

MARGARET BRIGGS,

Grievant,

v. Docket No. 00-HHR-131

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/BOARD OF MEDICINE

and DIVISION OF PERSONNEL,

Respondents.

DECISION

This grievance was filed by Grievant Margaret Briggs against her employer, Respondent, Department of Health and Human Resources/Board of Medicine ("HHR"), on January 18, 2000, alleging she was misclassified as a Secretary II. [\(See footnote 1\)](#) As relief she sought to be classified as an Administrative Services Assistant I, back pay, and "any and all other relief permitted under law." As this was a misclassification grievance, the Division of Personnel ("DOP") was made an indispensable party at Level III. [\(See footnote 2\)](#) The following Findings of Fact are made based upon the record developed at Level III, and the stipulations entered into on June 29, 2000.

Findings of Fact

1. Grievant has been employed by HHR at the West Virginia Board of Medicine since 1984. Her position was reallocated from Secretary I to Secretary II by DOP on November 10, 1999, after she submitted a position description form, but the reallocation was not effective until June 1, 2000, because a WV-11 form was not submitted by the Board of Medicine to put this classification change and pay increase into effect. She is secretary to the Executive Director of the Board of Medicine, Ronald Walton.

2. Grievant supervises employees hired as temporary workers from May to October each year, to assist in processing renewal applications, and one Office Assistant II. She also oversees and assigns tasks to an Office Assistant II, an Office Assistant I, two Office Assistant III's, a Health and Human Resources Associate, and an Information Systems Coordinator, who are full-time employees.

3. Grievant attends various committee meetings and takes notes. The Board of Medicine has 15 members. The Board meets every other month on a Monday. Grievant attends these meetings and prepares the Board minutes. She does not prepare the Board agenda, but she schedules the meetings, reserves the room, and sets it up. She makes sure Board members are notified of meetings, and that a notice is filed with the Secretary of State. It is her responsibility to make sure the Board acts in compliance with rules and regulations, including assuring the Board goes into executive session when appropriate.

4. Grievant processes WV-11's; reviews resumes and applications for employment, and conducts interviews for support staff; verifies employment histories; makes hiring recommendations for temporary staff; assists in training employees; proofreads most of the documents leaving the office for errors and to assure compliance with policies and procedures of the Board of Medicine; compiles data to be included in the annual report of the Board of Medicine to the Governor and Legislature and is responsible for getting it published; is responsible for the newsletter distributed to doctors, and writes some of the articles for the newsletter; decides what information to distribute to the media, agencies, and others regarding disciplinary actions, and when to release the information, after consulting with in-house counsel; oversees publication of the annual directory of physicians; is responsible for publication of the rules booklet each year, and composes and compiles information for inclusion in it; is responsible for development of the office procedure manual and updating it; is responsible for assuring the office is in compliance with federal and state employment laws; is responsible for communicating policy changes to staff; takes care of getting equipment repaired, and contacts the building landlord with building problems; prepares monthly attendance records; maintains overtime records and mileage records; assists in purchasing items for the office; monitors physician compliance with orders and notifies the Executive Director of noncompliance; suggests changes in procedures; assists in researching information; and oversees the random audit of continuing medical education and determines compliance with audit. She also types, makes copies, assembles reports, files, answers the telephone, screens calls, answers questions from the public,

and composes correspondence. Grievant did not indicate how much time she spends performing any one duty.

Discussion

Grievant bears the burden of proving her allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997). 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 match those of another cited classification specification than the classification to which she is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). DOP's classification specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These 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 the Work" section of a classification specification is its most critical section. See generally, Dollison v. W. Va. Dep't of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989).

The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for her required duties. A grievant may perform some duties outside her job description and still be properly classified. Dooley v. W. Va. Dep't of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991). 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); Simmons v. W. Va. Dep't of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broadus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting her classification with a substantial obstacle to overcome in attempting to establish that she is misclassified.

The relevant portions of the classification specifications for Secretary II and Administrative Services Assistant I are provided below.

