

CARL HANNING, et al.

Grievant,

v. DOCKET NO. 95-BEP-536

BUREAU OF EMPLOYMENT

SECURITY/ WORKERS

COMPENSATION DIVISION,

and

W.Va. DIVISION OF PERSONNEL,

Respondent.

DECISION

On or about April 15, 1995, Grievants, Carl Hanning, Florence Divita, Pina Price, Richard Weekley, Mary Asseff, Carolyn Kitchen, Larry Hill and Robert Skeen [\(See footnote 1\)](#), each currently classified as an Investigator I with the Bureau of Employment Programs (Bureau), filed a level one grievance claiming that they are presently misclassified. Grievants:

Disagree with the reclassification, made by Division of Personnel, changing [our] classification to Investigator I, an entry level position within the investigator series, which is still not an appropriate series for [our] job duties.

Each Grievant seeks the following relief:

Reclassification to my proper position Auditor II with backpay to make up for differences in paygrades.

This claim was denied at levels one, two and three. Grievants made appeal to level four on December 5, 1995, requesting that a decision be based upon the evidence produced at the lower

levels of the procedure. The case became mature on January 10, 1996, upon the submission of Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. **Grievants are classified as Investigator I's, assigned to the Office of Employer Accounts, Workers' Compensation Division.**

2. **Before May 1, 1986, Grievants were classified as Field Representatives. On May 1, 1986, they became Field Auditors WC and held such title until December 1, 1991. On December 1, 1991, they were reclassified as Investigators with no specific level. They were again reclassified as of May 20, 1995, as Investigator I's.**

3. **The Investigator series was designed to take the place of the previous Field Auditor classifications. Investigators conduct field audits for the Office of Employer Accounts.**

4. **Grievants are currently in Pay Grade 9. The Auditor II Classification, which Grievants claim is their appropriate classification, is Pay Grade 12.**

5. **In 1993, the accounting firm of Ernst and Young was hired to review the auditing process, to make recommendations on the utilization of resources, and to conduct training. Ernst and Young developed and conducted a training package for the Investigator I's which lasted between six and nine months. Ernst and Young representatives went out on field audits and sat with the field auditors, went through the books, showed the field auditors how to do compliance audits and trained the field auditors in the steps needed to show both compliance and substantiation of required evidence.**

6. **The prescribed authorized procedure for Investigator I's requires that every possible source within a company's records be examined to ascertain the company's obligation to Workers' Compensation and to examine the company's classification to determine optional employees, minimum and maximum reporting obligations, bonuses, commissions, cafeteria plans, 401K plans, tax shelter annuities, car allowances, and cash disbursement.**

7. **The Investigator I's for Office of Employer Accounts examine and report the status of an employer and determine the correct wages and information that must be declared. The Investigator I's have computer screens created for the purpose of issuing audits, recording the status of specific audits, indicating results and utilizing the findings of these audits.**

8. The audit is for the Investigator I's to attempt to determine the actual amount of wages the employer should have reported and to determine if the employer has the correct amount of coverage. The Investigator I's can help the employers in understanding the workers' compensation law, renewing the employer's coverage, if needed, and establishing an insurance coverage plan.

9. The Investigator I's gather information and prepare an extensive report in regard to an employer's payroll.

DISCUSSION

W.Va. Code §29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as the Bureau, which utilize such positions, must adhere to that plan in making assignments to their employees. Hager v. W.Va. Dept. of HHR/Office of Social Services and Div. of Personnel, Docket No. 95-HHR-241 (Sept. 30, 1995).

In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W.Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job specifications generally contain five sections as follows: (1) "Nature of Work"; (2) "Distinguishing Characteristics"; (3) "Examples of Work"; (4) "Knowledge, Skills and Abilities" and (5) "Minimum Qualifications". These 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 (April 4, 1991); for these purposes the "Nature of Work" section of a classification is its most critical section. Atchison v. W.Va. Div. of Health Docket No. 90-14-444, 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 Grievants' classification constitutes the "best fit" for their 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. Broadbus 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 should be given great weight unless clearly wrong. See, W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993). The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting his classification with a substantial obstacle to overcome in attempting to establish that he is misclassified.

The job descriptions for the pertinent classifications are as follows:

INVESTIGATOR I

Nature of Work

Under general supervision, performs entry level investigative work by obtaining evidence of violations of the rules and regulations of a state agency or of state or federal laws. Involves direct public contact. Work requires the use of a personal automobile for travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous. Performs related work as required.

Examples of Work

Conducts field investigations to ascertain facts and obtain evidence on reported violations; obtains statements concerning alleged violations.

Explains the law or other agency regulations to the party in violation to secure voluntary compliance.

Checks business records to determine amount of tax due to the state and collects delinquent accounts.

Keeps records and make oral and/or written reports of all investigations.

Locates witnesses and obtains facts and evidence needed by attorneys in litigation of cases.

Interviews complainants and witnesses using prescribed procedures.

Knowledge, Skills and Abilities

Knowledge of established and effective methods of investigation.

Knowledge of state and federal laws and the rules, guidelines and regulations pertaining to

the assigned agency.

