

SYLVIA G. TRENTON

v. Docket No. 95-HHR-242

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

and

WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

Grievant filed a complaint against her employer, the West Virginia Department of Health and Human Resources (HHR), shortly after the West Virginia Division of Personnel (DOP) finished a reclassification project within HHR. She maintains her position has not been allotted an adequate pay grade (PG) when compared to other positions in the classified service. Conversely, DOP contends that Grievant's position has been placed in the proper PG. The case was heard at level four on March 5, 1996, and became mature for decision on the agreed-upon final day for filing fact/law proposals and rebuttals, April 26, 1996. [\(See footnote 1\)](#)

Grievant is currently classified as an Employment Relations Specialist (ERS) at PG 9. She believes her position should have been placed in a PG higher than 9, specifically PG 11. Her position in this matter is best summed up in an addendum attached to her grievance form, as follows:

In comparing the [ERS] (pay grade 9) with Protective Service Worker Trainee and Child Advocate Legal Assistant (both pay grade 9), I see that my position (ERS) requires 5 years of qualification. Whereas, they as pay grade 9's only require 4 years of qualifying time.

On the other hand, the Employment Counselor (EC) from Employment Security requires 5 years as does my position, but is classified a pay grade 11.

Also, the Child Advocate Legal Assistant is not required to have access to a vehicle at pay grade 9, but I'm required to have access to one at the same pay grade level.

In conclusion, the nature of the work as well as the qualifying requirements of the Employment Relations Specialist (9) and the Employment Counselor (11) are comparable. The only difference seems to be that the EC works with the general public while the ERS works specifically with AFDC clients. I believe I should be reclassified at the level 11 and paid accordingly.

Although this grievance was not characterized by Grievant as a misclassification case, it is necessary to reproduce DOP's classification specifications both for Grievant's ERS position, at PG 9, and the specific class title she has cited as comparable to hers, Employment Counselor (EC), at PG 11.

EMPLOYMENT RELATIONS SPECIALIST

Nature of Work

Under General supervision, performs advanced work providing a wide range of employment-related social services to applicants and recipients of public assistance such as Work and Training, the Job Training Partnership Act (JTPA), and the Community Work Experience Program (CWEP). Develops jobs for CWEP sponsors. May lead and train new employees in the supervisor's absence. May be required to travel. Must have access to reliable transportation. Performs related work as required.

Examples of Work:

Maintains a caseload for employment programs and employment services.

Develops client service employability plan designed to assist clients in attaining employment while receiving employment and social services.

Negotiates and writes CWEP and JTPA contracts with non-profit agencies and employers.

Monitors and evaluates CWEP sponsors and participants to insure compliance with program standards.

Collects and interprets data from CWEP sponsors to calculate and compile reports on program placement.

Counsels clients/families in achieving employment goals.

Prepares periodic social assessment of clients' circumstances and recommends action to accomplish employment goal.

Interacts with a variety of professionals, elected officials, agency directors, and community leaders to assess employment needs of the community and to refer clients to appropriate agency services.

Plans and implements an effective employer relations program in order to develop employment opportunities for clients.

Promotes public relations through speaking engagements and news media.

Directs client in job search activities through utilization of job seeking skills and group or individual employment counseling.

Writes reports on case findings.

May lead and assist in training new employees.

Knowledge, Skills and Abilities

Knowledge of federal and state laws pertaining to social welfare work and training programs and related laws, rules and regulations.

Knowledge of theories, principles, methods and techniques of employment-related social service case work.

Knowledge of referral and placement techniques and procedure.

Knowledge of the general principles of economics and of social and labor market conditions prevailing in the state.

Knowledge of a variety of occupations and their required qualifications.

Knowledge of job seeking techniques.

Ability to use interviewing techniques and methods for obtaining and communicating information.

Ability to assess social, education, and economic circumstances of clients to determine need for employment, social and support services.

Ability to analyze job requirements and evaluate applicants and/or recipients qualifications.

