JAMES T. YOUNG,

Grievant,

v. **DOCKET NO. 96-HHR-177**

WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES/DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, James T. Young, filed the following grievance against his employer, West Virginia Department of Health and Human Resources/Welch Emergency Hospital, and the Division of Personnel, on October 26, 1995:

> Due to reorganization in Payroll/Personnel Office at WEH, additional duties & responsibilities were assigned, effectively changing my classification. Position description submitted to WV Division of Personnel, arbitrarily denied.
> Relief sought: To be properly classified as an Administrative Services Assistant I retroactive to April 1, 1995 and to be awarded back pay and interest from that date.

Levels one and two of the grievance procedure were waived, and a level three hearing was conducted on January 26, 1996. The Division of Personnel neither appeared nor submitted any written evidence at the level three hearing. Grievant testified on his own behalf and presented the testimony of his immediate supervisor at Welch Emergency Hospital, Cathy Addair, who concurred with Grievant that he should be reclassified to an Administrative Services Assistant I. No other witnesses testified, nor was any other written

evidence submitted by Respondent Health and Human Resources. Despite the lack of evidence to the contrary, the level three grievance evaluator found that Grievant failed to prove his case by a preponderance of the evidence, and denied the grievance on May 2, 1996.

Grievant appealed to level four on May 10, 1996, and following several continuances for good cause, and reassignment of the case to the undersigned Administrative Law Judge, hearing was held in Oak Hill, West Virginia, on December 16, 1997. Grievant's counsel moved to exclude any testimony offered by the Division of Personnel at that hearing based on its failure to appear or submit any written evidence at the level three hearing. The undersigned agrees that, especially in view of the absence of any testimony to the contrary, the decision at level three that Grievant failed to prove his case by a preponderance of the evidence, calls into question the objectivity of the level three grievance evaluator. However, this Grievance Board does not have any jurisdiction or authority over the lower levels of the grievance process. Moreover, as Grievant appealed and requested a hearing, there is nothing in the grievance process which would prevent any party from coming forth to offer testimony at level four. Therefore, Grievant's motion to exclude evidence from the Division of Personnel was denied.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 - Excerpt from "Working Woman Magazine" (January 1995).
Ex. 2 - Notary Public Certificate for James Young.
Ex. 3 - January 12, 1996 Memorandum from Robert L. Stephens, Jr. to All cabinet Members and All Agency Heads.
Ex. 4 - Administrative Services Assistant I Job Specification.
Ex. 5 - April 20, 1995 Memorandum from Cathy Addair to Lowell Basford.
Ex. 6 - March 31, 1995 Memorandum from Roger F. Topping to Garrett Moran.

Ex. 7 - West Virginia Administrative Rule, Section 4.
Ex. 8 - October 20, 1995 Memorandum from Cathy Addair to James T. Young.
Ex. 9 - Payroll Assistant Job Specification.
Ex. 10 - Organization Chart.
Ex. 11 - Supervisor II Job Specification.

Respondents' Exhibits

Ex. 1 - Position Description Form for Cathy Addair.
Ex. 2 - Position Description Form for James T. Young.
Ex. 3 - Application for Examination for Payroll Assistant of Lana Hall.

Testimony

Grievant testified in his own behalf and presented the testimony of Cathy Addair. Respondents offered the testimony of Lana Hall, Judy Bailey, and Cathy Addair.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by Respondent Health and Human Resources/Welch Emergency Hospital as a Payroll Assistant.

2. Cathy Addair, Director of Human Resources, is Grievant's immediate supervisor.

3. Prior to April 1995, Ms. Addair was responsible for the day-to-day supervision and operations of the Payroll Department.

4. In March 1995, Welch Emergency Hospital's Human Resource Department underwent a reorganization. At that time, Ms. Addair gave Grievant responsibility for supervision and operation of the Payroll Department, and Grievant has performed the duties associated with that position since April 1995.

5. Grievant performs direct day-to-day supervision of two other Payroll Assistants, Lana Hall and Judy Bailey.

6. On April 20, 1995, Grievant submitted a Position Description form to Lowell D. Basford, Assistant Director, Classification and Compensation, requesting that his position be reallocated to Administrative Services Assistant I. Ms. Addair supported Grievant's request to be reallocated. G. Ex. 5.

7. Mr. Basford performed a desk audit of Grievant's position and concluded on October 20, 1995, that he was properly classified as a Payroll Assistant.

