

MARGARET H. CARTUS,

Grievant,

v.

Docket No. 99-HHR-438

DEPARTMENT OF HEALTH AND HUMAN RESOURCES and

DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievant, Margaret H. Cartus, employed by the Department of Health and Human Resources (DHHR or Respondent) as a Health and Human Resources Program Manager I, filed a level one grievance on July 26, 1999, in which she alleged that she had been misclassified for three years. She requested reclassification "to a classification which adequately describes [her] responsibilities. . . " or reclassification to Health and Human Resources Program Manager II, and to be relieved of all but one of her major program responsibilities, with back pay for the three years in question. The grievance was denied

at levels one and two. Jack B. Frazier, Commissioner of Respondent's Bureau for Children and Families, granted a Motion to Dismiss the matter at level three, citing a settlement agreement between Respondent and Grievant dated August 13, 1997, which had placed Grievant in her present classification.

Grievant advanced her complaint to level four on October 12, 1999. At that time, Respondent renewed its Motion to Dismiss. Upon review of the statement of the grievance, the settlement agreement of 1997, and additional information from Grievant indicating that her duties and responsibilities had changed since 1997, a ruling was made to allow the grievance, but to limit the period of time it was to cover to ten days prior to the filing at level one. A level four hearing was conducted in the Grievance Board's Wheeling office on March 7, 2000. Grievant represented herself, DHHR was represented by DenniseSmith, Assistant Attorney General, and the Division of Personnel was represented by Lowell D. Basford, Assistant Director of Classification and Compensation. The grievance became mature for decision on April 7, 2000, the due date for filing proposed findings of fact and conclusions of law.

The following findings of fact are derived from the documentation and testimony made a part of the record at level four.

Findings of Fact

1. Grievant is employed as a Program Manager I by Respondent DHHR, Bureau for Children and Families, Office of Social Services, Division of Performance and Regulatory Management, and manages the Child Care Regulation and Institutional Investigation Programs.
2. The Nature of Work sections of the Program Manager I and the Program Manager II classification specifications are identical.
3. The Distinguishing Characteristics sections of those classification specifications indicates it is the relative size, scope and complexity of an agency which determines whether the manager will be classified as Program Manager I or Program Manager II.
4. Grievant manages the Child Care Regulation and Institutional Investigation programs within the Office of Social Services. She also bears supervisory duties for three statewide units: child care licensing, residential licensing, and institutional investigations.
5. Jim Boggs, Director of the Division of Performance and Regulatory Management, and Grievant's immediate supervisor, holds the same classification as other Division Directors, Program Manager II.

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 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 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 her 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. Broadus 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 said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 189 W. Va. 324, 431 S.E.2d 681, 687 (1993).

The classification specifications at issue are reproduced in part as follows:

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER I

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human resources. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Health Statistics, Health Promotion, Mental Retardation/Developmental Disabilities, Alcohol and Drug Abuse, Government Donated Foods, and other organizational units with similar size, scope and complexity.

HEALTH AND HUMAN RESOURCES PROGRAM MANAGER II

Nature of Work

Under general direction, performs complex administrative and professional work at the advanced level in managing a major program component within an office or organizational unit in the Department of Health and Human Resources. Programs are managed over a specified geographic region of the state, or statewide, and are of equivalent size and complexity. Responsibilities include planning, policy development, direction, coordination and administration of the operation of a major program component in the area of health or human resources. Complexity level is evidenced by the variety of problem-solving demands and decisions for the assigned area. Issues may be controversial in nature and work requires the ability to persuade or dissuade others on major policy and program matters. Performs related work as required.

Distinguishing Characteristics

Positions representative of the kind and level of work intended for the class include program areas such as Surveillance and Disease Control, Family and Children Services, Quality Control, and other organizational units with similar size, scope and complexity.

