DONNA ADKINS-MONTIE,

Grievant,

v.

Docket No. 97-HHR-017

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES/HUNTINGTON STATE HOSPITAL and

WEST VIRGINIA DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Donna Adkins-Montie, Grievant, is a classified employee of Huntington State Hospital ("HSH"), a hospital under the direction of the Department of Health and Human Resources ("HHR"). Grievant disagrees with her classification and states "WV Division of Personnel has incorrectly assigned my classification as Secretary I ("Sec I"). My job duties are more in line with [an] Administrative Services Assistant I ("ASA I")." Grievant's requested relief was "to be properly classified with back pay and interest." (See footnote 1) This grievance was waived at Levels I and II and denied at Level III. This grievance was appealed to Level IV, and a hearing was held on March 20, 1997. After submission of the parties' proposed findings of fact and conclusions of law, this appeal became mature for decision on August 14, 1997. (See footnote 2) After reviewing the record in its entirety the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed in the Human Resources Department at HSH as a Sec I. She works under the direction of Ms. Kieth Anne Dressler, the Director of Human Resources, who is classified

as an ASA III.

2. Although there is some overlap in the way Grievant listed her duties on her Position Description Form ("PDF"), the majority of Grievant's time is spent in: Preparing for and attending meetings, including grievance hearings, in-service training, and orientation of new staff; Composing and typing memorandums and reports for both her and Ms. Dresslers' signature; Interpreting hospital and division rules for staff and the public; Informing individuals of available positions and benefits; Reviewing and distributing mail; Preparing confidential correspondence; Serving as lead worker and assigning tasks as appropriate; and Scheduling and arranging meetings for Ms. Dressler.

3. Grievant also serves as the EEO counselor at HSH. (See footnote 3) These duties are intermittent and are in addition to her other duties. Grievant did not estimate, at hearing, the amount of time she spent in EEO duties during 1995, but the PDF she completed on January 15, 1996, states EEO duties consumed 5% of her time. Grievant did report athearing the amount of time she spent involved in EEO duties for 1996 and for the first three months of1997 as approximately 22%. Grievant spent an average of 17% of her time engaged in EEO activities during the time span of her grievance. Grievant spent a considerable amount of time in 1996 composing and compiling the Affirmative Action Plan that all facilities are required to have. (See footnote 4) The amount of time Grievant spent performing EEO duties varied widely during the year.

4. EEO duties consist of conducting investigations into complaints; conducting in-service training; preparing and mailing reports and memos, and attending meetings. EEO duties are not considered when a position is classified as these duties are assigned to many different classifications, such as Office Assistant II's and Directors. (Test. L. Basford, Level IV Hrg.).

5. During the month of December 1996, while Ms. Dressler was absent, Grievant served as Acting Director of the Human Resources Department. Grievant was not promised, nor did she ask for, any type of temporary upgrade while she was in this position. Although not appointed as Acting Director except for December of 1996, Grievant is viewed as the "Go To" individual when Ms. Dressler is not in the office and a question cannot wait.

6. The Human Resources Director at Sharpe Hospital does not have a secretary. Sharpe Hospital does have an ASA I. The two hospitals are different inpurpose and size. Testimony did not demonstrate that these hospitals were organizationally the same.

7. The Sharpe Hospital ASA I performs tasks Grievant does not perform. These duties include:

Coordinating all information relating to WV-11's and all personnel actions; Dealing closely with supervisors in the selection of applicants; Maintaining data for statistical reports; Gathering data for the Quality Assurance Reports; and Directly supervising three Office Assistants. (See footnote 5)

8. Grievant performs some tasks that this ASA I does not. Many of the tasks Grievant performs that this ASA I does not are secretarial in nature, such as; Drafting and typing letters, reports, and memos; Greeting visitors and staff; Preparing schedules and arranging meetings for the Human Resource Director; Presenting in-service training; Assisting the Human Resource Director in the grievance procedure by gathering data, making copies, and maintaining records; and Approving leave requests and attending meetings in the absence of the Human Resource Director. (See footnote 6)

9. Many of the tasks these two employees perform that are alike are minor administrative tasks such as: Responding to inquiries about personnel issues; Givinginformation about postings and vacancies and the personnel issues raised by these; Reviewing all mail; Interpreting hospital, Division of Personnel ("DOP"), and HHR rules; Assisting the Human Resource Director; and Composing correspondence for the Human Resource Director.

10. Grievant relieves her supervisor of many minor administrative duties, and occasionally assigns and directs the work of others. She also completes complex procedural assignments, independently. She works for a specific individual overseeing a section or division.

