ALLEN J. CODY,

Grievant,

v. Docket No. 96-CORR-509

WEST VIRGINIA DIVISION OF CORRECTIONS\
WEST VIRGINIA INDUSTRIAL HOME FOR YOUTH,
and WEST VIRGINIA DIVISION OF PERSONNEL, (See footnote 1)

Respondents.

DECISION

Grievant, Allen J. Cody, filed this grievance against Respondents, West Virginia Division of Corrections\West Virginia Industrial Home For Youth (IHY), and West Virginia Division of Personnel (DOP) alleging:

> I was not given the full pay raise. I come in direct contact with residents on a daily basis. Also I am working out of class.

As relief, Grievant seeks to be made whole, which includes a raise, back pay, and to be properly classified.

Grievant was denied relief at the lower levels of the grievance procedure. Grievant appealed to Level IV on December 3, 1996. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on February 5, 1997, and the case became mature for decision at that time because the parties waived submission of post-hearing briefs. The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant is a Recreation Specialist, and is the only employee to hold that classification at IHY.

2. Grievant, in performing his assigned duties, works in direct contact with the residents, or a group of residents, at IHY.

3. Grievant often works alone, without the immediate assistance of a Correctional Officer or other

staff member.

4. Grievant did not receive a two thousand dollar ($2,000) “salary upgrade” effective July 1, 1996.

5. Grievant completed the first three pages of a West Virginia Civil Service System Position Description form on September 11, 1996, outlining his duties and responsibilities. The form also required Grievant's immediate supervisor, Hope Coleman, to complete and sign the last page.

6. Later in September 1996, DOP evaluated Grievant's Position Description, and responded to IHY that Grievant was properly classified as a Recreation Specialist.

DISCUSSION

It is clear that Grievant alleges he has been misclassified as a Recreation Specialist. Grievant seeks to be reclassified in an effort to benefit from a “salary upgrade of two thousand dollars ($2,000)” which was provided to individuals in the following classifications: Correctional Officers, Correctional Counselors,Correctional Case Managers, Correctional Unit Managers, Correctional Program Managers I, Correctional Program Supervisors, Correctional Program Specialists, and Corrections Magistrates. All other employees, including Grievant, were to receive a three hundred dollar ($300) salary increase. Level IV, R. Ex. 3.

Respondents asserted that the “salary upgrade” was the result of a Legislative Act to attract and retain personnel for specific classifications, and that they did not designate which classifications were to receive the two thousand dollar ($2,000) salary increase. In this case, it is irrelevant whether the specific classification designation was a Legislative Act or an act performed by Respondents. In this case, the salary increase was merely the impetus or motivation behind Grievant's misclassification claim.

The second sentence of Grievant's grievance statement is apparently derived from his belief that because he has direct contact with IHY residents, his classification title should have the word “correctional” in it. However, this simply is not true. There are several classifications within the West Virginia Division of Corrections which involve direct contact with residents, but do not contain the word “corrections,” e.g., cooks, secretaries, and teachers.

For Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties 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. Dept. 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. Broaddus v. W.Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Additionally, class specifications are descriptive only and are not meant to be restrictive. Mention of one duty or requirement does not preclude others. W.Va. Admin. Rule, §4.04(a); Coates v. W.Va. Dept. of Health and Human Resources, Docket No. 94- HHR-041 (Aug. 29, 1994). Even though a class specification does not include all the actual tasks performed by a grievant, that does not make it invalid. W.Va. Admin. Rule, §4.04(d). Finally, Personnel's interpretation and explanation of the class specifications at issue, if the 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). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for his required duties. Simmons v. W.Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). Grievant proposes the following classification titles: Correctional Program Supervisor, Correctional Recreation Department Head, or Correctional Department Head. Grievant failed to offer a classification specification for any of the classifications he proposes. (See footnote 2) In this instance, it must be determined whether Grievant's current position description fits his job duties. See, Ferrell v. Bureau of Employment Programs, Docket No. 93-BEP-449 (July 29, 1994).

