KATHY GARRETSON, et al.,

Grievants,

v. **Docket No. 00-HHR-374**

WEST VIRGINIA DEPARTMENT OF
HEALTH & HUMAN RESOURCES
and DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants (See footnote 1) initiated this proceeding on March 29, 2000, challenging their classification as Accounting Technician IIIs. They request reclassification to DHHR Specialists. The grievance was denied at level one on March 30, 2000, and at level two on April 3, 2000. A level three hearing was held on November 14, 2000, followed by a written decision, denying the grievance, dated November 21, 2000. Grievants appealed to level four on December 1, 2000. After a level four hearing was scheduled, the parties elected to have this grievance decided based upon the lower level record, supplemented by fact/law proposals, which were due on February 16, 2001. Grievants represented themselves, DHHR was represented by counsel, Anthony D. Eates II, and Personnel was represented by Lowell D. Basford, Assistant Director. This grievance was reassigned to the undersigned administrative law judge on February 21, 2001, and became mature for consideration upon receipt of the level three transcript on February 22, 2001.

The following findings of fact are made from a preponderance of the credibleevidence of record.

Findings of Fact

1. Grievants are employed by the Department of Health & Human Resources' ("DHHR") Bureau for Child Support Enforcement ("BSCE") as Adjustment Workers ("AW") in the Financial Services Unit. They are formally classified as Accounting Technician IIIs.

2. The majority of Grievants' daily duties involve completion of child support “adjustment referral forms”, also called “Misc20s.” The request for a Misc20 requires an AW to audit a given child support case. Completion of these forms requires review of an extensive volume of information in order to ascertain whether or not the appropriate amount of child support is being paid, along with calculation of arrearages and determinations regarding who is to receive money. In order to complete the Misc20, an AW must have a comprehensive and detailed knowledge of the various systems used by DHHR for recording child support information, along with knowledge of numerous policies, laws and procedures, and accounting skills in order to calculate arrearages, overpayments, and other matters pertinent to child support payments. (See footnote 2)

3. Grievants have summarized their job duties as follows:

> Under general supervision, performs detailed analytical assessments of child support cases for compliance with State BCSE policy and procedure. Performs logical, analytical and technical functions at an advanced level in conjunction with detailed research and comprehension of highly complex information in the OSCAR, APDS, Mobius, C219, RAPIDS, and the TSOsystems. Examines records to assure adherence to all legal court orders, as well as Federal and State guidelines and BCSE policy and procedure. Responsible for large monetary transaction as well as the technical aspects of the automated child support system that enables such transactions to be completed in adherence to Federal, State and legal policy and procedure. Review and interpret work of field staff as well as providing technical and procedural support as needed on a per case basis.

Level III Tr. at 10, Exhibit D.

4. Examples of Grievants' everyday responsibilities include:

> Technical and analytical assessments of complex cases to assure accuracy and validity of case information maintained in the OSCAR system.
>
> Performs complex comprehensive and investigative review of cases.
>
> Examines case records including mathematical computations for any deficiency or discrepancy in the researched information.
>
> Use the knowledge of Federal and State laws and statutes governing the CSEB to analyze cases for determinations of adherence to the laws, policies and procedures of the program.

Research various data bases and monetary transactions to gather data used to compile complex FSU statistical reports that adhere to the BCSE guidelines and policy.

Analyze specific situations, problems and related information of cases to develop appropriate responses and/or resolutions in compliance with Federal, State, and BCSE guidelines and policy.

Correct ledger balances using complex codes to reflect correct balances for billing purposes using the ACRE function in the OSCAR system.

Keep records of all cases reviewed, including the completion date of each review and all necessary corrections made to assure correct balances in OSCAR system.

Review cases to assure correct statement balances are supplied to the Custodian Parent, Non-Custodial Parent, employers, out of state agencies, and the court.

After analysis and determination of the legalities of the case may consult legal counsel for final interpretation of court orders and/or BCSEpolicy.

Review records as requested and supply findings to such entities as the Commissioner, Governor's Office, the Legislature, Senate, state and federal auditors, and various sources of the media.

Daily duties include copying, filing, faxing, and typing.

Level III, Exhibit D.

