JULIE C. BROWN,

Grievant,

v. DOCKET NO. 96-CORR-267

WEST VIRGINIA DIVISION OF CORRECTIONS and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

DECISION

The Grievant, Julie C. Brown, filed a grievance on or about February 1, 1996, stating:

> Beginning Oct. 7, 1994 and ending September 15, 1995 I worked out of job class performing the job duties of a Payroll Assistant. I posted all security staff's time and attendance along with compiling overtime payroll reports. I distributed paychecks, answered payroll questions about employee checks. Maintained a file system for reports. Had to determine overtime rate of pay as per number of hours worked in a workweek for Bi- monthly report. Sent correspondence to employees and also sent documents for verification of hours worked to Captains for approval. Compared daily watch roster's [sic] to monthly watch rosters for accuracy. Set aside special time frames for security staff to discuss paycheck issues. Handled checks that were to be mailed and while Moundsville was still in operation, was responsible to send MOCC checks to Moundsville. Filled out yellow overtime sheets and totaled final report for warden's signature.

As relief, she sought:

> Backpay [sic] for difference between OAII and Payroll Assistant. Also compenate [sic] me for 8.5 hours (per day) instead of 8.0 from Oct. 7, 1994 to July 1, 1995 I would request this to be paid with interest.

The grievance was denied at Levels I, II and III. Appeal to Level IV was made based upon the record developed below, including the transcript of the Level III hearing held May 9, 1996. The grievance became mature for decision on May 27, 1997. (See footnote 1)

FINDINGS OF FACT

1 1 . Ms. Brown was hired on September 19, 1994, to work as an Office Assistant II at Respondent's Mount Olive Correctional Center (MOCC) in the Human Resources Department. Tr. p. 1.

2 2 . At the time she was hired, MOCC was a newly functioning institution, in its initial stages of organizing and setting up processes and standards of operation. In addition, timesheets and other documents were processed at MOCC which originated at other institutions in other locations. Tr. pp. 1-2, 5, and 13-14.

3 3 . Ms. Brown spent approximately 25 hours per week posting employee time; three hours per week posting employee overtime; four hours per week consulting with employees; four hours per week calculating rate of pay for overtime and compiling overtime reports; two hours per week distributing paychecks; and two hours per week helping with master file sheets, filing timesheets and reports in the payroll office and adding sick and annual leave to timecards. (See footnote 2) Exhibit I-4.

4 4 . The overtime reports which Ms. Brown compiled included timekeeping and individual payroll information. The reports were forwarded to the Commissioner, the Central Office or the Auditor's Office, as appropriate, as created by Ms. Brown, without modifica- tion or further processing by any other person. Tr. p. 7.

5 5 . Ms. Brown posted employee time on several forms. Ms. Brown calculated the number of hours of overtime worked, and the rate and amount of pay due the employee for that overtime. She then put this information on a payroll sheet. The Payroll Assistant (See footnote 3) , Priscilla Coleman (See footnote 4) , compiled these reports occasionally, when she had time. Tr. pp. 7-9.

6 6 . The overtime report and calculations are an important part of the overall payroll. One person could not perform all payroll duties at MOCC, and responsibility for the institutional payroll was shared by Priscilla Coleman and Ms. Brown. Tr. pp. 10 and 13. 7 7 . Ms. Brown was responsible for the overtime reports which she compiled, but not for all of the payroll reports. Priscilla Coleman had more responsibility than Ms. Brown, and performed different tasks, although some tasks were performed by both she and Ms. Brown. Tr. pp. 9-10.

8 8 . Ms. Brown handed out pay checks. Ms. Brown discussed overtime and payroll issues with individual employees and answered questions concerning overtime and deductions. She listened to their complaints, reviewed records, corrected errors and/or explained policy and procedure in addressing these issues. Tr. pp. 11, 14, 21 and 28; Exhibit I-4, p. 2, items 16 and 17.

