BILL HARRIS,

Grievant,

v. **Docket No. 97-CORR-109**

WEST VIRGINIA DIVISION OF CORRECTIONS

WEST VIRGINIA INDUSTRIAL HOME FOR YOUTH,

Respondent.

DECISION

Bill Harris, Grievant, filed this grievance against Respondent, West Virginia Division of Corrections\West Virginia Industrial Home For Youth (IHY) on December 5, 1996. He alleges:

> Concerning being assigned to be in charge of all school: I don't feel that my CO II status is equivalent to being a School Security Officer[,] and being responsible for assigning posts, keeping total school log[,] and generally being responsible for all school security.

As relief, Grievant seeks "to be compensated for this position for past and future dates at a rate of pay no less than Sergeant[,] CO (See footnote 1) IV."

Grievant was denied relief at the lower levels of the grievance procedure. Grievant appealed to Level IV on February 27, 1997. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on June 5, 1997, and the case became mature for decision at that time because the parties waived filing post-hearing submissions. The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant is a Correctional Officer (CO) II at IHY.

2. IHY is a juvenile institution. The Johnson School is located with the confines of IHY.

3. Within Johnson School, various posts are manned by COs. Post assignments are made daily. Post titles include: Chief Correctional Officer, Shift Supervisor, Residence Hall Officer, Staff Assigned to Gate House, School Security Coordinator, Second Floor Officer, Auditorium Officer,

Transportation/Gym Officer, and Vo-Tech Officer. Level III, Institution Exs. 1 and 2.

4. Grievant was often assigned the School Security Coordinator post at Johnson School. Below are the number of days per year that Grievant served as School Security Coordinator:

YEAR	NUMBER OF DAYS
1993	68
1994	79
1995	141
1996	148
1997	0

5. When Grievant was assigned School Security Officer, he would assign other COs to the various posts within Johnson School.

DISCUSSION

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). Class specifications are descriptive only and are not meant to be restrictive. The 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, 189 W.Va. 342, 431 S.E.2d 681 (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). 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).

Grievant asserts that when he is assigned to the Security Officer post, located at the Johnson

School, he is temporarily misclassified because in that position he assigns other COs to posts within the school. The class specification for CO IV is the first correctional officer specification to identify assigningduties to other COs. It provides, in pertinent part, “assigns duties to subordinates and supervises work performed.” Level IV, Gr. Ex. 2. Therefore, Grievant asserts that because he assigns COs to posts within Johnson School, he is working out of class, and should be compensated at the CO IV rate of pay.

However, the above mentioned task is the only Example of Work that Grievant performs within the CO IV class specification. Merely because Grievant performs one task listed in the CO IV class specification does not make him misclassified, or a CO IV. It is the predominant duties of a position which are class-controlling. Broaddus v. W.Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Moreover, that one task which Grievant performs is listed fourth out of eighteen Examples of Work mentioned in the CO IV class specification, and performs only one task, the eighth task out of the fourteen Examples of Work listed on the class specification for CO III. Again, these facts do not mean that Grievant is misclassified as a CO II. The Grievance Board has repeatedly held that class 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).

The mere fact that every task Grievant performs does not appear in the CO II specification does not mean he is misclassified. See Blake v. W.Va. Dept. of Health and HumanResources, Docket No. 95-HHR-043 (Apr. 30, 1996). Grievant failed to prove, by a preponderance of the evidence, that he was misclassified at any time relevant to this grievance.

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 Grievant must prove all of the allegations constituting his 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 are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

3. Class 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).

4. The mere fact that every task Grievant performs does not appear in the CO II specification does not mean he is

misclassified. Blake v. W.Va. Dept. of Health and Human Resources, Docket No. 95-HHR-043 (Apr. 30, 1996).

5. Grievant failed to prove, by a preponderance of the evidence, that he was misclassified at any time relevant to this grievance.

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:07/02/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

CO is an acronym used within the Division of Corrections for Correctional Officer.