The pertinent sections of the two job classifications at issue are reprinted below:

SECRETARY I

Nature of Work

Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.

Distinguishing Characteristics

This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine

correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.

At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks are defined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work is reviewed, usually upon completion, for conformance to guidelines. Contacts at thislevel are frequent and often non-routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Examples of Work

Responds to inquiries where knowledge of unit policy, procedure, and guidelines is required.

Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Signs, as directed, supervisor's name to routine correspondence, requisitions, and other documents.

Schedules appointments and makes travel arrangements and reservations for supervisor.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports.

Types reports, manuscripts, and correspondence using standard typewriter or word processing equipment; proofreads and corrects to finished form.

Gathers, requests, and/or provides factual information, requiring reference to variety of sources.

May delegate routine typing, filing, and posting duties to subordinate clerical personnel.

May maintain basic bookkeeping records for grants, contract or state appropriated funds.

May prepare payrolls, keep sick and annual leave records, act as receptionist and perform other clerical duties as needed.

May attend meetings take notes and relay information; typically would not interpret information or speak on behalf of supervisor.

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ADMINISTRATIVE SERVICES ASSISTANT I

Nature of Work

Under general supervision, performs administrative work in providing support services such as fiscal, personnel, payroll or procurement in a small division or equivalent organization level. May function in an assist role or in a specialized capacity in a large agency or department. Develops or assists in developing and implements plans/procedures for resolving operational problems and in

improving administrative services. Work is typically varied and includes inter- and intra-governmental and public contact. Performs related work as required.

Distinguishing Characteristics

Positions in this class are distinguished from the Administrative Services Assistant II by the size of the unit served and by the independence of action granted. Positions in a small agency or division may be responsible for a significant administrative component; other positions assist an administrative supervisor in a large state agency. Authority to vary work methods or policy applications or to commit the agency to alternative course of action is limited.

Examples of Work

Confers with inter- and intra-agency personnel to transact business, gather information, or discuss information; may be in a position with public or federal government contact.

Gathers and compiles information for state records; writes reports, balances tally sheets, and monitors inventories, purchases, and sales.

Updates records and contacts employees to gather information; represents the supervisor or unit in the area of assignment at in-house meetings.

Maintains files of information in hard copy files or electronic format; runs reports for regular or intermittent review.

Assists in determining the need for changes in procedures, guidelines and formats; devises a solution; monitors the success of solutions by devising quantitative/qualitative measures to document the improvement of services.

Assists in the writing of manuals in the area of assignment; clarifies the wording and describes new procedures accurately. Grievant's testimony revealed she works under general supervision and performs "full performance level work and multi- step

clerical tasks." She interprets and applies office procedural rules and regulations in routine settings. Grievant utilizes a word processor, types multiple documents, including minutes of department meetings, receives and routes mail and messages, and maintains office files and records. These are duties performed by OA II's.

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DISCUSSION

In order for 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 match another cited Personnel classification specification than the one to 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., topto 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). The "Nature of Work" section of a 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 her 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/W. Va. 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 Services, Docket No. 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. Div. of Personnel 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. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

The Sec I Job Specification indicates the individuals in this classification “relieve [their] supervisor of clerical and minor administrative tasks, exercising discretion and independent judgement.” (Sec I

Job Specifications, “Nature of Work”). A Sec I is to perform support duties for an individual who is over a section or a division and “composes routinecorrespondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information.” (Sec I Job Specifications, “Distinguishing Characteristics”). Additionally, a Sec I has limited authority to speak for her supervisor. Id. Further, a Sec I must be able “to complete complex procedural assignments” and determine appropriate procedures by reviewing “a variety of resources, methods, and processes.” Id. A Sec I is “responsible for [her] work, and may assign and direct the work of others” and contacts with others are” frequent and often non-routine and/or of a confidential or sensitive nature” and require tact and judgement. These phrases describe the predominant duties involved in Grievant's work. The “Examples of Work“ also correspond with the majority of Grievant's duties in that she answers the phone, handles the mail, composes letters, maintains some records, and attends meetings and speaks at those meetings as directed by Ms. Dressler. This description of what is expected of a Sec I, and what differentiates this classification from the more clerical Office Assistant series, applies to Grievant as the majority of her duties fall into the above-described areas.