Ability to communicate effectively both orally and in writing.

Ability to develop client service employability plan and assist client in attaining employment through the provision of employment and social services.

Ability to exercise independent judgement with regard to client participation.

Ability to counsel people in favor of specific actions, changes in attitude or behavior. Ability to communicate with individuals who have emotional or mental problems and with members of different cultural and subcultural groups.

Ability to maintain records, prepare reports and correspondence, and related work.

Minimum Qualifications

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

SUBSTITUTION Additional qualifying experience may be substituted on a year-for-year basis for the required education.

EXPERIENCE One year of successful full-time or equivalent part-time paid experience in a technical, professional or administrative capacity in a field of work closely related to the job assignment, such as personnel, health care, educational, industrial relations, guidance, public relations, training, psychology, employment placement services, or human relations where experience has been gained in helping troubled individuals or families toward normal social development and adjustment.

SUBSTITUTION Graduate study in one of the related fields listed above may be

substituted for the required experience on a year-for-year basis.

EMPLOYMENT COUNSELOR

Nature of Work

Under general supervision, performs professional level counseling providing the full range of employment counseling services offered at state job service offices. The work includes: Interpreting occupational tests; matching applicants' job skills and interests with occupational areas or in developing job-seeking skills; assisting clients in evaluating their work histories, interests, skills, personal traits, and physical capacities to help them make wise career decisions or career changes; and determining factors which inhibit the applicant in attaining and retained gainful employment. May assist clients in locating and applying for employment or training. May refer applicants to other community organizations and agencies to apply for additional support services. May serve part-time as a veterans, handicapped or youth program specialist. Performs related work as required.

Distinguishing Characteristics

This is the only non-supervisory professional position in a Job Service Office. It is distinguished from the Employment Programs Office Supervisor by absence of supervisory duties. It is distinguished from Employment Programs Interviewer and Employment Programs Interviewer, Senior by responsibility for analysis of occupational information and formulation of individualized vocational plans and goals.

Examples of Work

Interviews applicants with vocational problems to secure needed

information. Reviews additional information available from other sources such as reports from schools, employers and other agencies.

Analyzes available information, identifies the applicant's vocational problems, evaluates applicant's aptitudes, interprets test results, arranges for aptitude and proficiency tests and utilizes test results for counseling purposes.

Formulates a vocational goal and plan for applicant.

Provides follow-up counseling.

Develops and maintains working relationships with various community organizations and agencies, clients and the public.

Knowledge, Skills and Abilities

Knowledge of the principles and techniques of vocational counseling, testing and interviewing.

Knowledge of the variety of occupations and their training and experience requirements.

Knowledge of employment and industrial conditions within the state.

Knowledge of the functions and objectives of public employment offices and related rules and regulations.

Ability to deal effectively and tactfully with clients, other employees, employers and the public.

Some positions may require keyboard skills.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university with at least 15 hours in counseling related courses from the three areas specified on the attached list.

EXPERIENCE One year of full-time or equivalent part-time paid experience in employment service of comparable setting.

SUBSTITUTION A Master's degree from an accredited college or university in counseling and guidance or related field, may be substituted for training and experience provided that the training include at least 15 hours of counseling related courses from the three areas specified on the attached list.

ACCEPTABLE SPECIALIZED COURSES FOR EMPLOYMENT COUNSELOR

It is desirable that credits be received in each of the three areas listed below. Course titles need not be the same as those listed.

