

RUFUS MOORE,

Grievant,

v.

DOCKET NO. 96-RS-031

**WEST VIRGINIA DIVISION OF
REHABILITATION SERVICES and
DIVISION OF PERSONNEL,**

Respondents.

D E C I S I O N

Grievant, Rufus Moore, filed this grievance on November 9, 1994, alleging he was working out of classification for Respondent Division of Rehabilitation Services during the period October 27, 1992 through October 22, 1994. [\(See footnote 1\)](#) Following adverse decisions at the lower levels, Grievant appealed to level four on January 24, 1996. Hearing was held on May 17, 1996, at which time this case became mature for decision.

The material facts in this case are not in dispute and are set forth in the following findings.

Findings of Fact

1. Grievant was employed as a Rehabilitation Counselor in Respondent's Logan County branch office from 1991 until 1995, when he was terminated from employment. [\(See footnote 2\)](#)
2. Grievant was a Counselor Trainee for one year, after which time he was promoted to Rehabilitation Counselor. At that time, his then-district supervisor, Barbara Boyd, promised him verbally that he would be promoted to supervisor/lead counselor.
3. A few weeks later, Ms. Boyd gave him the title of Counselor in Charge, which is a working title and not a Division of Personnel position classification.
4. As Counselor in Charge, Grievant had a number of responsibilities, including, negotiating the

lease on the building occupied by the Logan office; developing individual written rehabilitation programs without instruction from the district supervisor; interviewing and hiring custodians for janitorial service; public relations and planning; implementing programs; signing expense accounts; working with the district supervisor on the office budget; approving and signing leave slips; and other day-to-day responsibilities normally associated with the effective operation of a branch office. 5. Grievant did not have hiring or firing authority over the staff in his office, nor did he prepare written performance evaluations on those individuals.

6. At all times pertinent to this case, the Logan branch office consisted of two counselors, including Grievant, and one support staff.

7. The higher level supervision of the Logan branch office, including hiring, firing and evaluations, was conducted from the Charleston office, initially by Karen White, Client Services Supervisor.

8. In or about 1993, Judy Reed was appointed district supervisor and Logan County fell within her jurisdiction. Ms. White and Ms. Reed were performing many of the same supervisory duties with respect to the Logan branch office.

9. In 1994, the staff of the Logan branch office inquired of Ms. Reed exactly what the chain of command was in that office, i.e., who had what supervisory duties for reporting purposes.

10. On October 26, 1994, Ms. Reed met with the staff of the Logan branch office and responded to their inquiries. Ms. Reed distributed a memorandum informing the staff that Karen White would serve as the "general/immediate supervisor", and she would "sign your expense accounts, itineraries, requisitions, time card, preapprove all annual leave requests, and sign all leave forms." The memorandum indicated that Grievant was Counselor in Charge and was responsible for handling day-to-day office questions, "but does not function as a supervisor of staff." 11. Many of the functions attributed to Karen White in the October 26, 1994, memorandum were previously performed by Grievant.

Discussion

Grievant alleges that he was working out of classification from October 22, 1992, when he became Counselor in Charge, until October 26, 1994, the date of Ms. Reed's memorandum. Grievant alleges his duties during that time period are more accurately reflected in either the Rehabilitation

Counselor, Senior classification specification, or the Rehabilitation Office Supervisor classification specification. Grievant ceased performing those duties after the October 26, 1994, with the exception of attending a district manager's meeting in December 1994. Grievant seeks compensation for the time period in question.

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 Personnel classification specification than that under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W. Va. Dept. of Health, Docket No. 90-H-444 (Apr. 22, 1991); see generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for 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, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993). However, no interpretation or construction of a term used in a job description is necessary or proper where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995).

The classification specifications at issue are reproduced below:

REHABILITATION COUNSELOR

Nature of Work

Under general supervision, at the full-performance level, performs professional counseling work with disabled individuals. Identifies potential problems in returning clients to the working community and develops programs and procedures to resolve these problems. May meet with employers to

develop programs to modify jobs or find alternative employment for injured workers. Performs related work as required.

