

**LEONA NOLAN,  
Grievant,**

**v. Docket No. 95-HHR-416**

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES/COLIN ANDERSON CENTER  
and DIVISION OF PERSONNEL,  
Respondents.**

**DECISION**

Grievant, Leona Nolan, filed this grievance because she believes the Department of Health and Human Resources ("HHR") and the Division of Personnel ("DOP") have improperly demoted her from her position at Colin Anderson Center ("CAC"), but are continuing to require her to perform the same duties she had before. She requests as relief to be reclassified from her current position of Health Service Worker ("HSW") to her former position of Health Service Assistant ("HSA"). Respondents state Grievant is properly classified and is no longer performing the duties of an HSA.

This grievance was waived at Levels I and II, and denied at Level III. Thereafter this grievance was appealed to Level IV, and a hearing was held on December 18, 1995. This case became mature for decision on January 17, 1996, the deadline for the submission of the parties' proposed findings of fact and conclusions of law.

The facts of this case are not in dispute and are set out below.

**Findings of Fact**

1. Grievant has been employed at CAC for 11 years, the last 5 as an HSA.
2. In recent years CAC has undergone significant downsizing with a substantial decrease in the number of clients.
3. With this downsizing, ResCare, the private management company which runs CAC decided to change the method of monitoring and/or supervising the direct

care staff on the living areas during the evening and night shifts.

4. Prior to this change, there was an HSA assigned to be "in-charge" on each individual living unit. Grievant's unit has twelve clients.

5. Betty Barron, Personnel Officer, requested DOP to review a proposed functional job description for the classification of Shift Supervisor/HSA, and to approve a staffing request form to advertise these positions. If approved, one individual would be hired to provide supervision for all units during a shift. With this change, there would no longer be a need for an individual HSA to be in-charge on each unit.

6. DOP approved the functional job description, and on January 9, 1995, Ms. Barron notified all HSA's that if they wished to retain their current classification they needed to interview for the position of Shift Supervisor/HSA. This same Memo stated that any HSA not functioning as a Shift Supervisor would be demoted, without prejudice, to an HSW.

7. Grievant applied for the new position, but was not selected. She did not grieve her non-selection.

8. On June 22, 1995, Grievant received formal notice of her demotion to an HSW, to become effective on July 16, 1995. This notice cited the reasons for this demotion and stated monitoring the staff in each living area would now be the responsibility of the Shift Supervisor.

9. Grievant's duties include providing basic nursing care, observing and reporting her clients' behavior and condition, and implementing her clients' written care plan. Grievant, at times, is required to orient "pulled" staff to her unit or to clients on her unit. [\(See footnote 1\)](#)

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

### **HEALTH SERVICE WORKER**

#### **Nature of Work**

Under direct supervision, performs work at the full-performance level providing basic personal and nursing care related to the treatment, habilitation and rehabilitation for the mentally and/or physically challenged at state operated facilities or in a

community setting. Performs basic nursing care under direct supervision; performs basic personal and/or therapeutic treatment duties. Travel may be required. Performs related work as required.

### **Distinguishing Characteristics**

This is full-performance level work providing basic care. The incumbents have successfully completed training courses and/or have passed competency skills and written tests.

### **Examples of Work**

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Participates in a formal training program to develop the knowledge and abilities required for the class and for career growth and opportunity.

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Provides required personal care and hygiene services for clients such as bathing, grooming, dressing, and feeding clients.

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Teaches clients basic skills for the development of daily living habits regarding cleanliness, personal hygiene, dressing, and eating skills, etc.

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Motivates and encourages clients to promote their treatment and development by engaging in one-to-one discussions and supportive relationship with the clients.

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Provides nursing care such as taking temperature, blood pressure, pulse readings, and performs routine treatment and first-aid under the direction of a licensed practical nurse, registered nurse or physician.

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Interacts with clients in a therapeutic manner.

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Participates with other treatment team members in overall programmatic rehabilitation activities to facilitate change in the clients'

behavior.

\_\_\_\_\_  
Oversees or participates in planned recreational and social programs.

\_\_\_\_\_  
Observes records and reports clients' behavior, attitudes and physical condition and reports significant changes to proper staff.

\_\_\_\_\_  
Serves as a role model in the training of less experienced workers.

\_\_\_\_\_  
Escorts clients to meals, therapy, medical appointments and scheduled activities within and outside the facility.

\_\_\_\_\_  
Performs duties necessary to maintain a safe, clean and orderly living and work area.

## **HEALTH SERVICE ASSISTANT**

### **Nature of Work**

\_\_\_\_\_  
Under general supervision, performs paraprofessional work at the full-performance level assisting professional staff in the care, treatment, habilitation and rehabilitation of mentally and/or physically challenged at state-operated facilities or in a community setting. Acts as a lead worker or charge assistant in assigning, scheduling and reviewing the work of Health Service Workers. Develops, writes, implements and evaluates basic therapeutic treatment programs. Assists professional staff in providing basic rehabilitative treatment in such areas as physical or occupational therapy, recreational therapy, restorative therapy or similar areas. Travel may be required. Performs related work as required.