9 9 . Ms. Brown prepared overtime reports and calculations until Judy Strickland, a Payroll Assistant, was hired in June of 1995. Ms. Brown trained Ms. Strickland to prepare the overtime reports and

calculations. Ms. Brown also trained Linda Coleman, an Office Assistant III, to post and track employee time, and to compile the overtime report, beginning at the time of Linda Coleman's hiring in September 1995. Tr. pp. 2, 6-7, 12-13.

10 10 . Linda Coleman's job duties in the payroll office were maintaining time records for employees, including sick and annual leave, preparing overtime reports, calculating overtime, preparing 941's (See footnote 5) , and maintaining the time clock. Tr. pp. 23-25.

11 11 . Ms. Brown's work was sometimes reviewed by her supervisor, but not often. Her overtime report was prepared for the Commissioner. Tr. pp. 21-22.

12 12 . Grievant claimed to have worked through lunch periods, but did not specify how many times, or the dates upon which this occurred, or that she was required to do so by her employer.

13 13 . Respondent provides paid, duty free lunch periods to its employees, at its own convenience, when possible.

DISCUSSION

1. Working out of classification :

In non-disciplinary grievances such as this, Grievant bears the burden of proof. In order for her to prevail on her claim of misclassification, Grievant must prove by a preponderance of the evidence that her duties more closely matched those of another cited class specification, rather than that under which she currently is classified. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

Class specifications are read in "pyramid fashion" from top to bottom, with the different sections considered as going from the more general and more critical to the more specific and less critical as one reads down the length of the document. Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991). Thus, the "Nature of Work" section of a position specification is its most general and most critical section. Atchinson v. W. Va. Dept. of Health, Docket No. 90-H-444 (Apr. 22, 1991). This prior- itization scheme must be considered in ascertaining whether the current classification constitutes the "best fit" for Grievant's required duties. See Propst v. W. Va. Dept. of Health and Human Resources, Docket No. 93-HHR-371 (Dec. 3, 1993).

There need not be a "perfect fit", only the "best fit." Id. 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, and -609 (Aug. 31, 1990). However, the Division of Personnel's interpretation and explanation of the class specifications must be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W.Va. 342, 431 S.E.2d 681, 687 (1993). The West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their classification with a substantial obstacle to overcome in attempting to establish that they worked out-of-classification.

Grievant claimed that her job duties from October 7, 1994 to September 15, 1995 more closely matched those found in the class specification for Payroll Assistant than those for Office Assistant II. Pertinent sections of those specifications are as follows:

PAYROLL ASSISTANT

Nature of Work

Under general supervision, performs clerical work at the full-performance level by preparing hourly and salaried payrolls for computer processing and the issuance of paychecks. Has limited latitude to vary methods and procedures, as strict state and federal guidelines apply. Work is accomplished in a narrow time frame and accuracy is important. May prepare accompanying personnel-related information; may act as lead worker. Performs related work as required.

Examples of Work

Posts employees' hours worked, computes total hours worked for pay period, reviews figures for completeness and accuracy and makes necessary corrections.

Answers employees questions concerning pay, benefits, and deductions.

Maintains multiple record and filing system of payroll and employee benefit data.

Prepares tax deposits for federal, state and social security withholding.

Redeposits payroll checks when necessary.

Posts and maintains payroll ledgers.

Distributes paychecks to appropriate personnel.

Codes payrolls and related intra-government transfers for data entry.

Prepares hourly, salary and part-time payroll requests for computer processing.

Prepares data sheets and cards for new employees.

Compiles weekly, monthly, quarterly, annual and other payroll related reports.

Processes personnel information concerning each employee on payroll.

Performs routine clerical duties such as filing, typing letters, correspondence and memos, answering the telephone, posting and making copies.

Posts sick, annual and vacation leave for each employee from time cards and leave slips.

