DANIEL CAIN,

Grievant,

v. **Docket No. 98-BEP-118**

BUREAU OF EMPLOYMENT PROGRAMS/

WORKERS' COMPENSATION DIVISION

and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Daniel Cain, states:

> I completed a position description form on 10/31/96. After reading the supervisor's comments, I signed the form and turned it in. Later, changes were made in the supervisor's portion of the position description form. Supplements were added, and I was not aware of this until recently. (See footnote 1) A (sic) desk audit was conducted on June 12, 1997, after Workers' Compensation requested it. I was then informed on June 25, 1997, that I had been demoted to a Data Analyst I. I filed a written appeal on July 1, 1997. My appeal was denied on July 22, 1997.

Relief sought is to "reverse the classification decision of June 25, 1997. Change my position from a Data Analyst I, back to a Data Analyst II."

This grievance was denied at all lower levels. Grievant appealed to Level IV, and a hearing was scheduled for May 21, 1997. At that time, Respondents decided they did not have anything further to add to the record and agreed to allow Grievant to supplementthe record in written form. (See footnote 2) Grievant submitted his written data on May 21, 1998, the day of the hearing, and the case became mature for decision on that date. (See footnote 3)

After a detailed review of the record in its entirety the undersigned Administrative

Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is currently classified as a Data Analyst ("DA") I, and is employed by the Bureau of Employment Programs ("BEP") in the Workers' Compensation ("WC") Division in the Office of Employer Accounts ("OEA") .

2. Prior to his reclassification on June 25, 1997, he was classified as a DA II.

3. Grievant had received this classification as a result of a grievance he filed shortly after he was reclassified as a DA I through the statewide reclassification project.

4. As the result of the grievance discussed in Finding of Fact 3, Grievant was reclassified as a DA II in 1993 or 1994. (See footnote 4) 5. In 1996, BEP asked the Division of Personnel ("DOP") to reevaluate all the DA positions in the Agency to see if they were properly classified, as many of the duties at BEP and WC, in terms of data gathering and analysis, had changed in recent years,

6. Grievant completed a new Position Description Form ("PDF") on October 31, 1996.

7. After Grievant completed his portion of the PDF, his first and second level Supervisors added their comments. These comments disagreed with Grievant's assessment of his exact duties. This section indicated Grievant did not analyze data, but only extracted and reported it.

8. The majority of Grievant's work consists of generating various monthly reports. These reports are either requested by his supervisor, Ms. Angela Shepherd, or are of a routine nature, such as a monthly report concerning the activity of the Attorney General's office in collecting past due accounts. Grievant goes to the proper data base, utilizes the proper computer program, extracts the requested data, and places it on a spreadsheet. Grievant examines the data he extracts for accuracy.

9. Infrequently, Grievant completes a special project requested by management

which involves analyzing the data he extracts.

10. Grievant is the only DA in the OEA, and he does not function in a lead capacity.

11. After reviewing Grievant's PDF, DOP stated he should be classified as a DA I. A subsequent desk audit confirmed this decision. Grievant appealed this decision to DOP, and it again confirmed its decision that he was correctly classified as a DA I.

The pertinent Class Specifications are listed below.

DATA ANALYST I

Nature of Work

Under general supervision, performs complex, full-performance level work in the collection, compilation and analysis of data obtained from research studies, source documents and surveys. Prepares a work strategy to obtain desired information and chooses sources. May employ mathematical formulae and refined analyses to emphasize important aspects or implications of each study. Initially, work is monitored by a supervisor and becomes more independent as proficiency increases. If employed by Employment Security's Labor and Economic Research Unit the employee may be required to travel in-state to test specific labor market areas. Performs related work as required.

Distinguishing Characteristics

This is basic research and data compilation work. After an employee becomes familiar with the various sources of information and with the data system and the types of programs it can run, the employee collects and analyzes a variety of data. The employee answers requests for data from internal and external sources, and compiles information for in-house publications which will be reviewed prior to publication. It is distinguished from the next level by the lack of time-sensitive assignments and special

projects such as data for immediate publication in trade or industry journals or governors release to the mass media, and the lack of responsibility for the accuracy of others' work. If employed by Employment Security the employee is required to develop a high degree of skill in estimating employment trends in the state. Positions in this class also assist other units/local offices in the analysis and resolution of data problems relating to automated reporting systems.

Examples of Work

Maintains files and records of data collected, compiled and analyzed.

Collects, compiles and analyzes data resulting from division programs, studies, and surveys.

Evaluates the information obtained and presents it through a variety of analytical techniques.

Writes memoranda, correspondence and reports.

Confers with supervisor concerning unique work procedures or problem areas.

Devises data collection procedures, data analysis plans and methods for dissemination of information.

Provides technical expertise to program personnel involved in evaluation efforts.

Learns to design and implement research studies and surveys; may proofread or typeset data for publication.

Analyzes automated reporting systems; write recommendations for system modifications; assist programmers in system modifications.

Assists unit/local office personnel in writing data processing requests.

May draft revisions to instruction manuals for such systems.

DATA ANALYST II

Nature of Work

Under limited supervision, performs full-performance work in the collection, compilation and analysis of data obtained from research studies, source documents and surveys. Prepares a work strategy to obtain desired information and chooses sources. Employs mathematical formulae and refined analyses to emphasize important aspects or implications of each study. Work is reviewed by a supervisor prior to publication or being released to the press, federal agencies, or agency management. If employed by Employment Security's Labor and Economic Research Unit the employee may be required to travel in-state to test specific labor market areas. Performs related work as required.

