KAREN S. MORRIS,

Grievant,

v. **DOCKET NO. 94-MBOT-414**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant alleges she was misclassified as a Secretary, effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . She seeks as relief to be reclassified as an Administrative Secretary with back pay to January 1, 1994. In addition to challenging the job title she received, Grievant has also challenged specific "point factors" (See footnote 2) used in the Mercer classification system. A level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on October 29, 1996. This matter became mature for decision on February 26, 1997, the deadline for submission of the parties' fact/law proposals.

The following findings are appropriately made from the record developed at level four.

Findings of Fact

1. Grievant is employed by West Virginia University ("WVU") in the Department of Medicine's Cardiology Unit. Effective January 1, 1994, she was classified as a Secretary at Pay Grade 8.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, "data lines" of particular degree levels for each point

factor were developed for each job title in the system. Employees with similar duties were grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties.

4. The degree levels for each point factor in a job title were used to arrive at a numerical point total, which determined each job's Pay Grade. 5. Generic job descriptions were developed for the various job titles within the higher education system in 1994 after the implementation of the reclassification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

6. Grievant's duties include the following: transcribing physicians' dictation, answering patient telephone calls, handling referral calls from other physicians, scheduling conferences and preparing materials for conferences, and maintaining time sheets and leave information for the office. She is also involved in planning luncheons and meetings, and she processes travel and expense forms submitted by the physicians in the office. There are seven cardiologists in the unit for whom Grievant performs these duties.

7. Grievant believes she should have been classified as an Administrative Secretary and evaluated at the degree levels assigned to that job title.

8. The Secretary job title received a total of 1377 points under the Mercer numerical system. This places the job in Pay Grade 8, the point range for which is from 1321 to 1394 points.

9. Administrative Secretary received a total of 1549 points, placing it in Pay Grade 10, the point range for which is from 1475 to 1560 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community

College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet her burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use “whole job comparison.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 3) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. The system must by statute be uniform across all higher education institutions;therefore, the point factor degree levels are not assigned to the individual, but to the job title. W. Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstra ting her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Plan (which provides the definitions of point factors and degree levels) 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). The higher education employee challenging her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 4)

In accordance with the foregoing discussion, a grievant must show that she was slotted into the wrong job title, that the point factor degree levels assigned to her job title are incorrect, or that she is entitled to an individual data line because of the unique nature of her position. In order to determine if Grievant was misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Application of the Point Factor Methodology

___Grievant challenged the degree levels which distinguish the Secretary job title's data line from

Administrative Secretary, which are for the point factors Knowledge, Complexity and Problem Solving, Freedom of Action, and External Contacts--Level.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Secretary received a 3.0 degree level for Knowledge, and Administrative Secretary received a 4.0.

A degree level of 3.0 is defined in the Plan as:

> Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

A degree level of 4.0 is defined as:

> Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

At the level four hearing, Linda Shaver, an Administrative Secretary in the Cardiology Unit, testified on behalf of the grievant. (See footnote 5) She testified that a high schoolgraduate would not be capable of handling Grievant's duties, because medical experience and training are necessary to understand the work. Grievant testified that she has a two- year college degree, and she had numerous years of experience working with medical terminology and in medical environments in various positions she held prior to her assignment to the Cardiology Unit. However, she did not explain how or if the particular degree she possesses was helpful in handling her current duties. On her PIQ, she listed the necessary skills of her position as word processing, typing, and spelling.

Luann Moore, Senior Compensation Analyst at WVU and a JEC member, testified on behalf of Respondent. She stated that the skills Grievant must possess, including typing ability, answering telephone calls, setting up meetings, and processing forms, could all be obtained in high school. Ms. Moore also pointed out that Grievant was given credit under the Experience point factor for one to two years of prior directly related experience, which she did not contest. She opined that this amount of experience in a medical office, which Grievant possessed, was sufficient to ensure that a new employee would be acquainted with issues related to the everyday workings of the unit to perform the

job.