### **Distinguishing Characteristics**

\_\_\_\_ This level is identified by the assignment of lead worker duties on an on-going basis or by the assignment of duties to develop and/or monitor program plans within a specific discipline at the facility. May be required to participate in additional training such as physical therapy assistance or basic education techniques. The employee has some latitude of action in the development of treatment plans; however, guidelines and client psychosocial development determine the parameter of individual care.

### **Examples of Work**

\_\_\_\_ Participates in a formal training program to develop knowledge and abilities required for career growth and development.

\_\_\_\_ Leads and performs required personal care and hygiene services such as bathing, grooming, dressing and feeding clients.

\_\_\_\_ Teaches clients basic skills of daily living habits such as cleanliness, personal hygiene, dressing, eating, etc.

\_\_\_\_ Provides training, role modeling and direction to assigned staff and clients; prepares work schedules and makes assignments.

\_\_\_\_ Oversees and participates in planned recreational and social programs.

\_\_\_\_ Provides basic nursing care such as taking temperature, blood pressure, and pulse; performs routine treatment and first-aid under the direction of a licensed practical nurse, registered nurse, or physician.

\_\_\_\_ Confers with supervisors and professional staff regarding problems, patient behavior, and assignment and scheduling of personnel.

\_\_\_\_ Assists professional staff in the implementation of established therapeutic treatment programs; serves as a member of the therapeutic treatment team to facilitate change in the clients' behavior.

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Develops individual treatment plans for clients in assigned specialty area; records plans in client records and oversees or leads clients in activities, testing, or life skills training.

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Follows physicians' or therapists' direction in providing hands-on therapy or care in assigned area.

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Leads and may perform duties necessary to maintain a safe, clean and orderly living and work area; reports needed repairs to maintenance staff; recommends needed equipment and supplies; orders, distributes and inventories supplies.

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Observes, records and reports clients' behavior, attitudes and physical condition and reports significant changes to proper staff.

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Teaches clients skill-building in such areas as independent travel, self administration of medication, crafts, money management, self expression, nutrition, crisis management and social intervention.

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The Shift Supervisor/HSA Functional Job Description approved by DOP is listed below:

**FUNCTIONAL JOB DESCRIPTION** [\(See footnote 2\)](#)

**SHIFT SUPERVISOR (TITLE: HSW ASSISTANT)**

**DAILY JOB DUTIES**

- 1) INSURE MINIMUM STAFFING LEVELS ARE MAINTAINED
- 2) INSURE STAFF COVERAGE FOR OFF-GROUNDS TRIPS
- 3) INSURE STAFF COVERAGE FOR MEDICAL APPOINT MENTS/HOSPITAL

- 4) ARRANGE STAFF COVERAGE FOR SICKBAY IF NEEDED
- 5) MAINTAIN CURRENT EMPLOYEES WORK SCHEDULE
- 6) MAINTAIN DOCUMENTATION OF DAILY REPORT OFFS FOR RESIDENTIAL
- 7) ARRANGE RELIEF FOR STAFF LUNCH BREAKS
- 8) THE PLACEMENT OF STAFF IS MONITORED CLOSELY TO INSURE STAFF ARE FAMILIAR WITH INDIVIDUALS ASSIGNED TO THEM
- 9) MAKE ROUNDS TO EACH LIVING AREA TO INSURE THERE IS A CLEAN AND SAFE ENVIRONMENT FOR STAFF AND INDIVIDUALS.
- 10) ZEROXING [SIC]
- 11) FILING
- 12) CRISIS ASSIST TEAM
- 13) SECURITY FOR ON-GROUNDS - (ie locking up Vocational Building and check to insure all doors are locked Center-wide)
- 14) RESPONSIBLE FOR HAND-HELD RADIO, TO INSURE CORRECT MAINTENANCE IS MAINTAINED
- 15) DELIVER PERTINENT DOCUMENTS TO HEALTH SERVICE WORKERS
- 16) RESPONSIBLE FOR EVALATION [SIC] OF EMERGENCY PHYSICAL PLANT PROBLEMS AND MAKE NECESSARY CHANGES TO INSURE SAFETY OF THE INDIVIDUALS. (AIR CONDITIONER BREAKING DOWN).
- 17) ASSISTS RTS [\(See footnote 3\)](#) OF AREA IN MONITORING AND INSURING IDENTIFIED PROBLEMS ARE NOT OCCURRING.