OFFICE ASSISTANT II

Nature of Work: Under general supervision, performs full-performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics (See footnote 6) **:** Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the understanding of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual problems. The steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

Examples of Work

> Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction, division or multiplication); corrects errors if the answer is readily available or easily determined.
>
> Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; reviews files for data and collects information or statistics such as materials used or attendance information.
>
> Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.
>
> Receives, sorts and distributes incoming and outgoing mail.
>
> Operates office equipment such as adding machine, calculator, copying machine or other machines requiring no special previous training.
>
> Types a variety of documents from verbal instruction, written or voice recorded dictation.
>
> Collects, receipts, counts and deposits money.
>
> Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.
>
> Posts records of transactions, attendance, etc., and writes reports.
>
> May compile records and reports for supervisor.
>
> 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.

Obviously, there is significant similarity between the two specifications, and either could apply to Ms. Brown's work. If there were no interpretation or explanation of how the two class specifications are applied, one might conclude that the Payroll Assistant specification was the best fit with Grievant's described job duties.

The Payroll Assistant specification itemizes the type of information posted and calculations performed by Grievant. It also lists at least one specific job duty performed by Grievant which does not appear on the Office Assistant II specification: distrib- uting paychecks. Further, Ms. Brown was replaced, at the end of the time period for which she requests relief, by an Office Assistant III and/or another Payroll Assistant, both of which are titles in Pay Grade 6. MOCC's original staffing plan called for two Payroll Assistants to handle the payroll. These facts all militate in favor of Ms. Brown's

assertion that the title Payroll Assistant best fit her job duties from October 7, 1994 to September 15, 1995.

However, the interpretation and application given by the Division of Personnel must be considered. Mr. Lowell D. Basford, Assistant Director for Classification and Compensation for the Division of Personnel, testified that Ms. Brown's position did not cover "the scope of responsibility and the duties indentified [sic] in the duties of a payroll assistant specification." Tr. p. 17. Mr. Basford explained that a Payroll Assistant has a "fairly broad realm of responsibility, in fact they're in charge of payroll" and that Ms. Brown's responsibility was a "slice of that overall area called payroll." Tr. p. 19. He pointed out that a Payroll Assistant handles many reports and records, such as internal revenue reports, withholding, and tax deposits, none of which Ms. Brown claimed to handle. He stated that Ms. Brown's responsi- bilities were "only a narrow sliver" of the broad spectrum of responsibilities a Payroll Assistant would have. Tr. p. 20.

Ms. Brown spent about three quarters of her time posting employee time, which Mr. Basford characterized as "a preparatory part of payroll, but it is not payroll." Tr. p. 20. This would fit under the Office Assistant II specification, he said. He added that Priscilla Coleman had indicated that Ms. Brown had less responsibility than she, and that she, Ms. Coleman, had a broader area of responsibility than Ms. Brown. Mr. Basford claimed that this testimony, and the Position Description form completed by Ms. Brown, confirmed that Ms. Brown's duties best fit the Office Assistant II classification.

Contrary to Mr. Basford's assumption, Ms. Brown's work was not merely preparatory, but was work on the payroll itself, at least in part. Tr. p. 10. However, his statement that Ms. Brown had a narrower area of responsibility, a "slice" of the Payroll Assistant position duties, is confirmed by Priscilla Coleman's testimony. Ms. Brown herself appeared to agree that she only had a "narrow sliver" of the broad spectrum of responsibility that a Payroll Assistant would have, in her closing statements. She did not argue that the Division of Personnel's interpretation was clearly wrong, in distinguishing the positions by a wide variety of tasks and broad responsibility for the entire payroll. The interpretation that to qualify for a Payroll Assistant position one must have broad responsibility and a wide variation in complex payroll tasks is not clearly erroneous, and is supported by the class specification.

Payroll Assistant position duties include types of activity which are varied, complex, and more

specifically oriented to payroll than the general duties noted on the Office Assistant II specification. However, an Office Assistant II might work on payroll-related matters as a part of his or her duties.

Ms. Brown did not show that her duties included the variety of complex, payroll-related tasks noted on the Payroll Assistant specification. She certainly had no broad responsibility for overall payroll. She only dealt with the overtime portion of payroll. She did not suggest that she dealt with any forms or reports, such as tax deposits, other than those dealing with hourly employee overtime. She did not indicate that she dealt with salaried payroll matters at all. Ms. Brown's evidence did not discuss each part of the Payroll Assistant specification which she claimed was addressed by her job duties. She did not discuss her job duties in sufficient detail to show that they fell under the Payroll Assistant specifications to the exclusion of those more generally-worded items in the Office Assistant II specification. The interpretation mandating that her duties best fit the Office Assistant II specification is not clearly wrong. Consistent with Blankenship, supra, I cannot conclude that Ms. Brown was working out of classification.