The pertinent classification specifications for a Recreation

Specialist are as follows:

> Nature of Work: Under general supervision, at the full- performance level, performs recreation planning and participation work at a state health or rehabilitation facility. Plans and gathers materials, and leads activities for patients or clients. Ensures that activities are in compliance with court orders,
>
> certification guidelines and/or facility policy. Work may involve irregular hours. The

position has significant latitude for planning activities within budgetary and programmatic limitations. Performs related work as required.

Examples of Work:

Plans weekly and monthly activities to provide structural group or individual recreation for patients or clients.

Instructs groups in team sports, arts and crafts, and group activities such as board games or aerobics.

Oversees recreation room during leisure activities; instructs individuals in the safe use of equipment such as weights.

Gathers and dispenses equipment, materials, and supplies.

Organizes staff or volunteers to ensure adequate supervision and support services for activities such as day camping and special occasion parties.

Evaluates activity-related injuries; applies first aid knowledge and/or contacts medical staff.

Documents patient or client participation and behavior; plans individual activities to encourage or reinforce patient or client behavior.

Monitors equipment usage; orders repairs or recommends replacement of equipment.

Purchases materials used for activities.

May drive buses or vans; may teach swimming, gardening, music, or other specialty area.

May care for pets used in pet therapy.

May attend staffings and treatment meeting; may conduct intake interviews with individuals arriving at the facility.

Level IV, R. Ex. 1.

Grievant completed the first three pages of a West Virginia Civil Service System Position Description form on September 11, 1996, outlining his duties and responsibilities. The form also required Grievant's immediate supervisor, Hope Coleman, to complete and sign the last page. Later in September 1996, DOP evaluated Grievant's Position Description, and responded to IHY that Grievant was properly classified as a Recreation Specialist. During the Level IV hearing, Grievant testified that he schedules and monitors all intramural events, performs daily scheduling for all recreational activities, maintains a daily log (wherein he logsevents hourly), maintains a monthly report of all recreation activities, provides recreation activities for “short-hall” residents (See footnote 3)

, schedules all athletic events and staff-resident games, schedules and creates activities for residents when teachers are off on breaks and vacations, oversees swimming activities, and is in charge of residents when they are cleaning the gym.

Mr. Lowell Basford, Assistant Director of Compensation and Classification for DOP, listened to Grievant's testimony, and testified that it was still his belief that Grievant was properly classified as a Recreation Specialist, and that Grievant's duties and responsibilities are “almost a direct match” with the Recreation Specialist classification specification. The Undersigned agrees with Mr. Basford's assessment. Grievant has not proven, by a preponderance of the evidence, that the Recreation Specialist classification does not constitute the “best fit” for his assigned duties.

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 Grievants must prove all of the allegations constituting their grievance by a preponderance of the evidence. Owens v. W.Va. Alcohol Beverage Control Comm'n, Docket No. 90-ABCC-003 (Apr. 30, 1990).

2. The predominant duties of the position in question areclass-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. 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).

4. Grievant failed to prove, by a preponderance of the evidence, that the Recreation Specialist classification does not constitute the “best fit” for his assigned duties. Moreover, Grievant has not proven, by a preponderance of the evidence, that the other classifications he offered are a better fit, or that the Division of Personnel's classification determination was clearly wrong.

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: 6/12/97 _____ _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

The West Virginia Division of Personnel was made a party to this grievance at Level IV of the grievance procedure.

Footnote: 2

Grievant did testify during the Level IV hearing that Pruntytown Correctional Center has a Corrections Recreation Supervisor, Bill Shahand (phonetic). Grievant also testified that Mr. Shahand does not have a college degree, and he has an assistant. However, Grievant did not introduce the Corrections Recreation Supervisor classification specification, and did not offer evidence as to similarities between his duties and those of a Corrections Recreation Supervisor. Moreover, Grievant does not have an assistant.

Footnote: 3

"Short-hall" residents are residents who are lodged in a cell at the facility. These residents receive one hour of recreation a day.