Examples of Work

Counsels disabled individuals to assess the individual's ability to return to the work force and to identify potential problems with the return to work.

Provides vocational and life adjustment counseling and guidance.

Collects and assesses medical, psychological and vocational data to determine rehabilitation needs of the disabled client.

Determines clients' eligibility for sponsored services such as vocational training, pain management and work hardening programs.

May monitor the work-flow among the sections of the Workers' Compensation Fund to insure that claims are managed effectively.

Facilitates the provision of medical and rehabilitation services from the Workers' Compensation Fund/Division of Rehabilitation Services, the health-care community and the rehabilitation community.

Meets the community employers to develop programs of alternative or modified jobs to return injured employees to work with their pre-injury employers.

Develops appropriate rehabilitation programs to return the worker to work or to a more productive pattern of living from the catastrophically injured.

May manage a caseload of workers with catastrophic injuries such as spinal cord injuries, severe head injuries and double amputations.

REHABILITATION COUNSELOR, SENIOR

Nature of Work

Under limited supervision, performs advanced professional counseling work in providing a full range of specialized rehabilitation services at the advanced level to physically challenged clients. Performs within detailed policies, procedures, state and federal regulations and professional standards. Considerable independent judgment is exercised in the development and implementation of the client rehabilitation plan. May perform in a lead worker or working supervisor capacity if in a small office. Extensive public contact with clients, service providers, community and advocacy groups. Considerable travel may be required. Performs related work as required.

Distinguishing Characteristics

Positions at this level are distinguished by the lead worker/working supervisor duties associated with the case management functions. At this level, incumbents assign and oversee the work of professional and supportstaff, review the use of agency resources to ensure cost effectiveness, and negotiate and interpret cooperative agreements with service agencies within the assigned territory. This class is intended to be limited to employees who have been assigned lead worker or supervisory duties over a designated group of employees on a permanent basis.

Examples of Work

Meets with superiors as needed to discuss the work of the unit and individual performance of duties; may complete performance evaluations on subordinates.

Counsels disabled individuals to assess the individual's ability to return to the work force and to identify potential problems with the return to work.

Provides vocational and life adjustment counseling and guidance.

Collects and assesses medical, psychological and vocational data to determine rehabilitation needs of the disabled client.

Determines clients' eligibility for sponsored services such as vocational training, pain management and work hardening programs.

May monitor the work-flow among the sections of the Workers' Compensation Fund to insure that claims are managed effectively.

Facilitates the provision of medical and rehabilitation services from the Workers' Compensation Fund/Division of Rehabilitation Services, the health-care community and the rehabilitation community.

Meets the community employers to develop programs of alternative or modified jobs to return injured employees to work with their pre-injury employers.

Develops appropriate rehabilitation programs to return the worker to work or to a more productive pattern of living.

May manage a caseload of workers with catastrophic injuries such as spinal cord injuries, severe head injuries and double amputations.

REHABILITATION OFFICE SUPERVISOR

Nature of Work

Under administrative direction, performs administrative and supervisory work in charge of a local Rehabilitation Services or Disability Determination Services office or a comparable unit at the West Virginia Rehabilitation Center. Supervisesthe work of professional, clerical, and support staff in

providing rehabilitation services or disability determination services to client population. Performs related work as required.

Distinguishing Characteristics

This class is established for positions having supervisory responsibility for a branch office in rehabilitation services, disability evaluation services, or a comparable unit at the West Virginia Rehabilitation Center. Typically, the position involves a significant amount of time in supervision of professional, clerical and support staff. Excluded from this class are satellite or branch offices having one Rehabilitation Counselor and support staff.

Examples of Work

Plans, supervises and coordinates the work activities of professional/technical, consultative and clerical employees in a branch office.

Develops, maintains and coordinates client service support programs in the area of assignment.

Maintains current awareness of overall trends of vocational rehabilitation and new approaches, techniques and equipment in rehabilitation services.

Serves in a liaison capacity with appropriate allied agencies, organizations and client advocacy groups.

Oversees the identification of program needs, goals and the development of new programs in rehabilitation services.

