

VICTORIA CLINE,
Grievant,

v. Docket No. 96-MOVHD-158

MID-OHIO VALLEY HEALTH DEPARTMENT
and DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant, Victoria Cline, grieves her classification as an Office Assistant III ("OA III"), and avers she should be classified as a Supervisor I. Although this issue proceeded through the Division of Personnel ("DOP") appeal process twice, this grievance was not filed until January 22, 1996. At Level I her supervisor, Ms. Patricia Hanlon, agreed with Grievant, but was without authority to grant the grievance. Again, at Level II, her director, Mr. Rien Valdov, agreed with Grievant, but was also without authority to grant the grievance. On April 9, 1996, this grievance was denied at Level III. A Level IV hearing was held on August 14, 1996, and the grievance became mature for decision on that date as the parties decided not to submit proposed findings of fact and conclusions of law.

The pertinent sections of the classification specifications at issue are written below:

OFFICE ASSISTANT III

Nature of Work: Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required. Distinguishing

Characteristics: Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

SUPERVISOR I

Nature of Work: Under general supervision, performs full-performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.

Distinguishing Characteristics: Supervisor I is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work

Performs duties that are similar or related to the work performed by subordinates.

Makes work assignments to employees; reviews the work of subordinates to ensure accuracy.

Trains employees in proper work methods.

Ensures that equipment, supplies, and materials are available to complete work.

Inspects work areas to ensure that tasks are completed in a timely manner.

Evaluates employees' performance; counsels employees and recommends corrective action.

Answers inquiries from employees; relays information from management.

Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Grievant has been employed by the Mid-Ohio Valley Health Department ("MOVHD") since 1981. In July 1992, she applied for the position she currently holds and was classified as a Clerk V. Grievant's working title is Program Coordinator for Nutrition Services within the Women, Infants, and Children ("WIC") program. This program provides nutritional education and supplemental food packages to clients who demonstrate physical and income eligibility for services. Within the WIC program, Grievant supervises five full-time and four part-time OA II's. These OA II's process the paperwork submitted by potential and current clients to determine eligibility within federal, state, and local guidelines. OA II's also maintain client charts, schedule appointments, distribute food packs, and generate and complete all necessary reports. Many of the OA II's are assigned to, or rotate through, MOVHD's outlying counties. Frequently, an OA II may be the only person in the office, except for clinic day, when

clients are seen by nutritionists and nursing personnel. Grievant's supervision of these OA II's includes: 1) approving and signing sick and annual leave; 2) completing, discussing, and signing annual evaluations; 3) formulating a work schedule for the nine employees to provide coverage for the nine county WIC programs; 4) conducting monthly meetings with the OA II's; 5) interviewing and recommending for hiring; 6) performing any necessary discipline; 7) holding Level I grievances, if necessary; and 8) conducting all orientation and in-service training. Additionally all OA II's call Grievant regularly for answers to questions and guidance on multiple matters. Grievant also periodically travels to the outlying counties to perform her supervisory duties.

When the OA II's are in the clinic settings, approximately one to two days a week, their work is partially overseen by a Nutritionist who selects what type of food packets should be given to each client. This nutritionist is not responsible for any of the OA II's other duties, but is in charge of the clinic.

Grievant's other duties include working in the clinic and providing secretarial support to Ms. Hanlon. In this regard, she types, compiles reports, prepares invoices, and helps with the budget. Grievant testified that the introduction of the computer system has decreased the amount of time she spends on these tasks. She also assumes "responsibility for administrative detail in the absence of the Project Coordinator" (Ms. Hanlon). Position Description Form, 1992 and 1995.

Grievant filled out two Position Description Forms ("PDF"); one on September 8, 1992, only a couple of months after she had assumed the position, and another one on May 25, 1995, while she was attempting to be reclassified. Both are approved by the same supervisor ([See footnote 1](#)) and although the duties enumerated on these PDF's did not change drastically, the amount of time Grievant indicated she spent on each of the areas did. The 1995 form identifies Grievant's supervisory duties as her major area of concentration; the 1992 form identifies reports and budgetary concerns as the major areas of concentration. Both Grievant and her supervisor testified Grievant's duties have not changed greatly since she assumed the position, and both testified her major duties are the supervision of the OA II's. Grievant also stated that she adopted a form used by her predecessor when she completed her first PDF, because she had been in the position for only a few months and did not know all that was

expected of her.

Mr. Lowell Basford, Division of Personnel's Assistant Director of Classification and Compensation, testified at Level III and made two arguments. One was that Grievant's position was not equal to two other supervisors in the department in difficulty and complexity, and thus, she should not have the same title and be in the same classification as these employees. The second argument was that Grievant's supervision was of an administrative not a technical nature. He described technical supervision as the "nuts and bolts" of the job and the "how and why of the work, the mission of the organization." Level III Trans. at 101-02. No description of administrative supervision was given, but it was characterized as less complex. Mr. Basford explained the Nutritionist is the OA II's technical supervisor, and, thus, Grievant's supervisory duties are "diluted". Level III Trans. at 102.