5. Grievants are not responsible for the monitoring and evaluation of the operation of their assigned program or program component, although they do have input regarding policy/program development. They solve problems in compliance with applicable policies and procedures.

6. When Grievants' knowledge of policy and procedure does not enable them to deal with a particular situation, questions are addressed to their supervisor, the unit manager, or legal counsel.

Discussion

W. Va. Code §29-6-10 authorizes the Division of Personnel ("DOP") to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as DHHR, 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 fivesections 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 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 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, 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 his classification with a substantial obstacle to overcome in attempting to establish that he is misclassified.

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

ACCOUNTING TECHNICIAN III

Nature of Work

Under general supervision, performs full-performance accounting support duties. The incumbent is responsible for performing moderately complex posting, encumbering of funds, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is the full-performance level of paraprofessional accounting. Responsibilities may include training and reviewing work of subordinate staff.

Examples of Work

Classifies/codes a variety of transactions which may require considerable knowledge.

Reviews accounts, ledgers, claims, invoices, purchase orders, receipts, or similar materials for completeness, accuracy, and compliance with laws and regulations.

Prepares bank deposits and/or checks.

Makes correcting and/or adjusting entries on ledger.

Examines accounting records to assure adherence to accounting laws and regulations; verifies calculations and ensures accuracy and validity of transactions.

Prepares and illustrates statements and reports which reflect the relationships among accounts and which require occasional searching and analysis.

Performs moderately complex posting, encumbering of funds, and balancing receipts of others.

Maintains accounting records; gathers data and prepares moderate to complex financial statements and reports from records maintained.

May assist supervisor in preparing budget by compiling data, preparing summaries and requests, and developing cost projections.

May train and review work of clerical staff.

Knowledge, Skills and Abilities

Knowledge of accounting laws and regulations of bureau/agency.

Knowledge of basic mathematical computations.

Knowledge of an automated computer accounting system.

Skill in the use of a calculator.

Skill in the use of office equipment such as a copier, fax machine, and personal computer.

Ability to detect and correct errors in arithmetic or to refer to proper source for correction.

Ability to gather and compile data for use in financial reports.

Ability to communicate effectively, both verbally and in writing.

Ability to establish and maintain effective working relationships with others.

Ability to train and review the work of others.

Minimum Qualifications Training:

Graduation from a standard four-year high school or the equivalent.

Experience:

Three years of full time or equivalent part time paid bookkeeping, accounting or related experience.

Substitution:

Successful completion of college-level accounting courses from an accredited college or university may be substituted at the rate of three semester hours equals six months experience; OR

Successful completion of related business school or vocational training may be substituted for the experience through an established formula.

HEALTH AND HUMAN RESOURCES SPECIALIST

Nature of Work

Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based on standards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical area specific to or characteristic of the Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on

highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operational area or a significant segment of a major statewide program or operational area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

Examples of Work

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance. Interprets laws and regulations governing program or technical area for participants and staff.

Monitors changes in laws and regulations and advises participants and other staff.

Confers with inter- and intra-agency personnel to transact business or discuss information.

Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.

Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.

Represents the program in the area of assignment with the agency and outside entities.

Has contact with federal, state, local program representatives and participants, or technical area personnel.

Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.

May oversee the work of support staff or other specialists in relation to the completion of specific

assignments.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area, its procedures, policies, and guidelines, and its relationship to the rest of the Department and other user entities.

Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.

Ability to represent area of assignment and to provide consultation on program or Department concerns.

Ability to synthesize information and provide interpretation.

Minimum Qualifications

Training:

Graduation from an accredited four-year college or university.

Substitution:

Additional experience as described below may be substituted for the required training on a year-for-year basis.

Experience:

Two years full-time, equivalent part-time paid or volunteer experience in a technical or program area that is related to the area of employment. **Substitution:**

Post-graduate education in a field related to the technical or program area may be substituted for the required experience on the basis of fifteen semester hours for one year of experience.

OR

Master's Degree in social work from an accredited social work program in a four-year college or university.