Distinguishing Characteristics

This is a more independent and responsible position which has gained a familiarity with the various information sources enabling the employee to answer time-sensitive

requests for data from the Governor's office, the Legislature, Federal Department of Labor or the media with accuracy. The employee is typically a lead worker who has developed the ability to locate and manipulate data quickly and accurately from a wide variety of source documents, or a specialist assigned on-going work requiring detailed knowledge of all aspects of a specific reporting system, program or research area. If employed by Employment Security, the employee must be skilled in estimating employment trends in the state. May also perform in a lead capacity in the analysis and resolution of data problems relating to automated reporting systems.

Examples of Work

Locates, verifies, and analyzes data gathered for immediate publication, press releases, or use by the Governor's office, the Legislature, Federal Department of Labor or other state agencies.

Designs and implements research studies and surveys used to gather information.

Evaluates and analyzes the information obtained from the research projects.

Makes recommendations to managers and other agency officials to carry out goals and objectives of the agency.

Writes memoranda, correspondence and detailed reports.

Confers with subordinates concerning unique work procedures or problem areas.

Revises on-line data entry and display systems.

Analyzes automated reporting systems; writes recommendations for system modifications; assists programmers in system modifications.

Answers inquiries from unit/local offices regarding reporting procedures and/or problem resolutions on automated systems.

Assists unit/local office personnel in writing data processing requests.

May draft revisions to instruction manuals and train staff on use of automated reporting systems.

Develops estimates of employment trends from basic data.

Devises data collection procedures, data analysis plans and methods for dissemination of information.

Provides technical expertise to program personnel involved in evaluation efforts.

Coordinates the work of the unit with federal and state agencies or local interest groups and committees.

May maintain files and records of data collected, compiled and analyzed.

May oversee normal operations of the unit in the supervisor's absence.

Travels to specific labor market areas to gain immediate knowledge of economic and labor market conditions.

DISCUSSION

In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited Personnel classification specification than the one to which he is 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., 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 ofa 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 Grievant's current classification constitutes the "best fit" for his required duties. Propst v. W. Va. Dept. of Health and Human Resources/W. Va. Div. of Personnel, Docket No. 93-HHR-371 (Dec. 3, 1993); Simmons v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class- controlling. Broaddus v. W. Va. Div. of Human Serv., 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 quality or requirement does not exclude

others. W. Va. Admin. Rules § 4.04(a). Even though a job description does not include all the actual tasks performed by a grievant, it does not make that job classification invalid. Id. at § 4.04(d). Finally, Personnel's interpretation and explanation of the classification specifications should be given great weight unless clearly erroneous. See W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993). Thus a grievant attempting to establish he is misclassified has a difficult task due to the deference afforded DOP in classification matters.

Grievant explained he did analysis when he checked for errors. The American Heritage Dictionary (2d. Ed., 1991), defines the term "analyze" as "[t]o separate into parts or basic principles so as to determine the nature of the whole; examine methodically". Id. at 106. Reviewing data for accuracy, while important, is not the same as analyzing data. See O'Dell v. Div. Of Corrections/ Div. Of Personnel, Docket No. 97-CORR-439 (May 22, 1998).

Grievant also explained he frequently did not do analysis, either because Ms. Shepherd did not specify she wanted analysis of the requested materials, or because he did not have time, with all his work, to provide this service. Grievant does extract requested data, and places it on a spreadsheet for Ms. Shepherd's review. Ms. Shepherd's unrebutted testimony is that she does the analysis of the data she receives from Grievant. It really does not matter why Grievant does not perform this task. The fact is he only infrequently analyzes the data he is asked to extract, thus he does not perform the duties of a DA II.

Grievant also argues he must be a DA II because he works under limited supervision as stated in the DA II Class Specifications. The DA I Class Specifications indicate the employee in this position will work more independently as his proficiency increases. This is what has happened to Grievant. A review of the Distinguishing Characteristics section of the Class Specifications clearly indicates Grievant does not perform the duties of a DA II. He does not "answer time-sensitive requests for data from the Governor's office,

the Legislature, Federal Department of Labor or the media with accuracy" nor does he function as "a lead worker who has developed the ability to locate and manipulate data quickly and accurately from a wide variety of source documents, or a specialist assigned on-going work requiring detailed knowledge of all aspects of a specific reporting system, program or research area."

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

Conclusions of Law

1. In order for Grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely match another cited Personnel classification specification than the one to which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. Grievant has failed to demonstrate by a preponderance of the evidence he is misclassified, or that the DA II classification is the "best fit" for his normal duties.

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: June 17, 1998

Footnote: 1

Grievant's supervisor, Angela Shepherd, indicated she had shared her additions with Grievant prior to submitting them to the Division of Personnel ("DOP"), and she had told him she would not change them. Whether Grievant knew or did not know of these comments is unimportant to the resolution of this misclassification grievance.

Footnote: 2

Several of the documents Grievant wished to submit at Level IV were not accepted as they were either copies of pages from the Level III transcript or materials that were already in the record. Grievant also wished to highlight that Mr. Lowell Basford did not submit his Level III proposals in a timely manner. The undersigned Administrative Law Judge explained this was an issue for the Level III Grievance Evaluator, and not an issue at Level IV.

Footnote: 3

Grievant was pro se, the Bureau of Employment Programs ("BEP") was represented by Mr. Thomas Rardin, BEP's Personnel Administrator, and DOP was represented by Mr. Lowell Basford, the Assistant Director at DOP in charge of the Classification and Compensation Section.

Footnote: 4

The same Level III Grievance Evaluator ruled on both of Grievant's reclassification grievances.