## **JOB DUTIES**

- 1) COMPILE AND DISTRIBUTE MONTHLY SCHEDULE
- 2) MONITOR STAFF THAT ARE OFF DUE TO ILLNESS/INJURY FOR RETURN
- 3) MONITOR MANDATORY OVERTIME.
- 4) MAINTAINING CURRENT MANDATORY OVERTIME LIST
- 5) SCHEDULE STAFF FOR INSERVICES.
- 6) ASSIST IN FIRE DRILLS
- 7) RESPONSIBLE FOR COMPUTER ASSIGNMENTS SHEETS PRINT

OUTS8) INSERVICES AS NEEDED

9) MAINTAIN UP TO DATE EMPLOYEES['] PHONE LIST

10) DELIVERY OF DISCIPLINARY ACTION MOSTLY IN EMERGENCY SITUATIONS (ie abuse)

11) CONTACT ADMINISTRATIVE WATCH AND ALL RESPONSIBLE CORE TEAM MEMBERS WHEN NEED ARISES PERTAINING TO INDIVIDUALS

12) MAINTAIN SAFETY AND SECURITY FOR INDIVIDUALS AND STAFF DURING EMERGENCY INCLEMENT WEATHER.

13)RESPONSIBLE [SIC] FOR EMERGENCY MEDICAL PROBLEMS (transport to and from Hospital)

14) RESPONSIBLE FOR EVALUATING UNUSUAL OCCURRENCES AND CONTACTING OUTSIDE AGENCIES WHEN NECESSARY. ( ie,Drug Raid,vandalism,staff conflicts)

### Discussion

West Virginia Administrative Rule 11.04 defines the types of demotions and the process to utilize when demoting an employee.

Demotions - There are two types of demotion, involuntary and voluntary. An involuntary demotion is a reduction in pay and/or a change in classification to a lower classification due to the inability of an employee to perform the duties of a classification or for improper conduct. A voluntary demotion is a change in classification of an employee to a lower classification, a transfer of an employee to a lower classification or a reduction in pay due to business necessity. An appointing authority may demote a permanent employee after presenting the employee with the reasons for the demotion stated in writing, and allowing the employee a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his/her designee.

Here, Grievant was demoted due to a business necessity, thus her demotion was a voluntary one. The proper procedures were followed, and the demotion on its face is correct. Casdorph v. W. Va. Dept. of Energy/Div. of Personnel, Docket No. 89-ENGY-



281 (July 30, 1990), aff'd, Casdorph v. W. Va. Dept. of Energy/Div. of Personnel, 189 W. Va. 132, 428 S.E.2d 553 (1993). However, Grievant argues she has been expected to continue the duties she originally performed without the correct classification and pay.

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 DOP classification specification than the one under which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-039 (Mar. 28, 1989).

DOP 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. HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 29, 1991). The predominant duties of the position are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-060, 607, 609 (Aug. 31, 1990). Finally, DOP's interpretation and explanation of the specification 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 foregoing legal analysis, the West Virginia Supreme Court of Appeal's holding in Blankenship presents employees, contesting their current classification, with a substantial obstacle to overcome in attempting to establish that they are currently misclassified. In this case Grievant has failed to meet this burden.

Grievant states she is expected to keep the logbook [\(See footnote 4\)](#) on a rotating basis with other staff. When an HSW is designated as the "logbook person" that individual is to orient "pulled" staff to the routine of the unit and needs of the clients.

and make client assignments as needed. Prior to the institution of the Shift Supervisor, Grievant was "in-charge" on a consistent basis, now she states she is seldom scheduled to be the "logbook person", but that other workers still ask her how to handle situations as they arise.

Grievant also testified that the former duties assigned to the on-unit HSA's now either don't get done or are performed by the former HSA's. Exactly what these tasks were was unclear. It appears the former HSA's basically performed a lead worker role and made sure necessary work was completed and the unit ran smoothly. Although both the HSW's and the HSA's may have found this prior method of supervision preferable, the testimony does not support Grievant's contention that she frequently continues to function as an HSA. The duties she performs are those listed under her current job description, HSW.

Further, Mr. Lowell Basford, Assistant Director of the Classification and Compensation Section, testified Grievant is not misclassified, and the demotion was properly carried out. He also stated if Grievant had not been demoted she would now be working out-of-classification.

The above-discussion will be supplemented by the following Conclusions of Law.

#### Conclusions of Law

1. Grievant has the burden of proving her grievance by a preponderance of the evidence. Casdorph v. W. Va. Dept. of Energy/Div. of Personnel, Docket No. 89-ENGY-281 (July 30, 1990), aff'd, Casdorph v. W. Va. Dept. of Energy/Div. of Personnel, 189 W. Va. 132, 428 S.E.2d 553 (1993).

2. Grievant's demotion did not violate any statute, rule, regulation, policy, or written agreement. She was properly demoted. W. Va. Admin. Rule, 11.04; Casdorph, supra.

3. Grievant is currently properly classified as an HSW, and that classification is the "best fit" for her normal duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991).

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 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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**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated: March 29, 1996**

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[Footnote: 1](#)

Grievant frequently referred to this orienting as training. Since the "pulled" staff were all trained employees, the correct terminology would be orienting.

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[Footnote: 2](#)

This description is in the exact format submitted to the undersigned.

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[Footnote: 3](#)

RTS' are residential treatment specialists and are the supervisors of both the HSA's and the HSW's.

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[Footnote: 4](#)

The logbook for each shift consists of a two page fill-in- the-blank form which details the events that occurred during an eight hour shift.