

**TERRY THOMAS,**

**Grievant,**

**v.**

**DOCKET NO. 95-HHR-187**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES/  
DIVISION OF PERSONNEL,**

**Respondents.**

## **D E C I S I O N**

Grievant, Terry Thomas, filed this grievance on July 19, 1994, stating:

As a Social Service Worker II, I have been assigned Adult Protective Service work since 1986. This is not in my job classification. I currently hold a Social Work license and feel I am qualified to hold this position of Adult Protective Service Worker.

### **RELIEF SOUGHT:**

Back pay for period of time I have worked out of classification and promotion to position of Protective Service Worker or assignment within my job classification.

Grievant received adverse decisions at levels one and two of the grievance procedure for state employees, W. Va. Code §§ 29-6A-1, et seq. The hearing examiner at level three, by decision dated May 3, 1995, granted the grievance in part, and awarded Grievant back pay with interest from February 1992 to August 1992, and from April 1994 to August 1994, finding that Grievant was performing Protective Service Worker duties outside her classification during those periods. Grievant was not awarded back pay for the entire period of time she alleges she was working out of classification, nor was she ordered reclassified as a Protective Service Worker.

Grievant appealed to level four on May 11, 1995. Hearing was held on September 28, 1995, and

April 25, 1996. [\(See footnote 1\)](#) Grievant is no longer employed by Respondent and amended her relief at level four to only a request for backpay for the entire period she alleges she was working out of classification. This case became mature for decision upon receipt of the parties' Proposed Findings of Fact and Conclusions of Law on May 28, 1996.

### Findings of Fact

1. Grievant was employed by Respondent in its Fayette County office as a Social Service Worker II from 1984 until she resigned her employment on September 28, 1994.
2. Grievant performed some adult protective service work, outside her classification, since 1986, including petitioning the courts for orders of detachment, preparing mental hygiene petitions, serving as petitional committee, or Guardian, as well as other duties related to protecting the health and well-being of adults.
3. Grievant's immediate supervisor from 1984 to 1988 was Bruce Webb. Grievant was assigned adult protective service cases about 35-40% of her time, when the regular adult protective service worker was unavailable. Grievant was responsible for investigating complaints of adult abuse, neglect and exploitation. G Ex. 8; Webb, LIV. [\(See footnote 2\)](#)
4. Mr. Webb believed if an employee performed duties not within her classification less than 50% of her time, she was not working out of classification. Webb, LIV.
5. Adult protective service work did not constitute the predominant amount of Grievant's work at that time. Webb, LIV.
6. Grievant's immediate supervisor from 1988 to 1990 was Robert James.
7. Mr. James assigned Grievant some adult protective service work. Grievant acted as the backup for the regular Adult Protective Service Worker on a regular basis during that time. James, LIII Tr., p. 11; G. Ex. 6.
8. Grievant's immediate supervisor from 1990 through September 28, 1994, when she resigned, was Doug Elliott. Mr. Elliott assigned Grievant adult protective service work. Grievant served as the primary backup adult protective service worker since 1992. Elliott, LIII Tr., p. 13; G. Ex. 7.
9. Grievant had been performing adult protective service work at the time Mr. Elliott became her supervisor in 1990. Elliott, LIII Tr., p. 14.

10. Grievant's adult protective service work fluctuated depending on the availability of the regular adult protective service worker. Grievant trained a new adult protective service worker in 1992. Elliott, LIII Tr., pp. 13-14. 11. Mr. Elliott worked under the assumption that as long as an employee did not perform duties not within her classification more than 49% of her time, she was not working out of classification. Elliott, LIII Tr., p. 16.

12. Elizabeth Powell was the Protective Service Worker in the Fayette County office from 1985 to 1992. Ms. Powell worked closely with Grievant, and Grievant would take over her adult protective service work when she was unavailable. Ms. Powell was off work for a considerable period of time in 1990 to attend school, and Grievant took over her adult protective service caseload. Powell, LIII Tr., p. 19.

13. Grievant was performing adult protective service work approximately 95% of her time during the time she was training the new adult protective service worker, Amy White, in 1992, and thereafter, she performed those duties approximately 45-50% of her time. White, LIII Tr., p. 24.

14. Grievant filled out a position description form as part of the statewide reclassification project in 1990, in which she indicated she spent approximately 15% of her time doing adult protective service work. R. Ex. 1.