8. Grievant performs the following duties, while serving as general supervisor over Ms. Hall and Ms. Bailey: (1) assigning job duties to Payroll Assistants; (2) completing performance evaluations; (3) handling disciplinary actions and making recommendations for hiring and firing; (4) recording employee man-hours; (5) preparing annual and sick leave reports monthly; (6) distributing payroll checks; (7) distributing job applications to the general public; (8) answering and routing all incoming calls to Payroll/Personnel; (9) entering data into Saint computer system; (10) posting employee wages on ledger sheets; (11) ordering supplies for Payroll/Personnel; (12) handling overflow of telephone calls; (13) preparing agency payrolls for payment; (14) preparing tax deposits for Federal, state, and Social Security withholding; (15) developing new methods to improve Payroll processing; (16) attending seminars regarding Payroll/Personnel; (17) orienting new hires regarding Payroll and benefits; and (18) serving as a Notary Public. G. Ex. 5.

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 that under which he is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Res., 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. Div. 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 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 HHR/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 duty or requirement does not preclude others. W. Va. Admin. rule, § 4.04(a); Coates v. W. Va. Dept. of Health and Human Res., Docket No. 94-HHR-041 (Aug. 29, 1994). Even though a job description does not include all the actual tasks performed by a grievant, that does not make the job classification invalid. W. Va. Admin. Rule, § 4.04(d). Finally, Personnel's interpretation and explanation of the classification 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, 687 (W. Va. 1993).

The classification specifications at issue in this grievance are set forth below.

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.

Knowledge, Skills and Abilities

- Knowledge of basic office clerical practices and procedures.
- Ability to learn payroll procedures and payroll computing processes.
- Ability to perform arithmetic calculations.
- Ability to review payroll documents for completeness and to detect and correct errors.
- Ability to type and operate a computer terminal.

Ability to prepare all payroll related reports.
Ability to understand and interpret oral and written instructions.

ADMINISTRATIVE SERVICES MANAGER I

Nature of Work: Under administrative direction, manages an organizational unit providing administrative and support services (i.e., budgeting, purchasing, personnel, business operations, etc.) in a division where operations, policy, work processes, and regulatory requirements of the unit are predictable and stable. Involves the supervision of professional, technical, and clerical employees. The scope of responsibility includes planning the operations and procedures; directing the work of employees; developing employees; evaluating unit operation; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations and policies. Performs related work as required.

Distinguishing Characteristics: The Administrative Services Manager I is distinguished from the Administrative Services Manager II by the responsibility to manage a department-wide administrative support function or a secondary mission, or unit of a primary statewide mission of the department.

Examples of Work

Plans, develops, and executes through professional, technical, and clerical staff, a secondary mission of a statewide program or a primary department-wide program.
Directs the daily operations of the staff and may direct regional or other field staff.
Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.
Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.
Evaluates the operations and procedures of the unit for efficiency and effectiveness.
Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.
Determines need for training and staff development and provides training or searches out training opportunities.
Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.
Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.
Interprets statutes, regulations and policies to staff, other managers, and the public.
May serve as a witness in grievance hearings or other administrative hearings.
Prepares reports reflecting the operational status of the unit and or agency programs.

Knowledge, Skills and Abilities

May participate in local conferences and meetings.
Knowledge of the organization and programs of the agency or department.
Knowledge of the principles and techniques of management, including organization, planning, staffing, training, budgeting, and reporting.
Knowledge of state government organization, programs and functions.
Knowledge of state legislative processes.
Knowledge of federal, state, and local government relationships as they relate to the program, mission and operations of the unit and/or department.
Ability to plan, direct, and coordinate the program and administrative activities of the unit.
Ability to supervise others.
Ability to evaluate operational situations, analyze data and facts in preparation for administrative and policy decisions.
Ability to establish and maintain effective working relationships with other government officials, employees, and the public.
Ability to present ideas effectively, both orally and in writing.

SUPERVISOR II

Nature of Work: Under general supervision, performs full-performance supervisory work overseeing a section of employees engaged in technical work requiring advanced training. Work is reviewed by superiors through results produced or obtained in meetings. May represent the agency before committees and the general public. Performs related work as required.

Distinguishing Characteristics: Supervisor II is distinguished from Supervisor I by the nature of the work supervised and by the level of collateral work assigned to the position. The nature of work supervised is typically of a technical nature as opposed to clerical at the Supervisor I level. May be a working supervisor performing related work of a more advanced level than the subordinates supervised.

Examples of Work

Plans, assigns, and coordinates the work of subordinates; trains employees in work methods.

Interprets and applies departmental policies and regulations for employees and others in state government.

Advises subordinates of changes in policy and procedure.

Responds to questions or problems of subordinates; restructures work procedures to align with changes in state or federal laws and programs.

Performs field visit inspections and spot-checks records to document activities and evaluate the performance of the unit.

Ensures that equipment, supplies, and materials are available to complete work.

Represents the unit before agency management, administrative hearings, business or civic groups, or other forums.

Performs employee performance evaluations, approves annual and sick leave, and recommends hiring, disciplinary actions and other employee activity.

Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Knowledge, Skills and Abilities

Knowledge of office methods and procedures; investigative procedures and techniques or technical specialty practice and methods.