The undersigned reviewed Mr. Basford's Level III and Level IV testimony, and the job descriptions of the two MOVHD Supervisor I's. He stated they had more complex and difficult duties. He also stated these Supervisor I's did technical supervision of their supervisees. A review of the record and PDF's does not bear out Mr. Basford's testimony. Ms. Virginia Ash supervises nine to ten clerical people in the Home Health areas of MOVHD. The OA's are located in only six counties, and according to the organizational chart, a nurse is in charge of each county. Ms. Angela Delaney oversees approximately sixteen support/clerical staff in the area of Public Health clinics in six counties. Some of these employees are part-time. Nurses or other health care professionals are in charge of all clinics where these clerical/support staff work.

The administrative versus technical supervisor theory was not supported by the testimony. Ms. Vickie Keefer, a Nutritionist II, stated she was "kind of over the offices", "I am kind of in charge of the clinic", "[OA II's] might ask me about something or I might tell them about what to do and things like that," and "I kind of oversee [the smooth running of the office]." Ms. Keefer also testified Grievant was the OA II's supervisor.

Ms. Rita Jarvis is another Nutritionist II at MOVHD and works in six counties. She indicated that one-half to one-third of her time is spent in Wood County, and she doesn't directly supervise OA II's in the clinic setting there. She indicated she was in charge of the other outlying clinics on the day she is there because they use a team concept when working with

clients. Thus, the one day a week she might be in an outlying county, she would directly supervise the OA II's regarding only their clinical, nutritional duties involving clients.

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 match another cited Personnel classification specification than the one under which she 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. Div. 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 the Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 89-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 should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with a substantial hurdle to overcome in attempting to establish that they are currently misclassified. In this case Grievant has demonstrated that although she performs most of the duties identified in the OA III job description, she spends the majority of her time performing the duties of a Supervisor I. The type of work Grievant performs is clearly described in the Supervisor I's Nature of Work section, and she is a working supervisor as discussed in the Distinguishing Characteristics Section. She performs all of the duties listed under the Supervisor I's Examples of Work. Although she has fewer employees than Ms. Ash and Ms. Delaney, she

still oversees the work of nine individuals and is responsible for coordinating, organizing, and scheduling nine counties, where Ms. Ash and Ms. Delaney only have six counties. Mr. Basford's argument that the nutritionist oversees the clerical staff while they are in the clinic, also applies to Ms. Ash and Ms. Delaney's supervision.

Grievant has met her burden of proof by demonstrating the Supervisor I classification is the "best fit" for her duties. Additionally, Grievant does perform the majority of the supervisory duties for the WIC OA II's, and all employees recognize Grievant as their supervisor. Further, Grievant's duties, although different than Ms. Ash's and Ms. Delaney's, are substantially similar, thus no disparity is created by placing Grievant in the same job classification.

The above discussion will be supplemented by the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant is a fifteen year employee in the MOVHD and is currently classified as an OA III.
2. Grievant performs the supervisory tasks identified in the Supervisor I job description with nine OA II supervisees.
3. Grievant attempted to correct her misclassification when she was originally assigned to the OA III classification. She has appealed her classification twice to the Division of Personnel. [\(See footnote 2\)](#)
4. Grievant was informed she could file a grievance in November 1994, but she chose instead to go through the DOP appeal procedure again in January 1995. On January 16, 1996, Division of Personnel denied her second appeal. This grievance was filed on January 22, 1996.

Conclusions of Law

1. Grievant has demonstrated by a preponderance of the evidence that the position classification of Supervisor I is the "best fit" for her duties. See Broadus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606//607/609 (Aug. 31, 1990).

Accordingly, this grievance is GRANTED, and Grievant is to be reclassified as a

Supervisor I from the date of her original reclassification, December 16, 1994. As Respondent did not raise the issue of timeliness until Level IV, Grievant is to be paid back pay, as a result of this grievance, from December 16, 1994, as well. See W. Va. Code §29-6A-4(a).

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: December 31, 1996

[Footnote: 1](#)

The May 25, 1995 PDF is not signed by Ms. Hanlon, but she approved of Grievant's description of her duties. Level III Trans. at 44-48.

[Footnote: 2](#)

At one point in time the Grievance Board had ruled that it lacked jurisdiction over county health department employees, and the Board would thus not address the merits of claims by such employees. The W. Va. Supreme Court of Appeals overruled this decision in W. Va. Dept. Of Admin. v. W. Va. Dept. of Health and Human Resources, 192 W. Va. 202, 451 S.E.2d 768 (1994).