15. Grievant was told by her supervisor at the time to fill out the position description form based upon her classification of Social Service Worker II. The other employees in the office were similarly instructed. Thomas, LIV.

16. Grievant did not file this grievance until May 10, 1995, because she had been told all along by her superiors that as long as she wasn't doing adult protective service work 50% or more of the time, she was not working out of classification. Thomas, LIV. 17. The Level III Hearing Examiner found that Grievant had proven by a preponderance of the evidence that she was functioning as a Protective Service Worker during the times February 1992 to August 1992, and from April 1994 to August 1994. Grievant was awarded backpay for those time periods.

It is in the context of the foregoing that a comparison must be made of the relevant job classifications at issue in this matter.

## **SOCIAL SERVICE WORKER II**

**Nature of Work:** Under general supervision performs full- performance level social service work

in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

**Distinguishing Characteristics:** All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker II provides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

### **Examples of Work**

Maintains a caseload for programs and services at this level.

Takes, evaluates and approves client applications for services; explains services and eligibility criteria.

Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of provider facilities and services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education and counseling and guidance to assess client's needs and provide appropriate services.

Counsels clients/families in achieving goals of client service plan.

Speaks before community organizations and groups regarding services available and to develop community resources.

Writes report on case findings and summaries of client social and financial circumstances.

### **SOCIAL SERVICE WORKER III**

**Nature of Work:** Under general supervision, performs advanced level professional social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

**Distinguishing Characteristics:** All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker III provides these services in one or more of the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, Hartley program, Medley program, Medical Waiver Project, licensing specialist or other services at this level. This class may also be used for positions in certain geographic areas performing professional social work in a variety of program areas such as day care, generic social services, foster care and protective services, and differs from the generic Social Service Worker II in that the positions involve a significant, but not predominant, amount of protective services work.

#### **Examples of Work**

Maintains a caseload for programs and services at this level.

Prepares social assessment of client circumstances.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education, juvenile delinquency, and counseling and guidance to assess client's needs and provide appropriate services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Cooperates with the court system for foster care, adoption, juvenile delinquency and Medley program services by preparing social assessments and recommending actions to accomplish goals.

Locates and evaluates providers for foster care, adoption, emergency shelter care and Medley home services; counsels and trains providers in effectively providing required services; conducts periodic evaluations of facilities and services.

Counsels clients/families in achieving goals of client service plan.

Counsels youth to correct delinquent and socially unacceptable behavior; prepares probation plans for juvenile offenders; monitors progress of probationers under the court supervision. Speaks before educational and community organizations and groups regarding services available and to develop community resources.

Writes reports on case findings and summaries of client social and financial circumstances.

## **PROTECTIVE SERVICE WORKER**

**Nature of Work:** Under limited supervision, performs advanced and complex social casework in a specialized area. Work is characterized by cases involving abuse/neglect/exploitation of children or adults. The nature of the situations require expertise and judgement to deal with problems that are potentially dangerous to the client and the worker. Work requires the use of personal automobile for local travel. Employee is subject to being on-call during non-business hours. Performs related work as required.

## **Examples of Work**

Conducts investigations concerning allegations of abuse by talking with and visually observing affected individual; talks with immediate family, relatives, neighbors, teachers, doctors, and reviews any relevant records.

Makes initial assessment of validity of the allegation and the degree of danger that the child or adult is in; documents the results of the investigation.

Assesses family dynamics and problems that may be precipitating an abusive situation.

Prepares a complete client service plan to remedy contributing problems and stop behavior patterns of abuse/neglect/exploitation and solicits family cooperation.

Engages family in counseling to solve problems, refers them to other available resources, and monitors situation to prevent a reoccurrence of abuse.

Files petition with the court when a child is judged to be in imminent danger and testifies before the court in order to remove a child from the family; makes appropriate placement of a child with relatives, in foster homes, or in emergency shelter.

Persuades the family, relatives, or adult family care provider that it is in the best interest of the client to live elsewhere after the worker has substantiated significant abuse/neglect/ exploitation; arranges placement of the adult client in an alternative living environment.

Evaluates periodically the progress of family or living unit towards meeting objectives of the service plan, the need to modify the plan, and the eventual closing of the case.

## Discussion

In order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than that under which she was 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 her required duties. Simmons v. W. Va. Dept. of HHR/Division 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 where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995).