1. Guidance Principles and Techniques

Principles of Guidance	Supervised Practice in
Counseling Theory	Counseling
Techniques of Counseling	Administration & Organization
Preparing and Using Case	of Guidance Programs
Records	Community Relationships in
Vocational Rehabilitation	Guidance and Personnel Work
Counseling	Social Case Work
Group Guidance Methods	Education Psychology
Pupil Personnel Work	Counseling Follow-up Techniques

2. Personality Development and Analysis of the Individual

Theories of Personality	Learning Theory
Abnormal Psychology	Adolescent Psychology
Mental Hygiene	Personal Appraisal
Individual Growth and	Tests and Measurements
Development	Individual Differences
Social Influences on	Motivation and Morale

Personality Development Statistics in Psychology or
Psychology of Adjustment Education

3. Occupational, Industrial and Societal Information

Psychology of Occupations Personnel Psychology Industrial
Psychology Statistical and Research
Industrial Sociology Methods
Theories of Occupational Human Relations
Choice Social Psychology
Occupational and Industrial Social Movements
Employment Trends Rural Development
Labor and Industrial Urban Development
Relations Race and Intergroup Relations
Labor Economics Cultural Anthropology
Business Cycle Theory and Delinquency
Business Fluctuations Community Resources and
Personnel Management Social Welfare
Job Analysis Project CAUSE Training

Also reproduced are the "Nature of Work" sections for two other DOP class specifications which Grievant cited, both of which are PG 9 positions.

CHILD ADVOCATE LEGAL ASSISTANT

Nature of Work

Under general supervision, assists an attorney in the rendition of professional services in connection with the establishment and enforcement of paternity and support. Assists the attorney with research of legal resource material, including reported decisions and opinions, statutes, rules and

regulations, with the preparation and drafting of pleadings or other documents, and with the review and assessment of case files by preparing summaries and reports of pertinent facts, and by compiling information as directed. Develops necessary information to implement methods of child support enforcement. Supports and assists in publicizing the Child Advocate program throughout communities to which assigned, and may assist in delivering services on an as-needed basis in more than one regional office. Performs related work as required.

PROTECTIVE SERVICE WORKER TRAINEE

Nature of Work

Under close supervision, performs in a training capacity for approximately one year learning the techniques of social casework in a specialized area. Usually will concentrate on cases in either abuse/neglect/exploitation of children or of adults or juvenile delinquency. The primary function of the class is to apply the training received in the specialized techniques of protective service casework; however, the employee is expected to bring social casework knowledge and experience to the job. Exposure is limited to cases with the least possibility of danger to the client and the worker. Work requires the use of a personal automobile for local travel. May be subject to being on call during non-business hours. Performs related work as required.

Discussion

When a worker challenges the pay grade and salary ranking of her job class, she bears the burden of proof that laws, rules or regulations have been

violated, misapplied or misinterpreted, or that an abuse of discretion has occurred with respect to that issue. Johnston v. W.Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94- HHR-206 (June 15, 1995); Frame v. W.Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-140 (Nov. 29, 1994); Thompson v. W.Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-051 (Nov. 23, 1994). Generally, the worker believes her job, when compared with another or others, is underpaid. For purposes of the analysis, the "Nature of Work" section of a classification specification is its most critical section. Atchinson 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 issue raised in this case is whether the ERS class, when compared to the EC class, is properly ranked at PG 9.

Grievant has not met her burden of proof in this case. Grievant does not offer any legal theory why the ERS position should be PG 11 instead of PG 9. Rather, she expresses the belief that her educational background, experience and skills are those required of an EC. According to Grievant, an ERS within HHR performs essentially the same duties as an EC within the Bureau of Employment Programs (BEP), and it is therefore unreasonable to differentiate between them in terms of salary simply because they are assigned to different State agencies. The issue in this case is somewhat similar to that raised in Grubb v. Dept. of Health and Human Resources, Docket No. 95-HHR-069 (May 30, 1995). In Grubb, Social Service Workers, employed by the Human Resources component of HHR, claimed they performed the same duties as Social Workers hired by the Health component of HHR and sought salary parity. The grievants in Grubb did not prevail, largely based on the testimony of DOP's Assistant Director of Classification and Compensation, Lowell T.

Basford. Mr. Basford testified that the nature, scope and even the working environment of the professional social workers in the two agencies differed significantly, thus justifying the different salaries.