Grievant has not met her burden of proof on this point factor. She did not demonstrate that a post-high school degree or training is necessary to minimally perform her responsibilities, especially in light of the required previous experience with which she was credited. She was appropriately evaluated at level 3.0 for Knowledge.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's job title received a 1.5 degree level, and the Administrative Secretary job title received a level 2.0. Half levels are not explained in the Plan, but the JEC witness explained that half levels were awarded when employees were performing duties at both levels, and neither degree level fully applied.

A degree level of 1.0 is defined in the Plan as:

> Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

A degree level of 2.0 is defined in the Plan as:

> Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

___Grievant argues that all of her work is at least at the 2.0 level. She answers telephone calls from patients who are having symptoms and need to know what to do, and she must exercise some judgment in advising them. If no doctor is available, she may ask Ms. Shaver what to tell such a patient. She must also properly prioritize her work, as in deciding how to deal with an emergency patient situation while also working on transcription that must be done right away. Grievant also discussed her various responsibilities in scheduling meetings and conferences, taking prescription requests over the phone, andtaking calls from physicians who want to refer patients. However, her

testimony reflects that there are structured procedures she follows in each of these situations, many of which involve merely taking down information or messages for others.

Ms. Moore opined that all of Grievant's duties are quite routine, such as answering calls, typing forms and transcription, and taking messages. The grievant did not really provide any examples of true “problems” for which she must find solutions or make decisions. It must be remembered that a key issue in applying this factor is whether the employee must make decisions about how to solve a problem, and, if so, whether the number of possible solutions is limited by some policy, regulation, or procedure. Martin v. Bd. of Trustees, Docket No. 94-MBOT-658 (Mar. 28, 1997). The only situation described by Grievant which may involve any decision-making would be the instance in which she must tell a patient what action to take in an emergency situation. Since there is no evidence regarding how often this happens, and Grievant stated that she would sometimes request advice from Ms. Shaver or a physician, the 1.5 degree level allocated would appear to cover such occasional situations. Otherwise, Grievant's duties are mostly routine with clear-cut solutions. She was not improperly evaluated with regard to Complexity and Problem Solving.

3. Freedom of Action

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents,policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

As with the previous point factor, Secretary received a 1.5 and Administrative Secretary was evaluated at level 2.0.

The definitions in the Plan show that at a degree level of 1.0:

> Tasks are substantially structured with the employee receiving clear, detailed and specific instructions from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

The definitions in the Plan show that at a degree level of 2.0:

> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions.

Questionable items are referred to the immediate supervisor.

___As with Complexity and Problem Solving, Ms. Shaver's testimony on this point factor focused upon Grievant's prioritizing of her duties, noting that she must deal with interruptions regularly. Once daily work is assigned, which is usually mostly transcription, it is up to Grievant to get that work done while dealing with telephone calls and emergencies. Grievant testified that she believed level 3.0 was appropriate for this factor, but she did not elaborate as to why. (See footnote 6) Respondent's witness testified that this point factor measures the structure of the position and the degree to which it is controlled by exterior influences. In this case, the grievant's actions are governed by policies, procedures and forms, and she also noted that the large percentage of time (40%, according to Grievant) that is spent on transcription leaves extremely little room for independent action.

___The key issue in measuring this point factor is "whether the employee has the option to make decisions on her own if and when such situations arise." Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 (Feb. 6, 1997) (citing cases). Grievant's decision- making ability, if any, is extremely limited by office policies, procedures and forms. Her responsibility for accomplishing her transcription duties while dealing with interruptions is not what is measured by this point factor. Lack of ongoing, hands-on supervision does not necessarily mean that a position has a great deal of Freedom of Action, as noted in the level 1.0 definition, because the employee knows the specific procedures to follow to accomplish his or her tasks. Grievant has not proven that her duties and responsibilities were incorrectly evaluated at level 1.5, and she has not met her burden of proof on this factor.

___4. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation. This point factor has two measured aspects which form a matrix, Nature of Contact and Level of Contact. Grievant has only contested the degree level given to her position for Level of Contact, a 2.0, and requests a level 3.0. Level 2.0 is defined in the Plan as "[g]eneral public, visitors, and/or service representatives and vendors." A degree level of 3.0 in Level of Contact is defined as "[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students."

