

WILLIAM GARCELON

Grievant,

v.

Docket No. 95-DOH-378

DEPARTMENT OF TRANSPORTATION/

DIVISION OF HIGHWAYS and

DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievant, William Garcelon, originally grieved his classification as a Transportation Technician ("TT") I and requested to be classified as a TT III or IV. When this grievance was filed, there was no TT IV classification. Division of Personnel ("DOP"), at the time of reclassification, had collapsed the four Right-of- Way Technician classifications into three TT classifications. This grievance was denied at Levels I and II. At Level III, Grievant apparently changed his grievance and requested as relief that there be a "[r]eview [of] the Transportation Technician classifications in general and specifically upgrade the start position from [pay] grade 7 to [pay] grade 9." Level III Dec. at 1. Grievant stated that the Right-of-Way Engineering Section had made recommendations for proposed classifications and these had been ignored. This grievance was denied at Level III, and Respondent Department of Transportation ("DOT") held that although Grievant did perform some tasks outside the TT I job description, "the predominant duties performed by Mr. Garcelon more closely fit the Transportation Technician I than the II, III, or IV classes." Level III Dec. at 5. This Decision also stated no evidence was presented to demonstrate DOP violated any of its rules and regulations or acted in an arbitrary and capricious manner when it reclassified Grievant. At Level IV Grievant again changed his statement of grievance and said he would be "willing to compromise" on a TT II reclassification. After an off-the-record discussion of the rules governing reclassification and pay increases, Grievant stated that he "realize[d] it's not necessarily a salary increase to go through this process (reclassification)." Respondents agreed to the addition of the TT II classification to the grievance.

After all parties rested, and at the undersigned's suggestion, DOP agreed to conduct a desk audit

of Grievant's position to see if he could be reclassified to a TT II in an attempt to resolve this grievance amicably. DOP agreed to perform this desk audit, and DOH agreed to abide by its outcome.

At the end of the hearing, the undersigned and Grievant had the following exchange.

ALJ: If indeed it does come out that you have been reclassified as a II because of that desk audit, my understanding would be that you would then ask for this grievance to be dismissed. Is that correct?

Grievant: That is correct.

The parties then agreed to hold this grievance in abeyance until the results of the desk audit were known. On November 2, 1995, the undersigned received a letter from Mr. Lowell D. Basford, Assistant Director of Classification and Compensation with DOP. He noted the desk audit indicated the position in question should be classified as a TT II, and he had so notified Grievant. No response was forthcoming from the Grievant, so on January 3, 1996, the undersigned wrote Grievant requesting a response. On January 10, 1996, Grievant wrote the undersigned stating "he decline[d] this classification without remunerations." [\(See footnote 1\)](#)

After a continuance, requested by Grievant, a second Level IV hearing was scheduled on March 19, 1996, to discuss the status of the case. [\(See footnote 2\)](#) At this hearing, Respondents indicated the grievance was resolved pursuant to Grievant's request and agreement, and they requested the case be dismissed.

When asked why this grievance should not be dismissed as settled, Grievant indicated he had previously only agreed to discuss reclassification to a TT II, and that he did not think it was fair to be reclassified without a raise. Grievant was shown a copy of the discussion at the prior Level IV hearing. A lengthy discussion ensued. It was again explained to Grievant that he could not receive a raise upon reclassification to a TT II because his current salary was above the TT II minimum, and an increase would violate W. Va. Admin. Rule 5.04(f)(1)(a). It was also explained to Grievant that even if he were to be reclassified to a TT III, he still couldnot receive an increase because his current salary was above this minimum level as well.

Grievant questioned why he could not be promoted to a TT III, then, if there was no salary increase. Mr. Basford stated Grievant was not performing the work of a TT III. Mr. Basford also stated the desk audit revealed Grievant was between a TT I and a TT II, and DOP gave him "the benefit of

the doubt” to reclassify him as a TT II. Mr. Basford also explained that an alternative to seeking reclassification would be to seek a promotion, and that a promotion would include a raise pursuant to W. Va. Admin. Rule 5.05.

Grievant then indicated he would accept the reclassification, and if after a few months he decided he did not think he had done the right thing he would file another reclassification grievance. After the doctrine of res judicata was explained to Grievant, he then decided to reject the settlement offer. Respondents renewed their Motion to Dismiss.

After a consideration of the evidence of record and the agreement of the parties, the undersigned **GRANTED** Respondent's Motion to Dismiss and found Grievant had knowingly agreed to accept a reclassification to TT II if this was demonstrated by the desk audit. Additionally, Grievant understood at the time of the agreement that this reclassification would result in no increase in pay.

Although the Motion to Dismiss was granted, the undersigned Administrative Law Judge will, in this particular case, address the merits of Grievant's TT III reclassification claim, as it is noted Grievant had rested his case prior to the secondhearing. A review of all the evidence indicates Grievant is now properly classified as a TT II, and this classification is the “best fit” for the duties he performs. [\(See footnote 3\)](#)

The pertinent sections of the class specifications at issue are written below:

TRANSPORTATION TECHNICIAN I

Nature of Work: Under close supervision, an employee in this class performs beginning to full-range duties in one or more of the following areas: mapping, traffic studies, highway planning, highway design, surveying, construction, inspection or materials testing. Work is performed according to prescribed procedures and involves direct contact with employees, public officials, civic and labor groups and the public. The work may be performed outdoors in adverse weather conditions and exposure to dust and chemicals. Extensive travel may be required. Performs related work as required.