Mr. Basford also testified in this case that the duties of an EC and an ERS differed significantly. He explained that HHR's Work and Training Unit utilizes a three-tiered group of workers, the Economic Service Worker, PG 7, the Employment Relations Specialist, PG 9, and a supervisory position, Social Service Worker III, PG 10. He further explained that an ERS works primarily with persons on public assistance, many of whom have not even completed high school, while an EC assigned to BEP works with a very different client base, that is, the public at large, including college-educated professionals. The EC must therefore have a much wider range of knowledge of occupations and employment strategies. In addition, an EC's college training must include fifteen counseling hours to serve the more diverse needs of the BEP clientele.

It is true that the two classification specifications in question, ERS and EC, identify many similar duties and responsibilities. However, it is not arbitrary or capricious for DOP to group these workers into two classifications, one with a higher salary than the other, based on the types of clients served and the degree and complexity of services required and rendered. See Id.

In addition to the foregoing, the following findings and conclusions are appropriate.

Findings of Fact

1. Grievant, employed by HHR in its Work and Training Unit, is classified as an Employment Relations Specialist (ERS), pay grade (PG) 9.
2. Grievant's primary function as an ERS is to interview, register, and classify the unit's clients, utilizing the proper techniques and forms, with respect to the clients' employment aptitude and interests, and to help provide

education opportunities, job training, employment placements and follow-up counseling.

3. An ERS must have attained five years' "qualification time" compared to the four years' time needed by both the Child Advocate Legal Assistant and the Protective Service Worker Trainee positions (PG 9 positions) within HHR. The complexity of Grievant's job as ERS does not exceed that of the other two.

4. Grievant's clients within HHR generally come from a low educational and socio-economic stratum, and therefore usually require basic educational training, such as high school equivalency classes and on-the-job training in government-funded vocational programs. Thus, it is not necessary for Grievant to possess extensive knowledge of the various occupations or to apply far-reaching testing, placement and counseling strategies.

5. An Employment Counselor (EC), a position utilized by the Bureau of Employment Programs, works with the public at large, which may include out-of-work professionals with college degrees. Therefore, the incumbent must possess and apply a high degree of occupational knowledge, testing procedures, counseling training, and placement strategies.

Conclusions of Law

1. W.Va. Code §29-6-10(1) specifically requires the Division of Personnel to prepare, maintain and revise the classification plans for positions in the classified service "based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class."

2. Grievant has not demonstrated by a preponderance of the evidence that the duties she performs and responsibilities she assumes as an

Employment Relations Specialist are so similar in nature, complexity, scope and breadth to the duties of an Employment Counselor, as to justify the same Pay Grade as the Employment Counselor.

3. Grievant has not demonstrated by a preponderance of the evidence that the establishment of Pay Grade 9 for the Employment Relations Specialist position is an abuse of Personnel's discretion. See Stephenson v. W.Va. Bureau of Employment Programs/Div. of Personnel, Docket No. 92-DOP-447 (Aug. 12, 1993).

4. Grievant has not established that the classification schemes for Employment Relations Specialist and Employment Counselor are violative of W.Va. Code §29-6-10(1).

5. Interpretations of statutes by bodies charged with their administration should be given great weight unless clearly erroneous. W.Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993).

6. In this case, Grievant has not established that Personnel relied on incorrect facts, data, and information, or otherwise abused its discretion under Code §29-6-10 to classify correctly. See Parsons v. W.Va. Bureau of Empl. Programs, 428 S.E.2d 528 (W.Va. 1993); Dillon v. W.Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95-HHR-044 (Apr. 12, 1995).

Accordingly, this grievance is **DENIED**.

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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

NEDRA KOVAL

Administrative Law Judge

Date: May 9, 1996

[Footnote: 1](#)

In addition to the evidence adduced at level four, specifically, some brief testimony as well as some additional documentary evidence to augment the lower-level record, the record consists of the transcript and exhibits of the April 8, 1994 level three hearing.