First, the undersigned agrees with the level three Hearing Examiner's decision that Grievant was working predominantly as an adult protective service worker for the time periods mentioned above, and was thus correctly awarded backpay for those periods of time. At issue here is whether Grievant was working as an adult protective service worker a predominant amount of her time from 1986 through 1994, and if so, whether she should be limited in her backpay award for failing to file this grievance earlier.

The classification specifications at issue are extremely similar and there is consequently much overlap in the duties of the positions. The Social Service Worker II position provides for full-performance level social service work in providing services to the public in one or multiple program areas. This generally has been interpreted as "generic" social service work on the adult level. The Social Service Worker III ("SSWIII") position also provides for "generic" social service work, but has



been determined to apply mostly to social service programs designed for children. The "Distinguishing Characteristics" of the SSWIII position include services in the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, and other areas that are designed to provide services to children. Importantly, also included in the "Distinguishing Characteristics" of the SSWIII is the statement that this position "differs from the generic Social Service Worker II in that the positions involve a significant, but not predominant, amount of protective services work." This necessarily indicates that protective services work is not to be performed within the Social Service Worker II classification. Finally, the Protective Service Worker's position is characterized by "cases involving abuse/neglect/exploitation of children or adults."

Thus, it is apparent that Grievant, as a Social Service Worker II, was not to perform adult protective service work, and that the level of adult protective service work she was performing far surpassed the limited amount described in the SSWIII position and more accurately fell within the Protective Service Worker position. However, the fact Grievant was performing those duties does not necessitate that she be reclassified or compensated as a Protective Service Worker for the entire period of time at issue.

Lowell Basford, Assistant Director of Personnel for Classification and Compensation, testified at length about Personnel's role in writing and interpreting the class specifications. Mr. Basford spoke to and interpreted W. Va. Admin. Rule § 4.04 which deals with "class specifications."

- (a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.
- (b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.
- (c) A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied power of the appointing authority now or hereafter vested with the right to prescribe or alter the duties of any

position.

(d)

The fact that all the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

Mr. Basford noted that employees can perform duties outside their job description as the class specifications are to characterize the type of work to be performed, not to identify every task of the position. Class specifications are descriptive, not exhaustive, and are to give a "flavor" of the difficulties, complexities, and duties of the position. Class specifications are to follow the organization of an agency's work, not to precede it. Personnel's goal in writing the class specification is to give a general description of the duties, not to handcuff the agency in the way it conducts business. Hager v. Dept. of Health and Human Resources, Docket No. 95-HHR-241 (Sept. 29, 1995).

Mr. Basford also noted that the predominant duties of the position are class controlling. Grievant demonstrated through testimony and evidence that she performed adult protective service work approximately 35-40% of her time under Mr. Webb's supervision; that she acted as the backup to the Protective Service Worker under Mr. James' supervision, and her adult protective service work "fluctuated" under Mr. Elliott's supervision. Grievant indicated on her position description form in 1990 that she spent approximately 15% of her time doing adult protective work. Because the predominant duties of the position are class controlling, the fact Grievant performed these tasks, not specifically identified in her classification as Social Service Worker II, a portion of her time, did not invalidate her classification. Hager; Collier; Coates; Broaddus; supra. Grievant has not met her burden of proof and has not demonstrated Personnel's determination that her work prior to April 1992 was within her classification was "clearly wrong."

#### Conclusions of Law

1. The predominant duties of the position in question are class controlling. Hager v. W. Va. Dept. of Health and Human Resources, Docket No. 95-HHR-241 (Sept. 29, 1995); Collier v. W. Va.

Dept. of Health and Human Resources, Docket No. 94-HHR- 039 (Sept. 19, 1994); Broadus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS- 606, 607, 609 (Aug. 31, 1990).

2. Personnel's interpretation of the class specifications for the position in question, as they apply to the duties Grievant performed, are not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993).

3. Although Grievant did perform some duties outside her current classification as a Social Service Worker II from 1986 through 1994, this did not render her misclassified. Kyte v. Dept. of Health and Human Resources, Docket No. 94-HHR-030 (Sept. 21, 1994); Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). Accordingly, this grievance is **DENIED**, except to the extent the level three hearing examiner's decision is hereby **AFFIRMED**.

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.

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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: July 10, 1996**

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[Footnote: 1](#)

*The considerable delay was due to reassignment of this case to other administrative law judges; scheduling conflicts; and the disappearance of taped testimony taken of Bruce Webb, which required rescheduling the taking of this testimony.*

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[Footnote: 2](#)

*Testimony from the level four hearing is referenced as "\_\_\_\_\_", LIV.*