

NANCY J. BLAKE, ET AL.,

GRIEVANTS,

v. DOCKET NO. 95-HHR-043

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

OFFICE OF INSPECTOR GENERAL, and

WEST VIRGINIA DIVISION OF PERSONNEL,

RESPONDENT.

DECISION

This grievance [\(See footnote 1\)](#) involves the alleged misclassification of twenty-one employees [\(See footnote 2\)](#) of the West Virginia Department of Health and Human Resources (DHHR). Grievants were denied relief at Levels I, II, and III. At Level IV, a hearing was scheduled to commence October 12, 1995, and again on November 17, 1995.

Grievants were granted a continuance on both occasions. On January 23, 1996, an evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia. On January 30, 1996, Grievants' Representative, Ms. Cheryl Pittman Boylen, faxed a letter to the Undersigned requesting that the case be reconvened. On February 27, 1996, this case became mature upon the issuance of an order denying Grievants' motion to reconvene.

Because this is a misclassification grievance, the specifications of Grievants' current classification are reproduced below:

QUALITY CONTROL REVIEWER (9356)

Nature of Work

Under limited supervision, performs work at the full-performance level in the comprehensive and investigative review of selected cases and/or programs in the assigned area of responsibility. Communicates with all parties necessary to obtain or

substantiate needed information, including individual contacts and review of records to determine compliance with federal and state guidelines. May provide presentations or training in areas of concern. Performs related work as required.

Examples of Work

Reviews and verifies assigned program areas, including compliance from employer's and individual's standpoint.

Examines case records and/or program information, including

mathematical computations, to gain an understanding of what has transpired and to note any deficiency or discrepancy in the information.

Makes necessary contacts to substantiate case records and/or program information.

Analyzes case determinations for adherence to laws, rules,

regulations, policies and procedures of applicable program area.

Writes a summary of each case reviewed, stating whether or not an error has been identified, and if so, detailing the nature of the error both for federal/state reporting and for the local agency.

Keeps records of all cases received, including the initiation and completion date of each review conducted for a particular program area.

Completes special reviews of programs as assigned.

Knowledge, Skills and Abilities

Knowledge of federal and state laws, rules, regulations,

policies and procedures governing applicable state program areas.

Knowledge of regulations, processes and procedures in the area of assignment.

Ability to perform basic mathematics.

Ability to analyze case determinations for adherence to laws, rules, regulations, policies and procedures of applicable program area.

Ability to interact effectively with people at all socioeconomic levels.

Ability to use interviewing techniques to obtain, verify and evaluate sensitive information.

Ability to write clear and concise reports on detailed reviews and investigations.

Ability to schedule work activities.

Ability to keep thorough and accurate records.

Ability to communicate effectively, both orally and in writing.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university.

SUBSTITUTION Experience as described below may substitute for the required training on a year-for-year basis.

EXPERIENCE Two years of full-time or equivalent part-time paid employment in responsible eligibility or investigatory work involving credit, insurance, or government programs.

SPECIAL REQUIREMENT Availability of a car for continuous use may be a requisite of employment.

DISCUSSION

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely matched another cited personnel classification specification than that under which they are 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 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 (W.Va. 1993).

Usually, the key to the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dept. of Health and Human Resources/Division of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). However, in this case, Grievants are not alleging that there is a current classification which constitutes the "best fit" because

"Quality Control Reviewer Senior," the classification proposed by Grievants is not a classification in the current classification scheme established by the Division of Personnel.

Grievants desire the creation of a new and additional classification for their position. In this instance, it must be determined whether Grievants' current position description fits their job duties. See, Ferrell v. Bureau of Employment Programs, Docket No. 93-BEP-449 (July 29, 1994). It is clear that the Grievants allege that they have been misclassified as Quality Control Reviewers, pay grade 10. However, the relief sought has changed many times throughout the grievance procedure. At Level III, Grievants attempted to show that their duties "best fit" the Auditor III classification. After appealing their case to Level IV, but before the Level IV hearing, Grievants requested to amend the relief they sought and be classified as Auditor IIs. At the Level IV hearing, Grievants again requested to amend the relief they sought. This time they requested to be classified as "Quality Control Reviewer Senior," Pay Grade 12. [\(See footnote 3\)](#) Grievants' motion to amend was granted.