Knowledge of departmental plans or procedures.

Ability to apply and instruct others in the application of governing laws, rules, and regulations.

Ability to make composite detailed reports based on individual reports of subordinates.

Ability to communicate effectively in oral and written form.

Ability to plan, assign, and coordinate the work of employees engaged in duties of a technical nature or field inspection work.

Respondents object to Grievant's submission of the Supervisor II classification specification at level four as a possible position which would best fit his duties and responsibilities. A submission of an alternative classification specification constitutes a change in relief requested, as opposed to a substantial change in the grievance itself. The grievance remains the same as it always has been: that Grievant is misclassified. That Grievant has found another classification specification since that time that might better fit

his duties and responsibilities does not change the grievance. Thus, the Supervisor II classification specification will be entertained as a possible better fit for Grievant's duties, as well as the Administrative Services Assistant I classification specification originally identified in the grievance statement.

There is no argument that Grievant is primarily responsible for the day-to-day operations of the payroll department, nor was there any argument or evidence that Grievant was not performing these duties. More importantly, there was no real dispute that Grievant was performing the supervisory duties and functions identified above, as well as his payroll responsibilities. Respondents merely make the conclusory statement that, despite his performance of those supervisory duties, Grievant simply was not a supervisor, but rather was a lead worker. Of course, that is the issue to be decided in this misclassification grievance.

Mr. Basford, in his proposed findings of fact and conclusions of law, suggests that Grievant could not be a supervisor unless he supervised an office with three or more employees, presumably other than himself. There is nothing in either the Supervisor II or Administrative Services Assistant I classification specifications which creates such a limitation. No interpretation or construction of a term used in a job description 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).

Respondents also suggest for the first time in their proposed findings, that it is the other two Payroll Assistants, Ms. Hall and Ms. Bailey, who are misclassified, not Grievant. Respondents failed to raise this issue at either level three or level four of this grievance procedure, and it is improper to suggest now that Grievant cannot possibly be misclassified

as a Payroll Assistant because the other two employees in that office are misclassified. The undersigned views this late argument as merely a grasp at the last straw in order to preserve the Division of Personnel's conclusion that Grievant is not misclassified as a Payroll Assistant.

Indeed, the testimony and evidence clearly show that Grievant is misclassified as a Payroll Assistant, even if Ms. Hall and Ms. Bailey are also misclassified. That they may be misclassified does not change the fact that Grievant is their immediate supervisor, conducts their performance evaluations, authorizes their leave usage, and generally acts in a supervisory capacity over their work. While Ms. Hall and Ms. Bailey both acknowledged that Cathy Addair, as the Director of Human Resources, is their ultimate "boss" or supervisor, that does not detract from the fact that Grievant directly supervises their work on a day-to-day basis. To suggest that just because there is another superior within the same office, Grievant cannot possibly be a supervisor, is ludicrous. Taking that argument to its extreme, only the Director of Health and Human Resources could be considered any employee within that agency's actual "supervisor".

At level four, Cathy Addair reviewed the Supervisor II classification specification for the first time in relation to Grievant's duties, and determined that it was the better fit, compared to the Administrative Services Assistant I classification specification. Specifically, Ms. Addair testified that Grievant really does not have administrative duties as outlined in the Administrative Services Assistant I specification. However, Grievant clearly performs the supervisor work outlined in the Supervisor II specification. Respondents argue that the Supervisor II specification is not the best fit because it refers to supervision of "technical" work. Respondents contend that the payroll is "clerical" work,

referring to the Payroll Assistant specification. The Payroll Assistant specification does refer to "clerical" work, but a close reading of that document indicates that it is the performance of "clerical" work that dictates the Payroll Assistant assignment, not that all payroll work in general is "clerical". In the instant case, it was shown through the testimony of Ms. Hall and Ms. Bailey that they are performing the "clerical" work of the payroll department. Grievant does perform some of that work, also, but also performs many other tasks within the payroll department, such as coordination of benefits, that would fall outside the general "clerical" nature of work. Therefore, I find that the Supervisor II classification specification is the best fit for Grievant's job duties and responsibilities.

CONCLUSION OF LAW

Grievant has proven by a preponderance of the evidence that the Supervisor II classification specification is the best fit for his job duties and responsibilities within the Payroll Department of Welch Emergency Hospital.

Accordingly, this grievance is **GRANTED** and Respondents are hereby **ORDERED** to reclassify Grievant as a Supervisor II, and to compensate him by paying backpay, with statutory interest at the rate of 10% per annum, for the difference, if any, between Grievant's salary paid and that which he would have made as a Supervisor II for the time period of April 1, 1995, until the date the reclassification is implemented by the Division of Personnel.

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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MARY JO SWARTZ
Administrative Law Judge

Dated: February 26, 1998