therefore, by her own example, Grievant has established that a high school education provides sufficient minimal basis to satisfactorily perform the duties of her position.

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 II a degree level of 2.0, defined in the Plan as:

Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

Grievant asserts that the proper degree level for the position is 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.

As a general rule, Grievant is the students' first contact in the Financial Aid Office. Grievant initially determines which standards apply to each student, whether a student qualifies for independent status under Internal Revenue Service guidelines, and whether a student meets eligibility standards, as part of her duties. This work is strictly governed by guidelines and procedures, requiring the employee to apply the most appropriate options to individual cases. Minimal problem solving is required of Grievant. Much of her work is routine and procedures and guidelines provide readily obtainable solutions. When she encounters situations which she cannot resolve, Grievant simply refers the matter to another employee. Grievant has failed to prove that she is entitled to a 3.0 in this point factor.

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 II was accorded a degree level of 2.0, defined by the Plan 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.

Grievant argues that her duties are more properly defined at a 4.0 level. The

definitions 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.

Grievant works without constant supervision but exercises minimal freedom of action in that her position is highly structured and controlled by her duties and responsibilities which are established and repetitive, such as the production of a file for each student's financial aid application. Procedures, practices, precedents, regulations, and time schedules limit Grievant's freedom of action in performing tasks. Grievant claims to prioritize her work; however, because financial aid processing consists of multitudinous rules and strict deadlines for various phases of the program throughout the year, she exercises only limited control in this area. Thus, the evidence supports Respondent's determination that a level of 2.0 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.

Financial Aid Assistant II was accorded a degree level of 1.0 in Impact of Actions, defined in the Plan as:

Work is limited to immediate work function and short-term situations.

Grievant requests a degree level of 2.0 in Impact of Actions, defined in the Plan as:

Work affects either an entire work unit or several major activities within a department.

___ Grievant manages the processing of the student files to the point when the determination of financial aid is made. After the determination, she resumes management of the files, notifying the students of the outcome, and continues processing through actual disbursement of the funds. Because the processing of individual student files involves employees other than Grievant, responsibility rests with the work unit rather than on Grievant alone. Grievant's work is undeniably essential to the Financial Aid Office, and her performance would surely have an impact at her function level. Because various activities which constitute Financial Aid processing are ongoing in the office and involve a number of employees, it is unlikely that any action taken by Grievant would remain uncorrected and impact the unit level. Errors or failure to complete her duties would be identified prior to the point where the entire unit would be adversely affected. Grievant has failed to prove that the higher level in this point factor was more appropriate for the work she performs.

5. External Contacts

External Contacts is defined in the Plan as:

This factor appraises the responsibility for working with or through other people outside 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, influencing others or negotiation.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant challenges only the Nature of Contact. The JEC awarded the position of Financial Aid Assistant II a degree level of 2.0 in Nature of Contact, defined in the Plan as:

Moderate tact and cooperation required; communication is largely of a non-

controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Grievant requests a degree level of 3.0 in Nature of Contact, defined in the Plan as:

Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of policies, resolution of problems.)

The record establishes that Grievant engages in the routine exchange of information when gathering and disbursing information or ordering supplies. It also supports her claim that she explains policies and procedures regarding financial aid to students and parents. At times, these interactions involve issues of dependent status and more personal matters which affect the student. Nevertheless, Grievant's role is to gather information from the student in order to supply the correct data to determine eligibility. Accepting that some individuals may be experiencing stress, be reluctant to divulge some facts, or behave in a hostile manner, Grievant's work is governed by practice and procedure, requiring moderate tact rather than substantial sensitivity. Grievant failed to establish that she contacts other persons outside the system on a regular, recurring, and essential basis, and that the contacts require that she exercise substantial sensitivity. Grievant did not prove that 3.0 was the appropriate level in this point factor.

6. Direct Supervision Exercised/Number

This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

Financial Aid Assistant II was slotted at degree level 1.0; Grievant requests a degree level of 2.0 in the Number category of this factor.

A degree level of 1.0 for the Number of Direct Subordinates is defined by the Plan as:

None.

A degree level of 2.0 for the Number of Direct Subordinates is defined by the Plan as:

One.

The record reflects that Grievant trains and supervises two to three work-study students for 10 to 12 hours per week, each. She concedes that she could keep the office functioning without the work-study employees, but could not do so at the same level of efficiency. Because work-study students are considered non-essential, and non-essential employees are not included in this category, Grievant cannot be given a level of 2.0 in this point factor.

7. & 8. Direct Supervision Exercised/Level and Physical Coordination

___In her proposed Conclusions of Law, Grievant states that “[b]ecause it is not necessary to consider that points that would be generated by a change in [these] factor[s], in order to determine that Susan Perkins should be reclassified as a Financial Aid Assistant III, [these] factor[s] will not be considered any further.” Consistent with this statement, these point factors will receive no further consideration.

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 Assistant III, at pay grade 13. 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 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 Assistant III.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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: October 31, 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.

[Footnote: 5](#)

Grievant also contends that she did not receive sufficient credit in the factors of Scope and Effect/Nature of Actions, Intrasystems Contacts/Level, and Physical Demands. However, because she received credit in each of these categories at the same level necessary for the position of Financial Aid Assistant III (or higher), these point factors were not challenged.