MARY E. LOVEJOY,

Grievant,

v. **Docket No. 97-HHR-502**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Mary E. Lovejoy, employed by the Department of Health and Human Resources, Bureau of Public Health, Division of Engineering (Respondent), as an Office Assistant II, filed a level one grievance on April 10, 1997, in which she challenged her classification, and requested reclassification to Office Assistant III. Following denials at levels one, two, and three, Grievant advanced the matter to level four on November 21, 1997. The parties agreed to submit the grievance for decision based upon the lower-level record, supplemented with proposed findings of fact and conclusions of law. The grievance became mature for decision with the filing of the final response by the Division of Personnel (Personnel/Respondent) on January 22, 1998. (See footnote 1)

The following findings of fact are made upon a review of the record in its entirety.

Findings of Fact

1. At all times pertinent to this matter Grievant has been employed by Respondent Department of Health and Human Resources/Bureau for Public Health, and assigned to the Certification/Training section of the Environmental Health Services unit as an Office Assistant II (OAII).

2. Prior to December 1992, Grievant was classified as a Clerk III; however, following implementation of the statewide reclassification project, she was classified as an OAII. Grievant didnot protest this classification.

3. In February 1997, Grievant filed a request with the Division of Personnel (Personnel) for reallocation to OAIII, based upon increased complexity of duties assigned to her since the December

1992 reclassification. This request was denied on April 8, 1997, based upon a finding that Grievant was properly classified.

4. Following Personnel's denial of her request for reclassification, Grievant requested that a desk audit be conducted on her position. This request was granted and Virginia Fitzwater, Senior Personnel Specialist, performed the audit on May 16, 1997.

5. Following the desk audit, Personnel again determined that Grievant was properly classified as an OAII.

6. Grievant performs the following duties: 1) maintains files for the public water system operations (Class ID through Class IV) and well drillers; 2) processes incoming mail; 3) processes certification approvals and coordinates responses; 4) types renewal cards, certificates, letters and other forms; 5) enters documents and forms into correspondence log; 6) prepares and gathers data for EPA reports; 7) types examinations that are given to water operators; 8) administers examinations when Training Officer is absent; 9) accompanies Training Officer to Cedar Lakes when necessary to help monitor classes; 10) attends the annual “EXPO” at the Civic Center to assist the Training Officer in passing out literature and answering questions; 11) types study material; 12) composes correspondence to water operators and well drillers; 13) screens all incoming calls and sets up appointments for supervisors; 14) serves as receptionist to the general public; and 15) word processing.

Grievant asserts that Ms. Fitzwater did not fully review the information, includingengineering regulations, policies and protocol, and a notebook that had been prepared for the desk audit. She argues that based upon the forty-five (45) minute review which overlooked vital information, the audit was flawed and improperly denied her reclassification as OAIII. Respondents argue that Grievant is properly classified.

Discussion

Because this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 **§**4.19 (1996); Payne v. W. Va. Dept. Of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code §29-6A-6. More particularly, in

order for a grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than that under which she 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., 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 generally 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 her required duties. Simmons v. W. Va. Dept. of Health & Human Resources, 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 Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

The relevant portions of the classification specifications for OAII and OAIII positions at issue in this case are reproduced herein as follows:

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

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.

OFFICE ASSISTANT III

Nature of Work

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit. Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

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 and analyze data for management.

Grievant bases her request for the higher classification upon the fact that her duties have increased since 1992. She specifically relies upon the fact that she works independently a great deal of the time, relieving the HHR Associate and the Chief Sanitarian of many responsibilities. Grievant testified that she composes correspondence which is sent out in her own name, and responds to telephone inquires whenever possible. Grievant emphasizes that she must be familiar with departmental regulations so that she may respond to inquires from department personnel, system administrators, county sanitarians, and the general public. She notes that questions posed to her may not always call for a simple answer, and that she may have to interpret and apply the regulations to a specific set of circumstances. Grievant also offered several examples of HHR employees who had been reallocated to OAIII, and opined that her duties were comparable.

Lowell D. Basford, Assistant Director of Personnel's Classification and Compensation Section, stated that Grievant's duties fall within the nature of work statement for OAII because she performs multiple-step clerical tasks and interprets and applies office procedures, rules and regulations. He continued, that upon review it was determined that Grievant's duties did not rise to the advanced level, or that the work processes she performs were of a complex or complicated nature required of an OAIII. He explained that these conclusions were made from findings that Grievant's duties are structured with clearly defined policies, procedures, and regulations as guides. Additionally, it was determined that her public contacts are routine in nature with a well-defined customer group, and that her work is repetitive in nature. Mr. Basford concluded that the interpretation and application of policies, rules and regulations, a duty upon which Grievant relies for reallocation, is listed in the OAII class specification.

The evidence of record supports Grievant's claim that her workload has increased in quantity and degree of difficulty since 1992; however, her predominant duties, including interpreting and applying the regulations, are more consistent with the classification OAII than the OAIII classification. While some of the duties performed by Grievant are contained in the Nature of Work and Examples of Work portions of the OAIII classification description, as well as the OAII classification description, this fact does not render her misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991).

In addition to the foregoing findings of fact and discussion the following conclusions of law are proper.

Conclusions of Law

___1. In a grievance which does not involve a disciplinary matter, the grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code §29-6A-6.

2. Grievant has not proven by a preponderance of the evidence that the classification of Office Assistant III constitutes the “best fit” for the duties she performs. See Simmons v. W. Va.Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

3. Although Grievant performs some duties that are outside her current classification as an Office Assistant II, this does not render her misclassified. Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). See Div. of Personnel Administrative Rules, Series I (Amended), §4.04(d) (1993); Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

4. Personnel's interpretation of the classification specifications for the positions of Office Assistant II and Office Assistant III, as they apply to the duties being performed by Grievant, are not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

5. Grievant's job duties best fit within the classification specification for Office Assistant II.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred, 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.

DATE: 2-24-98 _____

SUE KELLER

Senior Administrative Law Judge

Footnote: 1

This matter was transferred to the undersigned for administrative reasons on January 13, 1998.