SECRETARY II

Nature of Work

Under general supervision, at the full-performance level, provides clerical and administrative relief, exercising discretion and independent judgment. May sign supervisor's name to routine memorandums, correspondence and forms. Attends meeting in the supervisor's absence or on the supervisor's behalf. Necessity for dictation, familiarity with word processor and other special requirements vary depending upon supervisor's preference.

Distinguishing Characteristics

Work at this level is characterized by the level of administrative support performed. Typically, duties such as researching a variety of sources (library, division archives, past-practice documents, outside private sources, etc.), attending meetings for supervisor where interpretation of information gathered is necessary, and coordinating the activities of section, unit, etc., are characteristic of this level.

At this level, the work requires the application of specific knowledge necessary to complete complex procedural or unusual assignments. Incumbent determines appropriate procedures from among various and variable methods, resources, and processes, or devises innovative methods to accomplish assignment. Incumbent is responsible for his/her own work, and may assign, direct, or supervise the work of others. Although some tasks are defined and self-explanatory, the incumbent works closely with supervisor to set objectives, priorities, and deadlines; may independently set goals and time frames for individual work assignments. Work is typically reviewed randomly upon completion for adherence to guidelines. Contacts at this level are frequent, typically varied and non-

routine. Incumbent answers procedural or program inquiries, whenever possible, or refers. Contacts are frequently of a confidential or sensitive nature and require tact.

Examples of Work

Coordinates activities associated with the functions of the division/section/unit, planning and implementing office procedures.

Researches basic statistical work in the compilation of reports involving the activities of the division/section/unit.

Responds to inquiries where considerable knowledge of unit policy, procedures, and guidelines is required. Answers telephone, screens calls, and places outgoing calls.

Screens mail and responds to routine correspondence.

Schedules appointments and makes travel arrangements and reservations for supervisor.

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

Attends meetings with or on behalf of supervisor to take notes or deliver basic information.

Takes and transcribes dictation, or transcribes from dictation equipment.

Composes form letters, routine correspondence, and factual reports requiring judgment and originality.

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

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

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

May maintain bookkeeping records for grants, contract or state appropriated funds or related departmental accounts.

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

May assign and review the work of others.

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.

Lowell D. Basford, Assistant Director of DOP's Classification and Compensation Section, explained that the secretary series was designed to be a combination of clerical and administrative support, and going from Secretary I to Secretary II, the amount of administrative support or relief increases. He stated that Office Assistants type, make copies, file, and answer the telephone, not Secretaries. He explained that Secretaries are attached to a particular administrative position, and that distinguishes a Secretary from an Office Assistant.

Mr. Basford further testified that when the Secretaries at HHR were classified in 1993, DOP used a "hierarchical model," meaning the level of the Secretary was based upon the level of her supervisor. He stated that Grievant's supervisor is a Program Manager I, and Secretaries to Program Manager I's are Secretary I's, while Secretaries to Program Manager II's are Secretary II's, and Secretaries to someone over a Bureau are Administrative Secretaries. Thus, he stated, the level assigned to the Secretary is based upon the size of the unit and the complexity of the duties. Nonetheless, he stated DOP recognized that Grievant's level of responsibility had increased, and determined that it was appropriate to increase the level of her classification to a Secretary II.

On the other hand, he explained that Administrative Services Assistants perform administrative work, not clerical work or secretarial support services, and they are incharge of a function or unit, such as, fiscal, personnel, payroll, or procurement in a small division or agency. He noted that Grievant is not in charge of any kind of unit.

Mr. Basford further explained that the examples of work are to be read in conjunction with the Nature of Work section of the classification specification, and in the case of the Administrative Services Assistant, that means the examples of work relate to the functions of fiscal, personnel, payroll, or procurement.

Grievant has not demonstrated that DOP's determination that she is a Secretary II is clearly wrong, and that the Administrative Services Assistant I classification specification is the best fit for her duties. While she has demonstrated she is a valued employee and has willingly taken on additional responsibilities, and acted independently, these responsibilities are found within the Secretary II classification specification. Further, Mr. Basford's explanation of the differences between the Secretary series and the Administrative Services Assistant series are consistent with the classification specifications, and are accepted as accurate. Grievant is not in charge of a function such as fiscal, personnel, payroll, or procurement, as are the Administrative Services Assistants to whom she compared herself.