Attached to both classification specifications is a list of areas of assignment, as follows:

Behavioral Health

Community Health

Emergency Medical Services

Environmental Health

Health

Health Facilities Licensure and Certification

Health Planning

Health Promotion

Investigation

Legal

Rural Health

Social Services

Volunteer Services

There is no dispute that the Nature of Work sections of the two classification specifications are identical, or that Grievant's duties fall within those described in both the Program Manager I and

Program Manager II specifications. This Grievance Board has held that, when the specifications for two classified positions are so similar that no rational basis exists for a finding that either constitutes a "best fit" for a grievant's position, he or she is entitled to the higher classification. Gillenwater v. W. Va. Dept. of Health and Human Res., Docket No. 90-H-146 (Dec. 18, 1991). Just as an ambiguous specification must be construed so as to benefit the employee (see Rumbaugh v. W. Va. Dept. of Highways, Docket No. 89-DOH-389 (Dec. 18, 1989)), where two classification specifications are essentially identical, with no rational basis for choosing one over the other, the higher classification must be found appropriate. Smith v. W. Va. Div. of Health, Docket No. 91-H-525 (Apr. 5, 1991). Thus, the inquiry in this case is limited to whether Respondents have offered a rational basis for determining the best fit for Grievant's classification is Program Manager I. Cater v. Dept. of Health and Human Resources/Bureau of Public Health and Div. of Personnel, Docket No. 96-HHR-094 (Mar. 26, 1997).

___ The Office of Social Services (OSS) is a subdivision of Respondent's Bureau for Children and Families, which is headed by Director Mary Jo Thomas. OSS is organized into eight divisions, each of which is headed by a Director classified as a Program Manager II. The Division of Performance and Regulatory Management employs two Program Managers I, including Grievant. Respondents do not dispute Grievant's recitation of her duties and responsibilities, which include the supervision of approximately sixteen employees, interpretation and enforcement of regulations, investigation of allegations of abuse/neglect pertaining to children residing in out-of-home settings, and the investigation of licensing non-compliance complaints. Neither do Respondents dispute Grievant's claim that she assumed child care licensing duties performed by Lucy Eates prior to her retirement. Mr. Boggs testified that Grievant's role primarily is to provide overall direction and development, and that she is given great latitude and discretion in the planning, organizing, and supervising of the programs and units. In Cater, supra, Mr. Basford testified that the similarity in the two job specifications is by design. Both classifications perform complex administrative and professional work in managing a major program within an office or organizational unit for HHR. Thus, the managerial duties grievants performed were the same type of managerial duties performed by Program Manager IIs. The distinguishing characteristics between the two classifications are the relative level of complexity and difficulty of the programs administered by the program manager. Mr. Basford testified that factors considered to determine a program's level of complexity include the size and scope of the

program, the complexity of the work performed, the program's mission, the amount and type of subordinate staff a program manager is responsible for, the amount of federal oversight a program has and the Legislative framework and public policy behind the program's creation. Mr. Basford stated that no one factor is controlling, but all of the factors are weighed by Personnel in making this determination.

Addressing the present matter, Mr. Basford noted that Grievant has not requested a position review or submitted an updated position description form. He acknowledged that Grievant has assumed child care licensing responsibilities once performed by Ms. Eates, but stresses that these were but a fraction of Ms. Eates' responsibilities, and while there has been a change in the degree of responsibility placed upon Grievant, that alone does not warrant a change in her classification. Further, he observes that there has been no significant change in Grievant's day-to-day functions. The fact that she is responsible for planning, organizing, and directing two programs and three units leaves her in the same role she previously held, Mr. Basford concluded. Grievant has proven that she performs a wide variety of managerial tasks which fit both the Program Manager I and Program Manager II classification specifications. However, Respondents have explained that while Grievant has been assigned additional duties and responsibilities, her daily functions have not changed, and she is not misclassified. Respondents have offered a rational basis for determining that Program Manager I is the best fit for Grievant, and that reason cannot be found to be clearly wrong or arbitrary and capricious. See Blankenship, supra.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. 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 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).
2. Personnel's interpretation and explanation of the classification specifications at issue, if said 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).
3. Grievant has failed to prove by a preponderance of the evidence that Respondent's

determination that her duties have increased, but not changed, thus justifying her classification as Program Manager I, to be clearly wrong, arbitrary or capricious. See Blankenship, supra. Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. 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 §29- 5A-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.

Date: June 5, 2000

Sue Keller

Senior Administrative Law Judge