MELISSA BAKER,

Grievant,

v.

Docket No. 01-HHR-238

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU OF PUBLIC HEALTH and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Melissa Baker, filed this grievance against her employer, Respondent, Department of Health and Human Resources ("HHR"), contesting her classification. She believes she is misclassified as a Data Analyst II, and seeks to be classified as an Epidemiologist I, pay grade 17, back pay to November 13, 2000 (the date she submitted a new position description form), plus interest. (See footnote 1)

The following Findings of Fact are made based upon the evidence presented at Levels III and IV.

FINDINGS OF FACT

1. Grievant is employed by HHR in the Research Division of the Office of Maternal and Child Health, Bureau of Public Health. She has been an employee of HHRsince November 1996, and has been classified as a Data Analyst II, pay grade 12, since she began her employment.

2. Grievant has a Masters Degree in Public Administration. She has taken public health courses, and has had training in principles of epidemiology and epidemiological investigations through the Center for Disease Control.

3. Grievant is responsible for overseeing the daily operations of the Pregnancy Risk Assessment Monitoring System (“PRAMS”) Project, which is a statewide population- based

surveillance project, surveying West Virginia women who have recently had a baby. The PRAMS survey collects data on economic and living conditions, prenatal care, smoking and drinking habits, birth control, whether the pregnancy was intended, breast- feeding, and emotional and stress levels. Grievant also has responsibilities related to the Birth To Three Program, which is a statewide surveillance program of the entire population of children up to three years old with special health care needs. Grievant supervises five data entry operators, four telephone surveyors, and an office assistant II. Grievant spends four hours a week performing training and supervising staff. She spends more than 13 hours a week monitoring and providing direction to PRAMS and the Birth to Three Programs, attending meetings, and updating protocol. Grievant spends six hours a week preparing and assisting in the preparation of grant requests, preparing annual grant reports, preparing funding reports, assisting other programs, and drafting regulations and legislation.

4. Nearly half of Grievant's time is spent preparing reports, correspondence, memoranda, publications, and presentations, using statistical methodology to analyze data using computer software, interpreting findings and determining trends, and working with other agencies to develop methods to apply PRAMS project findings to prevention and intervention. Many of the reports prepared by Grievant are statistical compilations of the collected data, with a descriptive summary of what the data reflects. Grievant serves oncommittees which require recommendations for prevention, intervention, and evaluation. She makes recommendations to the Federal Center for Disease Control ("CDC") which are used by the CDC to formulate national policy.

DISCUSSION

W. Va. Code § 29-6-10 authorizes Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR, which utilize such positions must adhere to that plan in making assignments to their employees. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994).

In order for a 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 those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel job 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 employee's current classification constitutes the "best fit" for his required duties. Simmons v. W. Va. Dep't of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of theposition in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, 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).

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

The pertinent sections of the classification specifications for the two classifications at issue are reproduced below.

DATA ANALYST II

Nature of Work

Under limited supervision, performs full-performance work in the collection, compilation and analysis of data obtained from research studies, source documents and surveys. Prepares a work strategy to obtain desired information and chooses sources. Employs mathematical formulae and refined analyses to emphasize important aspects or implications of each study. Work is reviewed by a supervisor prior to publication or being released to the press, federal agencies, or agency management. If employed by Employment Security's Labor and Economic Research Unit the employee may be required to travel in-state to test specific labor market areas. Performs related work

as required.

Distinguishing Characteristics

This is a more independent and responsible position which has gained a familiarity with the various information sources enabling the employee to answer time-sensitive requests for data from the Governor's office, the Legislature, Federal Department of Labor or the media with accuracy. The employee is typically a lead worker who has developed the ability to locate and manipulate data quickly and accurately from a wide variety of source documents, or a specialist assigned on-going work requiring detailed knowledge of all aspects of a specific reporting system, program or research area. If employed by Employment Security, the employee must be skilled in estimating employment trends in the state. May also perform in a lead capacity in the analysis and resolution of data problems relating to automated reporting systems.

Examples of Work

Locates, verifies, and analyzes data gathered for immediate publication, press releases, or use by the Governor's office, the Legislature, Federal Department of Labor or other state agencies.
Designs and implements research studies and surveys used to gather information. Evaluates and analyzes the information obtained from the research projects.Makes recommendations to managers and other agency officials to carry out goals and objectives of the agency.
Writes memoranda, correspondence and detailed reports.
Confers with subordinates concerning unique work procedures or problem areas.
Revises on-line data entry and display systems.
Analyzes automated reporting systems; writes recommendations for system modifications; assists programmers in system modifications.
Answers inquiries from unit/local offices regarding reporting procedures and/or problem resolutions on automated systems.
Assists unit/local office personnel in writing data processing requests.
May draft revisions to instruction manuals and train staff on use of automated reporting systems.
Develops estimates of employment trends from basic data.
Devises data collection procedures, data analysis plans and methods for dissemination of information.