Although Grievant accepted responsibility for not getting a WV-11 form submitted until May 17, 2000, to put her reallocation from Secretary I to Secretary II into effect, stating that she did not know she could do so while she had a grievance pending, the undersigned is of the opinion that it was not her responsibility to make sure this form was submitted. Her supervisor should have seen that this reallocation was put into effect immediately. The letter from Joe E. Smith, Acting Director, on January 7, 2000, reaffirming DOP's determination that Grievant was a Secretary II, was addressed to Grievant's supervisor. The letter states that, while the reallocation "requires a minimum a [sic] 5% salary increase. You may grant additional increments of 3% to 5% based on additional qualifying experience." Obviously, it was not up to Grievant to decide whether she should receive a salary increase over 5%. It was the responsibility of her supervisor to make this determination, and get the proper forms submitted. Grievant's position should have been reallocated to a Secretary II as soon as it was approved by DOP, which was November 10, 1999. She is entitled to back pay from that date through May 31, 2000.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant bears the burden of proving her allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997).
2. 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 match those of

another cited classification specification than the classification to which she is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

3. Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. See, W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

4. Grievant did not demonstrate that the Administrative Services Assistant I classification specification was a better fit for her duties than Secretary II.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. Grievant's request that she be classified as an Administrative Services Assistant I is **DENIED**. Grievant's position is **ORDERED** reallocated retroactively to Secretary II effective November 10, 1999, and HHR is **ORDERED** to pay her back pay to that date in the amount of the difference in her salary at that time and her salary had her position been reallocated on that date.

Any party may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Date: July 11, 2000

[Footnote: 1](#)

The Division of Personnel determined on November 10, 1999, that Grievant should be classified as a Secretary II. However, no action was taken to implement this reallocation until May 17, 2000, because Grievant did not realize she could submit a WV- 11 while she had a grievance pending, and her supervisor took no action to put the reallocation into

effect.

[Footnote: 2](#)

Grievant's supervisor responded to the grievance at Level I on January 27, 2000, stating he was without authority to grant the relief requested. The parties waived Level II, with Grievant appealing to Level III on January 27, 2000. A Level III hearing was held on March 24, 2000. The grievance was denied at Level III on March 31, 2000. Grievant appealed to Level IV on April 6, 2000. The parties then agreed to submit this grievance for decision at Level IV on the record developed at Level III, supplemented by written argument. Grievant represented herself, HHR was represented by Dennise Smith, Esquire, and DOP was represented by Lowell D. Basford, its Assistant Director of the Classification and Compensation Section. Grievant submitted written argument on June 2, 2000. Respondents declined to submit written argument. On June 15, 2000, an amended Level III decision was issued, denying the grievance, but reallocating Grievant's position to Secretary II, and granting her back pay from October 5, 1999. Grievant did not question the propriety of any of this, and did not withdraw her grievance as a result of the amended decision, but rather, appealed the amended decision. It is improper for HHR to issue an amended decision once a grievance reaches Level IV of the grievance procedure, and particularly after the record has been closed. "Once an agency has issued a decision on a particular grievance, it cannot on its own motion, reopen the grievance for a subsequent decision that changes the outcome. Appalachian Regional Health Care v. W. Va. Human Rights Comm'n and Hooper, 180 W. Va. 303, 376 S.E.2d 317 (1988)." Millerv. W. Va. Dep't of Transp., Docket No. 98-DOH-037 (July 6, 1998). A telephonic conference was held on June 29, 2000, to address Grievant's current classification, as the evidence presented at the Level III hearing was that Grievant was classified as a Secretary II at the time of the hearing. The parties stipulated that Grievant was classified as a Secretary I until June 1, 2000, for the reasons discussed in footnote 1. This grievance became mature for decision at the conclusion of that telephonic conference.