At the Level III hearing, Grievants' Representative stated in her opening statement:

The Quality Control Reviewer position number 9356 as it exists, in our opinion, is too broad. It is inadequate (inaudible) take into consideration the complexity of our work, the importance of review finding, the danger element in our job, the multiple programs that we review, the extremely high documentation standards required, the Federal Regulations we must follow and our accountability to various Federal agencies. ... We have no disagreement with the title that was assigned to our position, however, we must disagree with the duties and the examples of work performed as the detail and complexity of our work is not covered. We will prove that we perform not only all the duties described in the Quality Control Reviewer position number 9356, but other duties as outlined in higher classifications as well. ... The ultimate answer to our grievance would be a second higher level, perhaps a Quality Control Reviewer Senior to compensate employees for their more complex and detail review and for the numerous programs reviewed for the Federal agencies.

Specifically, Grievants feel that their jobs are "more complex" and require more knowledge of state and federal regulations than workers in the Child Advocates Office and Employment Programs with the same title, Quality Control Reviewers, at Pay Grade, 12. [\(See footnote 4\)](#) Therefore, Grievants do not believe that they should be in the same classification and pay grade as these workers.

Mr. Lowell Basford, Assistant Director of the Division of Personnel, testified during the Level IV hearing that "[t]he positions are sufficiently similar that they can be called by the same title, that they can utilize the same minimum qualifications and they can, as a matter of equity, utilize the same pay grade." Mr.

Basford further testified that the Quality Control Reviewers in "Job Service" do not just do one program. They audit over eight distinct federal programs under Public Law 97-300, the Wagner-Peyser Act. Therefore, the Quality Control Reviewers of the other agencies also review multiple federal programs.

Mr. Basford also pointed out that many times the benefits that Grievants audit are related or a recipient qualifies for multipleservices. For example, he testified that in a great majority of the cases a person who receives food stamps also receives Aid to Families with Dependant Children (AFDC), and Medicaid.

Grievants also failed to prove by a preponderance of the evidence that the complexity and alleged "danger element" of their position was not properly considered during their reclassification. Merely auditing more federal programs does not necessarily mean that Grievants' duties are more complex than Quality Control Reviewers in the other agencies. Furthermore, Respondent established that there are classifications at lower or equal pay grades which require potentially confrontational duties.

Grievants' Representative admitted that they perform all of the duties described in the Quality Control Reviewer (9356) classification specifications. However, Grievants believe that the duties are not described in enough detail. Nevertheless, it is the predominant duties of the position in question which are class-controlling. Broaddus, supra.

In summary, since the vast majority of Grievants' duties fall within the Quality Control Reviewer classification, it is clear

Grievants are not misclassified. The fact that every task Grievants perform does not appear in the specification does not mean they are misclassified. Nor does it follow that DHHR's Quality Control Reviewers are misclassified merely because the specifications are broader than Grievants feel is appropriate.

Furthermore, Grievants did not prove that Respondent's action in including their position within the Quality Control Reviewer classification was arbitrary and capricious. Mr. Basford credibly explained that:

We changed the title of it [Grievants' classification] to Quality Control Reviewer to make it more generic because that's what the personnel board asked us to do in the entire project was to take positions that were somewhat similar and group them into broader class definitions and we did that, you know, we did that over the entire

system. That was a system wide objective of the reclassification project. We reduced the number of titles from thirteen hundred down to about seven hundred fifty. So, I mean, that happened system wide. Things that were just slightly distinct before were now grouped into larger more, larger class definitions.