2. Compensation for lunch periods missed:

As to Ms. Brown's claim regarding missed lunch periods, she failed to establish that Respondent required her to miss her lunch break, or even that Respondent was required to provide a paid lunch break free of all duty. It is clear that Respondent's established policy is to provide a paid, duty free lunch period only when it is possible to relieve the employee of work, and that if an employee is required to eat at her duty station the employee is not entitled to additional compensation as a 40 hour workweek is scheduled for compensation. Exhibit I-1.

Patterson v. W.Va. Div. of Corrections, Docket No. 95-CORR-308 (Oct. 13, 1995), established that the Respondent is not required by law to provide any employee with a paid, duty free lunch period. That it chooses to provide this benefit to employees at its own convenience does not establish Grievant's entitlement thereto. Even if Grievant had shown her entitlement to a paid, duty-free lunch period, she did not prove that she did not receive it on any particular occasion or number of occasions. Moreover, she did not prove that missing lunch was anything other than voluntary on her part. Ms. Brown cannot prevail on this issue.

CONCLUSIONS OF LAW

1 1 . Grievant must prove all the allegations constituting the grievance by a preponderance of the evidence. Crow v. W. Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

2. Grievant must prove that her duties more closely match those of another cited class specification, rather than that under which she is classified. Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. Grievant failed to prove that the Division of Personnel's interpretation was clearly wrong in distinguishing the Payroll Assistant title by the variation in and complexity of tasks and broad responsibility for payroll, as opposed to the narrow portion of payroll tasks and responsibility an Office Assistant II might have.

4. Grievant failed to prove by a preponderance of the evidence that her job duties from approximately October 7, 1994 to September 15, 1995 best fit with the title Payroll Assistant, rather than Office Assistant II.

5. Grievant failed to prove that paid, duty-free lunch periods were legally required to be provided, or that she was denied any such lunch periods.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of the county in which the grievance occurred. 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: May 29, 1997 **JENNIFER J.MEEKS**

Administrative Law Judge

Footnote: 1 The parties' proposed findings of fact and conclusions of law were originally due on November 14, 1996. Grievant made the submission. On April 28, 1997, the West Virginia Division of Personnel was joined as a necessary party and was allowed to submit proposed findings of fact and conclusions of law, over Grievant's objection. Although permitted the opportunity, Grievant did not file any responsive brief.

Grievant's Exhibits from the Level III hearing were apparently misplaced when the record was prepared for submission. The parties were unable to locate or provide those exhibits. However, Grievant supplied surrogate exhibits received May 27, 1997. Receipt of these exhibits completed the record, and the receipt date is therefore considered the maturity date for this grievance.

References to the Level III transcript will be referred to as Tr. p.__. The pages were not numbered in the original, but I have numbered them by hand for ease of reference.

Footnote: 2

This information is taken from Ms. Brown's position description form dated March 25, 1996. It is assumed that this position description pertained to Ms. Brown's duties during the time period involved here, when she allegedly was working out of classification. Such was implied by Mr. Basford's testimony, and was not disputed by Ms. Brown.

Footnote: 3

The Payroll Assistant positions were sometimes also identified as "payroll clerk" in the testimony.

Footnote: 4

Priscilla Coleman, a Payroll Assistant, and Linda Coleman, an Office Assistant III, both testified at the Level III hearing. To avoid confusion, they are each referred to by their full names.

Footnote: 5

The nature of this form was not addressed in the testimony. Notice is taken that it is a form for reporting amounts withheld from employee compensation for federal income tax and Social Security.

Footnote: 6*The class specification for Payroll Assistant apparently does not have a "Distinguishing Characteristics" section.*