However, it does appear Grievant performs some duties outside of her job description, and some of the administrative duties she performs, such as conducting EEO investigations involve more than just minor administrative acts. This finding does not appear to benefit Grievant for two reasons: 1) these duties do not comprise a majority of her time, only approximately16% on a yearly basis; (See footnote 7) and 2) the unrebutted testimony of Mr. Lowell Basford, DOP's Assistant Director of Compensation and Classification, is that since EEO duties are intermittent they are not considered in classifying the position. (See footnote 8)

Even if the EEO duties were combined with the other duties Grievant performs that are more than just minor activities, these would still not comprise a predominant amount of her time. Since the predominant duties of the position are class-controlling, the fact that Grievant occasionally performs tasks outside her written job description does not elevate her position to that of an ASA I. Broaddus, supra. Employees can perform duties outside their job description as the class specifications are to characterize the type of work to be performed, not to identify every task of the position. Class specifications are descriptive, not exhaustive, and are to give a "flavor" of the difficulties, complexities, and duties of the position. Hager v. Health and Human Resources, Docket No. 95-

HHR-241 (Sept. 29, 1995).

Additionally, a review of Grievant's testimony indicates she is quite confused about what duties a Sec I is expected to perform. She seems to have accepted the layperson's typical definition of secretarial duties and has adopted a definition similar to the one in The American Heritage Dictionary which defines secretarial work as handling correspondence, keeping files, and doing clerical work. The Division of Personnel has chosen to divide the wide variety of potential secretarial and/or clerical duties into two class series: office assistants and secretaries. Sec I's are expected, within this hierarchy, to perform complex tasks independently, relieve their supervisor of many administrative duties, assign work to others as needed, attend meetings and represent the supervisor at these meetings in herabsence, and respond to non-routine questions of a serious and confidential nature. Grievant's definition of a secretary as someone who files, types, and answers the phone is extremely limiting, incorrect, and is somewhat remarkable in that she works in the human resources area and is expected to field questions about job duties.

Because the predominant duties of the position are class controlling, the fact Grievant performs some tasks, not specially identified in her current classification, a portion of the time, does not invalidate her classification. Collier, supra; Coates, supra; Broaddus, supra. Grievant has not met her burden of proof and has not demonstrated Personnel's determination that the predominant portion of her duties were within her classification was "clearly wrong." Francis/Sayre v. Dept. of Health and Human Resources/Office of Social Servs. and Div. of Personnel, Docket No. 95-HHR-077 (July 28, 1995).

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. The predominant duties of the position in question are class controlling. Collier, et al. v. W. Va. Dept. of Health and Human Resources/Off. of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-039 (Sept. 19, 1994); Broaddus v. W. Va. Div. of Human Servs., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

2. Personnel's interpretation of the class specifications for the position in question, as they apply to the duties Grievant performs, are not clearly erroneous and, therefore, should be accorded great weight. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1993); Kyte v. Dept. of

Health and Human Resources and Dept. of Admin./Div. of Personnel, Docket No. 94-HHR-030 (Sept. 21, 1994). 3. Although Grievant does perform some duties outside her current classification as a Secretary I, this does not render her misclassified. Kyte, supra; Dooley v. W. Va. Dept. of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991).

4. A review of the evidence demonstrates Grievant has not met her burden of proving the Secretary I position constitutes the "best fit" for her required 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: March 19, 1998

Footnote: 1

The Sec I classification is in pay grade 7, while the ASA I classification is in pay grade 9.

Footnote: 2

After the hearing, Grievant moved to supplement the record, and this motion was granted over the objections of Respondents. All parties were offered the opportunity foran additional hearing date or to respond, in written form to the additional evidence. The parties did not want an additional hearing, but Respondents did respond to the supplemental materials.

Footnote: 3

Grievant believes all her EEO duties are administrative. This is clearly not the case as some of them are clerical and secretarial in nature such as mailing reports and making phone calls.

Footnote: 4

It is assumed that this report does not have to be completely rewritten every year, and Grievant would now only be expected to update and supplement this document on a yearly basis.

Footnote: 5

Although Grievant assigns work to the Office Assistants in HSH's Human Resources Office, she does not supervise these individuals in that she does not perform the duties normally required by the Division of Personnel to be labeled as a Supervisor, such as: completing evaluations and being completely in charge of their assignments. Apparently, Ms. Dressler retains this duty as Grievant did not identify anyone she directly supervised on her PDF.

Footnote: 6

Grievant attempted to prove her case by stating her duties were different from the duties performed by another Sec I at HSH. As the evidence submitted to prove this point was the unsigned and undated evaluation form of this individual and the PDF of this individual was not submitted into evidence, this issue was not examined in detail.

Footnote: 7

This number represents the average of time Grievant has spent performing all of her EEO activities during the time in question for this grievance.

Footnote: 8

Clearly, if the duties comprise a predominant amount of employee's time the position would then would be classified by these duties. (Grievant's Supp. Exh.).