Distinguishing Characteristics: Transportation Technician I is work of less complexity and requires less independent judgement. The work may be performed in conjunction with higher level technicians.

Examples of Work

Conducts traffic counts, inventories, weight checks and various studies.

Surveys and measures property lines and road sites for exact measurements.

Performs legal research on parcels of land to identify boundaries and ownerships.

Prepares drafts of maps, land plots, sketches and etc.

Conducts various tests and checks on materials or equipment used in construction or work sites to assure compliance with standards and specifications.

Maintains and repairs equipment, tools, and instruments for proper safety accuracy and use.

Recommends measures to correct and alleviate safety hazards.

Maintains, prepares and updates various records, reports and maps.

Collects sample materials for testing purposes.

Operates various types of equipment and/or instruments.
Cuts and removes brush when necessary to set stakes and markers to identify location of roads or construction.

Reviews reports and records for accuracy and completeness.

TRANSPORTATION TECHNICIAN II

Nature of Work: Under general supervision, an employee in this class performs full-performance level technical work in one or more of the following areas: mapping, traffic studies, highway planning, highway design, surveying, construction, inspection or materials testing. Assists Transportation System Analysts and Engineers in various projects. The work may require travel, working outdoors and being exposed to dust and chemicals. Performs related work as required.

Distinguishing Characteristics: Transportation Technician II is distinguished from Transportation Technician I by the full-performance level work assigned to the position. Exercises more independent judgement in actions taken.

Examples of Work

Assists System Analysts and Engineers in the development and testing of pilot studies for use in the highway planning function of developing methodologies, training field crews, evaluation of data and methodology revisions.

Conducts inspections on various types of highway construction, utility lines, railroad crossings, and paving projects for compliance requirements and state and federal safety regulations.

Coordinates testing of materials to assure compliance with standards and specifications.

Conducts field surveys and investigations relating to right-of-way acquisition, relocation, and citizen complaints.

Prepares exhibits os survey findings.

Researches legal documents to obtain background information.

Maintains records and compiles and records data for reports or other purposes.

Cleans, repairs, and maintains equipment to assure safety and in good working condition.

Prepares and revises plans.

Prepares sketches, drawings and layouts of graphs, charts and maps for reports, hearings and meetings.

Classifies construction projects and other subject matter by categories, ratings, priority and etc.

TRANSPORTATION TECHNICIAN III

Nature of Work: Under limited supervision, an employee in this class performs advanced level technical work in one or more of the following areas: mapping, traffic studies, highway planning, highway design, surveying, highway construction, highway maintenance, inspection or materials testing. Provides highly responsible administrative and technical assistance to a professional in the management of transportation programs. The work may require travel, working outdoors and exposure to dust, chemicals and moving machinery. Performs related work as required.

Distinguishing Characteristics: Transportation Technician III is distinguished from Transportation Technician II by the level of more advanced to specialized complex assignments with limited administrative review. Position may also train co-workers and serve as a lead worker.

Examples of Work

Prepares and revises plans and property descriptions for right-of way and relocation.

Conducts field surveys and investigations relating to right-of-way acquisition, relocation, and [sic] citizen complaints.

Prepares exhibits of survey findings.

Writes reports of technical activities and progress.

Consults with professionals to resolve discrepancies.

Conducts various field inspections.

Prepares plans and makes revisions as directed.

Calculates construction materials to be used for projects.

Prepares sets of detailed plans for construction projects.

Assists professionals in designing and implementing projects and pilot studies.

Trains personnel in the use of new equipment or new procedures and methods.

Grievant's testimony is he does the same work as a TT III "minus the supervision." Grievant identified his duties as conducting "courthouse" research, performing basic drafting, utilizing the

CADD to make plans and designs, and functioning as a project leader in the development of right-of-way plans. Trans. L. III Hrg. at 5; Position Description Form, dated November 27, 1991. Both Grievant's first and second level supervisors stated Grievant did not perform the work of a TT III. Level I and II Decisions. Additionally, Mr. Basford stated, at the Level IV hearing, that the duties Grievant performed were between a TT I and a TT II, that he did not perform the duties of a TT III, and that he did not function as a lead worker.

Discussion

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited DOP classification specification than the one under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). DOP's 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. Div. 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 his 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. Broadus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the foregoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents to employees a substantial obstacle in attempting to establish that they are currently misclassified. In the instant matter, Grievant's evidence falls well short of demonstrating that DOP's determination that he is properly classified is "clearly wrong." The "best fit" for Grievant is a TT II.

The above discussion relating to Grievant's classification will be supplemented by the following

conclusions of law.

Conclusions of Law

1. Grievant is properly classified as a TT II.
2. DOP's reclassification of Grievant to a TT II without an increase in pay was in accordance with W. Va. Admin. Rule 5.04(f)(1)(a).
3. DOP violated no rules, regulations, or statutes when it reclassified Grievant.

Accordingly, this grievance is **DISMISSED**.

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.

JANIS I. REYNOLDS
Administrative Law Judge

Dated: April 29, 1996

[Footnote: 1](#)

Of course, an employee cannot decline having his position reclassified.

[Footnote: 2](#)

Grievant obviously did not understand he had rested his case at the prior hearing, and requested multiple subpoenas for this hearing. These were issued by the undersigned.

[Footnote: 3](#)

Because DOP agreed to reclassify Grievant to a TT II, that classification issue is not before the undersigned.