Knowledge of record keeping practices.

Ability to ascertain facts by personal contact, observation and examination of records.

Ability to interview or interrogate those involved in investigations.

Ability to effectively explain and interpret pertinent provisions of laws and regulations.

Ability to effectively explain and interpret pertinent provisions of laws and regulations. Ability to enforce laws, rules and regulations with firmness and impartiality.

Ability to write clear and concise reports.

Ability to establish and maintain effective working relationships with the public.

Ability to qualify with and use firearms if required.

AUDITOR II

Nature of Work

Under general supervision, an employee in this class performs complex financial and/or performance auditing work involving the examination of accounts, records, and fiscal affairs and procedures of state agencies, local government units, vendors, contractors, consultants and private businesses for the purpose of attesting to the completeness and accuracy of financial statements, determining the adequacy of internal controls over financial and operating activities; and determining compliance with applicable laws and regulations. Extensive travel may be required. Performs related work as required.

Examples of Work

Performs routine research on the operation of entity to determine its purpose, organization, the accounts or funds involved, and the applicable laws and directives.

Selects accounts to be examined using established criteria.

Inspects accounting files to ascertain the existence of sufficient documentation for entries, tests samples of past accounting transactions such as routine disbursements and receipts for accuracy, endorsement, and correct positing.

Verifies revenue from available information to see that revenues are properly recorded following audit program procedures.

Examines disbursement vouchers and invoice records to check legality, clerical accuracy, proper supporting documents, efficiency of expenditures, proper authorization, etc., following audit program procedures and federal or state laws.

Determines whether expenditures plus encumbrances were equal to budgetary appropriations; verifies correct budget classification, discounts and endorsements on warrant, invoice and purchase order documents.

Reviews cost reports for computational accuracy and justification; tests the application of indirect cost ratios to direct cost totals.

Examines the accuracy of statistical reports and financial statements by recomputing figures.

May review payroll records to determine compliance with unemployment compensation regulations.

Prepares final schedules, working papers and exhibits in order to summarize audit findings.

Writes narrative of audit findings in order to summarize audit data and to discuss special matters such as recommendations, changes and procedure exceptions.

May advise or explain audit procedures, point out compliance problems or recommend record keeping changes. May occasionally lead or direct the activities of less experienced auditors and technicians in the conduct of field audits or records analysis.

Knowledge, Skills and Abilities

Knowledge of accepted accounting principles and practices.

Knowledge of auditing processes and techniques.

Knowledge of laws and policies governing agencies and accounts to be dealt with.

Knowledge of the general characteristics and controls of business and government organizations and staff functions such as personnel and payroll procedures and purchasing and inventory procedures.

Ability to prepare narrative and tabular reports and analyses of audit findings.

Ability to analyze accounting systems and internal controls in use, test them, and reach logical conclusions about their effectiveness.

Ability to research applicable laws, regulations and pertinent professional accounting opinions.

Ability to verbally communicate with others for the purpose of giving and requesting

information.

Ability to interact with employees and officials in order to establish and maintain effective working relationships and deal with controversial matters in a tactful manner.

Grievants maintain that their position is more accurately described by the Auditor II specifications. The Investigator I's conduct the field audits for the Office of Employer Accounts. The Investigator I's examine and report the status of an employer and determine the correct wages and information that must be declared. In conducting the audit, the Investigator I's attempt to determine the actual amount of wages the employer should have reported and determine if the employer has the correct amount of coverage. The Investigator I's can help the employers in understanding the workers' compensation law, renewing the employer's coverage, if needed, and establishing an insurance coverage plan.

Respondents argue that the work Grievants perform, as Investigator I's, is very different in degree of complexity and responsibility than the work performed by Auditor II's. Respondents maintain that the Investigator I job is verification, while the Auditor II job, auditing, utilizes generally accepted principles of accounting. Respondents argue that the Investigator I's responsibility is in a limited area, that of payroll. The Investigator I's try to determine one aspect of the business' financial condition. They are not attesting to the accuracy and adequacy of internal controls over financial and operating activities. Additionally, Respondents argue that although the Investigator I's have an audit manual and an audit program, they are simply gathering information.

Grievants have not established that the Bureau was clearly wrong in its determination that Grievants should be classified as Investigator I's. Grievants' duties more closely match the Nature of Work, Examples of Work and Knowledge, Skills and Abilities sections of the Investigator I position, and these duties provide the controlling basis for classifying their position in that class. See Broaddus v. W. Va. Div. of Human Services, Docket No. 89- DHS- 606, 607, 609 (Aug. 31, 1990).

CONCLUSIONS OF LAW

- 1. Grievants have not proven by a preponderance of the evidence that the classification**

of Auditor II constitutes the "best fit" for the duties they performed. See Simmons v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Grievants have not proven by a preponderance of the evidence that they were entitled to the position of Auditor II as a matter of law.

Accordingly, this grievance is DENIED.

Dated: March 19, 1996 _____

MARY BETH ANGOTTI-HARE

Administrative Law Judge

Footnote: 1 *Grievant Florence Divita, died July 2, 1995. Her claim for back pay is being pursued by her husband as administrator/executor.*