The following findings of fact and conclusions of law are also properly made from the record. ([See footnote 5](#))

FINDINGS OF FACT

1. In 1992, Grievants' positions were reclassified and included in the Quality Control Reviewer classification.
2. The Quality Control Reviewer classification is comprised of approximately thirty state employees, twenty employees of Respondent, seven from Employment Programs and two from the Child Advocates Office.
3. Grievants review programs in Aid to Families with Dependent Children, Foodstamps, and Medicaid.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. In nondisciplinary matters the grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Unrue v. W. Va. Div. of Highways, Docket No. 95-DOH- 287 (Jan. 22, 1996).
2. It is within the jurisdiction of the Grievance Board to determine whether a classification should have been created that would more closely fit the duties and responsibilities of a grievant. The standard under which such a case should be decided is whether the Division of Personnel abused its broad discretion in not creating an additional classification. Johnston v. W. Va. Dept. of Health and Human Resources, Docket No. 94-HHR-206 (June 15, 1995); Nida v. W. Va. Dept. of Health and Human Resources, Docket No. 93-HHR-240 (Aug. 20, 1993).
3. 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).
4. Personnel's

interpretation and explanation of the classification specifications at issue, if 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 (W.Va. 1993).

5. Grievants failed to establish by a preponderance of the evidence that the Division of Personnel abused its discretion in not creating a "Quality Control Reviewer Senior" classification.

6. Grievants failed to prove their grievance by a preponderance of the evidence.

Accordingly, the grievance is DENIED.

Any party 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.

Dated: 4/30/96 _____

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

At Level III, this grievance was entitled Antel, et al., v. W. Va. Department of Health and Human Resources, Office of Inspector General and Division of Personnel. Subsequently, Mr. Gary Antel withdrew from this grievance.

[Footnote: 2](#)

The twenty-one employees\Grievants are: Nancy J. Blake, Cheryl A. Pittman Boylen, William Fishbaugh, James Forgacs, William J. Herter, Loretta Jackson, Bob Kapinos, Evelyn E. Kelley, Retha Lilly, Marsha Morgan, Joan Mosko, Richard L. Phillips, Joseph F. Powell, Elizabeth Juba Proffitt, Nancy L. Rush, Betty J. Porter Stewart, Deloras A. Terry, Dorothy J. Tichnell, Brenda Whited, Judith Williams, and Wayne F. Wilson.

[Footnote: 3](#)

Grievants' cited Burke v. Board of Directors\Fairmont State College, Docket No. 94-MBOT-349 (Aug. 8, 1995), for the proposition that one may properly file a grievance challenging a classification system's scheme and request a new and additional classification within a given system. The representative for the Division of Personnel (DOP) cited Brant v. W.

Va. Bureau of Employment Programs\ W. Va. Division of Personnel, Docket No. 92-BEP-433 (Aug. 10, 1993), for the proposition that Grievants' must select a classification currently created within the classification system. However, in *Nida v. W. Va. Dept. of Health and Human Resources*, Docket No. 93-HHR-246 (Aug. 20, 1993), DOP's position was rejected when *O'Conner v. W. Va. Division of Rehab. Services*, Docket No. 89- RS-647 (Oct. 31, 1990), was overruled. See, *Johnston v. W. Va. Dept. of Health and Human Resources*, Docket No. 94-HHR-206 (June 15, 1995). *Brant and Adams v. W. Va. Dept. of Health and Human Resources\Welch Emergency Hospital*, Docket No. 91-HHR-341 (Aug. 31, 1992), the case upon which *Brant* rested, stand for the same proposition as *O'Conner*. Accordingly, *Brant and Adams*, insofar as they are inconsistent with *Nida*, are hereby overruled.

[Footnote: 4](#)

The Quality Control Reviewer classification is comprised of approximately thirty state employees, twenty from DHHR, seven from Employment Programs and two from the Child Advocates Office.

[Footnote: 5](#)

The record in this case consists of the following: (1) grievance forms from each Grievant with two attachments, a letter dated July 13, 1995, and a one page document entitled "Job Openings- Supplemental Page"; (2) Level III decision; (3) Grievants' fifteen exhibits admitted at Level III; (4) the transcripts from the Level III hearing, dated March 3, 1994, and April 29, 1994; (5) Grievants' four exhibits admitted at Level IV, Grievants' exhibit number two was not admitted; (6) the audio tapes from the Level IV hearing. Grievants' exhibit number 1 at Level III was remarked at Level IV as Grievants' exhibit number 3. Also, while the Level I and II decisions are not included in the record, the parties did not dispute that the grievances were denied at these levels of the grievance procedure. The Undersigned considered all matters of record.