Provides technical expertise to program personnel involved in evaluation efforts.

Coordinates the work of the unit with federal and state agencies or local interest groups and committees.

May maintain files and records of data collected, compiled and analyzed.

May oversee normal operations of the unit in the supervisor's absence.

Travels to specific labor market areas to gain immediate knowledge of economic and labor market conditions.

Knowledge, Skills and Abilities

Knowledge of state and federal laws, rules and regulations which apply to the area of assignment.

Knowledge of statistics and statistical techniques.

Knowledge of the application of mathematical formulae and of research techniques.

Knowledge of data collection, compilation, and analysis procedures and techniques.

Knowledge of the principles and techniques of economic research and employment conditions throughout the state.

Knowledge of automated reporting systems related to the area of assignment.

Ability to organize and direct personnel in the technical phases of research.

Ability to analyze data, determine its value, make observations and applications, and draw conclusions and prepare summaries from the data.

Ability to apply or develop formulae for various statistical data to illustrate existing mathematical relationships.

Ability to design and implement research studies and surveys.

Ability to establish and maintain effective work relation ships.

Ability to analyze and resolve reporting problems for automated reporting systems.

Minimum Qualifications

Training:

Graduation from an accredited four-year college or university including a course in methods of research and/or statistics or mathematics.

Substitution:

Additional qualifying experience in research and data compilation may be substituted for the required

training on a year-for-year basis.

Experience:

Three years of full-time or equivalent part-time paid experience in research, statistical, or other analysis in the area of assignment or a related area.Substitution:

A Master's Degree in business administration, public administration, mathematics, statistics, operations research or related curricula may be substituted for the required experience.

EPIDEMIOLOGIST I

Nature of Work

Under general supervision, performs work at the full-performance level by conducting and coordinating multi county and/or statewide epidemiological or public health entomology investigations and surveillances. Reviews reports and statistics from studies, interprets findings, and prepares final reports. Provides educational and consultative services to departmental personnel, professionals and lay groups. Travel to various statewide locations is required. Performs related work as required.

Distinguishing Characteristics

This is the entry level in the series, and performs at the full-performance level. This level in the series does not have administrative or supervisory responsibility.

Examples of Work

Conducts epidemiologic investigations and studies of infections, chronic environmental, occupational and sexually transmitted diseases.

Processes and analyzes collected data to determine trends and probable causes of epidemiologic problems.

Recommends control or prevention measures.

Maintains and prepares required records and reports.

Gives educational presentations to professionals and lay groups.

Provides consultative and technical assistance as requested.

Knowledge, Skills and Abilities

Knowledge of the principles, practices, current developments, and techniques related to epidemiology.

Knowledge of state and federal laws and regulations pertaining to public health.

Knowledge of the practices and procedures utilized in conducting epidemiologic surveys, investigations and preparing reports.

Knowledge of communicable and non-communicable diseases and their etiology.

Skill in oral and written communications.

Ability to coordinate epidemiologic investigations and surveys on a local and/or statewide basis.

Ability to interpret rules, regulations, policies, standards and objectives of epidemiologic programs to field personnel, community organizations and the public.

Ability to analyze, evaluate and interpret epidemiology data to determine origin, causes and transmission of diseases.

Ability to provide technical advice and guidance to local health personnel on data collection and case findings.

Ability to conduct training sessions for local health personnel on proper data collection methods and report preparation.

Minimum Qualifications

Training:Master's degree in epidemiology, public health, biology, physical or natural sciences from an accredited college or university.

OR

Graduation from an accredited school of nursing with state licensure and three years of full-time or equivalent part time paid experience in conducting epidemiology.

Substitution:

One year of full-time or equivalent part-time paid experience in conducting epidemiology, including disease investigation, risk assessment or environmental epidemiology may substitute for the required training.

Grievant's argument that she is an Epidemiologist is based upon her position that the work

she performs falls within the textbook definition of descriptive epidemiology. To that end, she presented the textbook definition of descriptive epidemiology from A Dictionary of Epidemiology, 3rd Edition, by John M. Last, as follows:

> Study of the occurrence of disease or other health related characteristics in human populations. General observations concerning the relationship of disease to basic characteristics such as age, sex, race, occupation, and social class; also concerned with geographic location. The major characteristics in descriptive epidemiology can be classified under the headings: persons, place, and time.

Grievant's representative, Ms. Hannah, who is an Epidemiologist, testified that the PRAMS project is an epidemiological study, in that the data collected is used to determine why infant mortality is not declining, among other issues, and to search for measures to address these public health issues. She stated Grievant makes recommendations to the CDC based upon the low birth weight data collected. The CDC takes the recommendations from PRAMS coordinators nationwide, and uses those recommendations to formulate national policy. Ms. Hannah testified that Grievant has served as a paid technical assistant to the PRAMS project in Virginia, and is considered to be an authoritative resource for PRAMS programs nationally. Grievant's supervisor, Kathy Cummons, also testified that Grievant performs epidemiological studies.