The crux of Grievants' argument is that “crunching numbers” or “checking math” is an extremely small portion of their job duties, as little as one percent by some estimations. L III Tr. at 4. Grievants contend that “the essential duty and responsibility” of their positions “is to apply state and federal policy governing the program to [their] daily assignments.” Id. Accordingly, they do not believe that the Accounting Technician III class specification accurately describes their positions. Grievants believe that, because they are required to have an extensive knowledge of numerous policies and procedures, which they must apply to their work on a daily basis, they are performing portions of the “examples of work” section of the HHR Specialist job description, such as analyzing, applying, and interpreting laws and regulations. However, Grievants did admit during their level three presentation that they also perform many of the “examples of work” contained in the Accounting Technician III specification.

As explained by Lowell Basford, Assistant Director of DOP's Classification and Compensation Unit, Grievants have too narrowly construed the Accounting Technician III class specification, along with looking to the “examples of work” section first, rather than the “nature of work” section, which has been established as the controlling portion of all state job descriptions. Mr. Basford testified that all Accounting Technician IIIs in this state are required to have extensive knowledge of the laws, policies and procedures of the agencies for whom they work, which is contemplated by the “nature of work” statement thatsuch employees “examine records to assure adherence to . . . laws and regulations.” As Grievants have correctly pointed out, “number crunching” is a small portion of their jobs, and the class specification accurately encompasses a variety of responsibilities beyond basic accounting. However, the majority of Grievants' duties, such as making sure all financial information is legally and factually correct, balancing the accounts, etc., is all accounting related.

Mr. Basford did admit that Grievants' positions could perhaps be better described by a separate classification, which has been proposed to DHHR by DOP. Nevertheless, Grievants are simply not performing the functions of HHR Specialists. Such individuals, as Mr. Basford explained, are administrative personnel in charge of the development and oversight of major programs within the agency, or who have a significant degree or responsibility with regard to a major program component. Although Grievants are an integral part of the program they work within, they simply are not charged with the significant level of responsibility assigned to HHR Specialists, who exercise considerable latitude and independent judgment, rather than referring problems to others. In addition,

HHR Specialists are responsible for monitoring and evaluating the operation of their assigned program or program component, which Grievants are not. See Loudermilk v. Dep't of Health & Human Resources, Docket No. 00-HHR-304 (Dec. 29, 2000). Grievants have repeatedly emphasized the complex laws, policies and regulations they must apply and interpret in order to complete their duties. However, Grievants's use and knowledge of policies and regulations does not equate to actual oversight. An HHR Specialist is required to monitor their assigned area to ensure that applicable laws, policies, etc., are being followed. Similarly, although grievants have input into the problem-solving process,it is not their responsibility to consult with employees throughout the agency to make sure the program is running properly. Additionally, Grievants are not responsible for the development and delivery of training programs, although they certainly attend them.

Unfortunately, Grievants are yet another example of DHHR employees who are required to have extensive knowledge and abilities and perform highly complex functions, while being paid at very low levels on the pay scale. However, as Mr. Basford stated, it is not the importance of a position which determines whether it is misclassified. Although the Accounting Technician III class specification is not a “perfect fit” for Grievant's positions, it is certainly a far better fit than the HHR Specialist classification, which simply does not describe Grievants' responsibilities. Accordingly, the requested relief of reclassification must be denied.

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law

1. 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).

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, DOP'sinterpretation 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. DOP's determination that Grievants are Accounting Technician IIIs is not clearly wrong.

4. The HHR Specialist classification specification is not a better fit for Grievants' duties than the Accounting Technician III.

Accordingly, this 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, and 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: March 14, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The grievants are Kathy Garretson, Mary Young, Nancy Skiles, Jacqueline Jones, Betty Raines, Rita Straight, Eric Stone, Anthony S. McNealy, Twana Tolliver, Betty Carter, Larry Nunnery, Chau Tran, Cindy Whitley, Michele Ware, Terry Burford, Shanetta McBrayer, Darlene Thompson, Angie Rollyson, Carolyn Wilcoxen, and Rhoda Hughes.

Footnote: 2

This is far from a "verbatim" description of Grievants' duties as reflected in the level three transcript. Unfortunately, the level three testimony was very poorly developed, with Grievants providing extremely lengthy, technical explanations of their job duties with little to no cross examination, which could have provided a description of their duties in laymen's terms. The above description has been gleaned from Grievants' testimony and exhibits.