The focus of Grievant's argument for the higher level is her frequent contact with patients, their families and other doctors. It is obvious that Grievant communicates constantly with patients who are seen in the cardiology facility, along with their families. The patient or relative may call in to request a

prescription renewal, which Grievant takes over the phone and forwards to a nurse. She speaks with doctors outside WVU when she must set up conferences or lectures, when the doctor wants to refer a patient, or when patient information is requested. She will provide the information herself, if possible, or take the request down for a physician in the office. Grievant sets up approximately one lecture by a visiting doctor each week. Under cross examination, Ms. Morris stated that, in these situations, she deals with the doctor the vast majority of the time, and it is infrequently an assistant or secretary calling on the physician's behalf. Grievant has argued that, since the Department of Medicine is not engaged in rendering traditional academic services like most other departments of the university, their relationship with patients should be likened to others' relationship with students. She alleges that students are the “consumers” of academic services, just as the patients are consumers of medical services. Respondent argues that Grievant cannot be entitled to level 3.0, because the patients and doctors she has referred to are not specifically listed in the level 3.0 definition. It is Respondent's position that such individuals are members of the general public or visitors.

The undersigned agrees. Although Grievant has made a unique and creative argument that patients and their families should be evaluated on the same level as students and parents, she has not proven her case. Grievant's office happens to be in a department of which the chief purpose is to render services to the general public, and doctors who come to deliver lectures are visitors to the university. Her external contacts fall squarely within the level 2.0 definition.

C. Generic Job Descriptions

Grievant presented evidence at level four comparing the generic job descriptions of Secretary and Administrative Secretary in support of her allegations that she was incorrectly classified. Generic job descriptions were compiled after implementation of the Mercer system and were not used in the classification process. Each employee's PIQ, not a generic description, is the specific measure and description of that individual's job duties. Moreover, to compare generic job descriptions “would be to resort to the less quantitative, less objective classification method of 'whole job comparison,' abandoning the point factor methodology which the JEC adopted.” Payne v. Bd. of Directors, 94-MBOD-372 at 17 (Jan. 8, 1997). Therefore, Grievant's evidence in this regard is not relevant or probative and will not be discussed by the undersigned.

D. Summary

Grievant has argued that she should have been classified as an Administrative Secretary rather than a Secretary, and she argued for the degree levels assigned to the Administrative Secretary job title. She did not prove by a preponderance of the evidence that the JEC's evaluation as applied to her position was clearly wrong or arbitrary and capricious with regard to any of the challenged point factors.

Conclusions of Law

1. The governing boards are required by W.Va. Code § 18B-9-4 to establish and maintain an equitable system of job classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee ("JEC") regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94- MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis; theymay also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that a mistake has been made. Burke, supra. See Frymier-Halloran v. Page, 458 S.E.2d 780, 788 (W.Va. 1995).

5. The JEC's evaluation of Grievant's position in the challenged point factors was not clearly wrong nor arbitrary and capricious.

6. Grievant did not prove by a preponderance of the evidence that she was incorrectly classified as a Secretary, Pay Grade 8.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or 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 § 18-29-7. 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.

DATE: May 27, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27 and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 3

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 4

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 5

Respondent objected to the testimony of Ms. Shaver, because Dorothy Pesyna was listed on the Grievant's PIQ as her immediate supervisor. However, both Grievant and Ms. Shaver stated that Ms. Pesyna works on a different floor and has no involvement in the daily duties of secretaries in the Cardiology Unit. Ms. Shaver assigns work to the grievant, works with her on a daily basis, and evaluates her, so her testimony regarding Grievant's duties isquite relevant.

Footnote: 6

Although she testified she believed level 3.0 was appropriate, Grievant clarified in her post-hearing submission that she would be satisfied with a level 2.0 rating, so long as she is determined to be properly classified as an Administrative Secretary.