Maintains good public relations with the local community and allied organizations through public speaking engagements and consultative work with such organizations; oversees the development and dissemination of informative literature in the area of assignment.

Oversees and participates in staff development activities in the area of assignment.

Participates in the development of budget requests and supports the upgrading of personnel and program resources in area of assignment.

Explains programs and provides information to clients and public

There is no argument that Grievant was not primarily responsible for rehabilitation counseling services, nor was there any argument or evidence that Grievant was not performing these duties. More importantly, there was no real dispute that Grievant was not performing the administrative duties and functions identified above, as well as his counseling responsibilities. Respondents merely makes the conclusory statement that, despite his performance of those administrative duties, Grievant simply was not a supervisor. Of course, that is the issue to be decided in this misclassification grievance.

Lowell Basford, Assistant Director, Division of Personnel, in charge of classification and pay, testified that adding "minor administrative duties" such as those Grievant was performing in the Logan branch office in essence "diluted" the rehabilitation counselor position. The undersigned does not find this logic persuasive. Individuals in professional positions are often given additional administrative duties and titles on top of their official ones, the addition of which is viewed as increasing the importance of the position, not diluting it.

Mr. Basford also testified in his deposition, taken and made part of the Level III hearing, that Grievant could not be a supervisor unless he supervised an office with three or more employees, presumably other than himself. The Logan branch office consisted of Grievant, another rehabilitation counselor and one support staff. Mr. Basford's interpretation of supervisor was directly contradicted in this instance by Ms. Reed, who testified that, in her district there are two other offices with only three persons that have an office supervisor. Further, there is nothing in either the Rehabilitation Counselor, Senior or Rehabilitation Office Supervisor classification specifications which creates such a limitation. In fact, the Rehabilitation Office Supervisor specification clearly states that, "[e]xcluded from this class are satellite or branch offices having one Rehabilitation Counselor and support staff." (Emphasis added). No interpretation or construction of a term used in a job description 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). Thus, it is apparent that there can be a Rehabilitation Office Supervisor in an office with only two employees, including the supervisor.

Respondents also argues that Grievant did not have complete supervisory authority because he did not have authority to hire, fire or evaluate employees in his office. Those responsibilities rested with Karen White in Charleston. Because Grievant did not possess complete supervisory authority over the Logan branch office, the undersigned finds that the Rehabilitation Office Supervisor classification specification is not the best fit for the duties he performed.

However, he did perform many other types of supervisory duties, as well as office management duties. The Rehabilitation Counselor, Senior position specifically states that that individual "[m]ay perform in a lead worker or working supervisor capacity if in a small office." That is exactly what Grievant did.

Conclusions of Law

1. It is incumbent upon Grievant to prove the charges in a misclassification grievance by a preponderance of the evidence. 2. Personnel's interpretations of the classification specifications for the positions of Rehabilitation Counselor and Rehabilitation Counselor, Senior, as they apply to the duties being performed by Grievant, are clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

3. No interpretation or construction of a term used in a job description 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).

4. Grievant has proven by a preponderance of the evidence that the classification of Rehabilitation Counselor, Senior, constitutes the "best fit" for the duties he performed. See, Simmons v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

Accordingly, the grievance is **GRANTED** and Respondents are hereby ordered to reclassify Grievant as a Rehabilitation Counselor, Senior, and to compensate Grievant in back pay, if applicable, for the difference between Grievant's salary and benefits as a Rehabilitation Counselor and that of a Rehabilitation Counselor, Senior, for the time period October 27, 1992 through October 22, 1994.

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.

MARY JO SWARTZ
Administrative Law Judge

Dated: June 27, 1996

[Footnote: 1](#)

Several other issues were raised in the original grievance statement which were either resolved or withdrawn at the lower levels and will not be discussed further.

[Footnote: 2](#)

Grievant's termination was the subject of another grievance styled Moore v. Dept. of Health and Human Resources, Docket No. 95-RS-165 (July 31, 1995), presently on appeal by Respondent to the Circuit Court of Kanawha County, Civil Action No. 95-AA- 214.