Lowell Basford, Assistant Director in charge of Personnel's classification and compensation section, testified Grievant applied for the posted position in 1996, and thepredominant duties of the position have not changed significantly since that time. In his opinion, although Grievant had assumed additional duties since she began her employment, they were the same type of duties she always had. He explained that Personnel's Rules require a significant change in the job in order for a position to be reallocated, which was what would have to occur in this case in order for Grievant to be classified as an Epidemiologist I.

Mr. Basford further explained that persons classified as Data Analyst II's are involved in the collection, compilation, and analysis of data obtained from research studies and source document surveys. It was his view that the PRAMS project was a data collection project. He pointed to the position description form prepared by Grievant, which showed that the focus of

the job was data collection, the oversight of the data collection, including the employees collecting the data, compiling the data, and transmitting or reporting data. He stated the software used by Grievant is typically used by persons classified as Data Analyst II's.

Mr. Basford stated that the Epidemiologist classification is intended by Personnel to be a specialist, performing highly specialized work. He stated the focus of the Epidemiologist classification is to draw epidemiological conclusions from the data. He defined epidemiological conclusions as medical conclusions, or having to do with diseases, and the probable causes of disease. He stated Grievant does not draw epidemiological conclusions; for example, when she presents data that a certain number of pregnant mothers exhibit a particular risk factor, this is not an epidemiological conclusion. He testified that a person not trained in epidemiology, such as himself, could present the same types of conclusions from the data as Grievant was presenting, and that was not the intent of the Epidemiologist classification.

Mr. Basford noted Grievant's supervisory responsibilities are a significant part of her job. He pointed out that the classification specification specifically states in theDistinguishing Characteristics section, that the Epidemiologist I has no administrative or supervisory responsibilities. He explained that while the Data Analyst II classification specification does not indicate the position is a supervisory position, it does state the position is a lead worker position, which involves some supervisory responsibilities. He explained that since Grievant supervises persons who perform routine functions, the supervisory function is not so important.

Grievant has demonstrated that she does make recommendations designed to improve health. Whether these recommendations fall within the definition of descriptive epidemiology need not be addressed, however, as it is evident that this is a small part of her job, although the evidence presented does not allow for a determination of exactly how much time she spends in this role. It is noted that Personnel's interpretation of the scope of the term epidemiology, as that term is used in the classification specification, is entitled to great weight, and it is clear from the examples of work in the classification that the focus of the classification is intended to be upon the study of infections and diseases. Most of the reports Grievant presented as evidence simply show statistical analysis of the data collected, which is

no different from the type of analysis performed by any Data Analyst.

Further, Grievant's supervisory role, her role as project director of PRAMS and the Birth to Three Programs, and her grant and funding duties, which represent a significant part of her job, are not the type of duties envisioned by Personnel for the specialist Epidemiologist I, as explained by Mr. Basford, and as is noted in the Distinguishing Characteristics portion of the classification specification by the omission of administrative and supervisory duties. While the undersigned questions whether the Data Analyst II is the correct classification for Grievant, given her significant supervisory responsibilities, and her program oversight responsibilities, she has not demonstrated that the Epidemiologist I is a better fit for her duties.

The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. In order to prevail in a misclassification claim, a grievant must prove by a preponderance of the evidence that his duties for the relevant period more closely match those of another cited classification specification than the classification to which he is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. The key to the analysis is to ascertain whether the grievant's current classification constitutes the "best fit" for his required duties. 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. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Importantly, 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).

3. Grievant has not demonstrated the Epidemiologist I is the best fit for her duties.

Accordingly, this grievance is DENIED.

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

Dated: October 5, 2001

Footnote: 1

This grievance was filed on February 5, 2001. Grievant's supervisor responded on February 8, 2001, that she agreed Grievant should be classified as an Epidemiologist I, but she lacked the authority to grant the relief requested. Grievant appealed to Level II, where the grievance was placed in abeyance for a short time. Grievant's second level supervisor responded at Level II on April 11, 2001, that he was without authority to grant the relief sought. Grievant appealed to Level III, the Division of Personnel ("Personnel") was joined as a party, and a Level III hearing was held on April 20, 2001. The grievance was denied at Level III on April 27, 2001, and Grievant appealed to Level IV on May 4, 2001. A Level IV hearing was held on July 26, 2001. Grievant was represented by Karen L. Hannah, HHR was represented by Jon Blevins, Esquire, and Personnel was represented by Robert Williams, Esquire. This matter became mature for decision upon receipt of the last of the parties' post-hearing written arguments on August 22, 2001.