MELISSA MULLINS,

Grievant,

v.

DOCKET NO. 02-HHR-266

WEST VIRGINIA DEPARTMENT OF HEALTH

AND HUMAN RESOURCES/OFFICE OF

NUTRITION SERVICES and DIVISION OF

PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Melissa Mullins, filed the following Statement of Grievance on May 8, 2001, with the Department of Health and Human Resources ("HHR"):

> Fiscal unit supervisors who perform equivalent job duties in the Bureau of Public Health are classified at the Assistant Service[s] Manager II level and I am not. I am classified as an Accountant/Auditor IV and I have requested and been denied reclassification to an Assistant Service[s] Manager II. I believe with my certification as a CPA and with the job duties I perform[,] the position should be classified as an Assistant Service[s] Manager II. Relief sought: The relief sought is to be classified as an Assistant Service[s] Manager II.

This grievance was denied at all lower levels, and Grievant appealed to Level IV on August 21, 2002. The parties agreed to submit this case on the record, and this matter became mature for decision on September 23, 2002, upon receipt of the parties' proposed findings of fact and conclusions of law. Grievant represented herself, HHR was represented by B. Allen Campbell, Assistant Attorney General, and Division of Personnel ("DOP") was represented by Robert Williams, Assistant Attorney General. (See footnote 1)

Issues and Arguments

Grievant asserts the Assistant Services Manager II position is the best fit for her job duties. She maintains her duties have increased recently and she should be reallocated. Respondents asserts the class specification of Accountant/Auditor IV is the best fit for Grievant's duties, and the increased or new duties are ones DOP would contemplate an Accountant/Auditor IV would perform.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. On July 11, 2001, the Office of Nutritional Services ("ONS") within the Bureau for Public Health posted a position for an Accountant/Auditor IV. The Bureau for Public Health is within HHR. DOP reviewed and approved the posting and the duties of the position.

2. Grievant applied and in August 2001, she was laterally transferred, without an increase in pay, from her Accountant/Auditor IV position with the Office of Behavioral Health Services to ONS.

3. In January 2002, Grievant filed a Position Description Form with DOP requesting to be reallocated to an Assistant Services Manager II, because of additional duties.

4. On April 29, 2002, Lowell Basford, Assistant Director of Classification and Compensation, found Grievant to be correctly classified as an Accountant/Auditor IV.

5. On May 3, 2002, Grievant appealed Mr. Basford's determination to the Director of DOP, Nichelle Perkins.

6. Ms. Perkins responded on June 26, 2002, stating she concurred with Mr. Basford's decision. She noted that CPA certification was not necessary in eitherclassification, Grievant's primary duties fell within her current classification, and the classification indicated her duties may include supervision of others. Following this response, Grievant filed this grievance.

7. On her Position Description Form, Grievant listed five additional duties she had assumed since her transfer.

a) Preparation of ONS fiscal note for the legislature. In her Position Description Form, Grievant indicated she "[a]ssist[ed] in the preparation of fiscal notes. . . ." Grievant's notes are reviewed by her supervisor and other administrators. Test. Ferris, Level III Hearing.

b) Increased number of staff supervised from three to four. This is incorrect. The number of staff Grievant supervises had increased from two to three.

c) "Increased personnel responsibilities." Grievant supervises the clerk who processes personnel paperwork, such as WV-11's. She also directs this clerk to attend training seminars.

d) Developed "new ONS purchase request form which requires fiscal approval/budget information before final approval." Grievant reviews all budget requests, on a form which she developed, to see if there is enough money in the budget to pay for a requested item. She then sends the form on to her supervisor for approval.

e) Performs inventory audits of high-risk WIC (See footnote 2) vendors. 8. No evidence was presented indicating any fiscal unit supervisors who were classified as Assistant Services Manager II's. (See Grievant's Statement of Grievance.)

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 their employees' assignments. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994).

Grievant asserts her position is misclassified, and she has requested her position be reallocated. DOP's Rule 3.78 defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position."

The key in seeking reallocation is to demonstrate "a significant change in the kind or level of duties and responsibilities." Without additional information, an increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. Kuntz/Wilford v. Dep't of Health and Human Resources, Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." Id. Further, 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 moreclosely 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 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 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). 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, 348, 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 pertinent sections of the classification specifications for the two classifications at issue are reproduced below.

ACCOUNTANT/AUDITOR 4

Nature of Work

Under general supervision, performs advanced accounting/auditing duties in one or more of the following areas: general accounting, internal auditing, external auditing, budget/administration, and financial analysis. The incumbent may be responsible for preparing highly complex expense, revenue, and reconciliation reports, planning, assigning, and reviewing agency audits, and handling more sensitive accounting/auditing matters. Responsibilities may also include supervising employees in the preparation of financial reports and the maintenance of proprietary ledgers, budgetary control ledgers, profit and loss statements, and other comparable reports. Extensive travel may be required. Performs related work as required.

Distinguishing Characteristics

Duties in the Accountant/Auditor 4 level are wide in scope, have immense legal impact, and are more specialized than at the next lower level. Positions at this level are considered lead workers and may train other accountants/auditors.

Examples of Work

Assists in the development of policies and procedures; develops and installs the accounting/auditing systems.

Conducts research into the accounting needs of the agency/entity.

Conducts more sensitive audits, and/or fraud and/or special compliance review with internal control evaluations and recommendations and/or investigations of sensitive agency activities or activities of grantees for funds with Federal/State requirements in ADA, EEO, and other anti discrimination features.

Prepares or reviews a variety of professional accounting and other reports relating to policies, procedures, investments, financial positions and operational results.

Writes audit and/or comprehensive review programs, tests accounting records and related reconciliations, develops sampling and other techniques of evaluation, prepares reports of auditors' findings, recommendations, and conclusions; assists in explaining findings and recommendations to grantee organizations and agency officials.

Reviews prior audit reports and financial statements of agency/entity. Analyzes complex administrative and technical problems and formulates suggested improvements or solutions; evaluates and approves selection of information to be included in reports of examination.

Prepares or supervises preparation of complex accounting and operational reports and supporting financial documents, expenses, revenues, reconciliations, disbursement, summaries, and general vouchers and transactions; analyzes variances.

Evaluates efficiency and effectiveness of various programs; analyzes financial records for completeness and accuracy to determine compliance with state and federal laws as well as with national accounting and auditing standards.

Consults with accounting agency on accounting procedures and problem resolution.

Maintains knowledge of current trends and developments in the field.

May supervise and review work completed by Accounting Technicians and other office support.

May lead and train lower-level accountants/auditors to prepare financial documents such as journals, vouchers, warrants, financial schedules, and reports, and in implementation of departmental procedures.

May lead employees in the maintenance of proprietary ledgers, budgetary control ledgers, reports of allotment balances, preparing financial reports, trial balances, profit and loss statements, inventories, accounts receivable controls and appropriations.

ADMINISTRATIVE SERVICES MANAGER 2

Nature of Work:

Under administrative direction, manages an organizational unit providing administrative and support services (i.e., budgeting, accounting, purchasing, personnel, business operations, etc.) in a division. The operations, policy, work processes, and regulatory requirements of the unit are moderately complex, varied and dynamic, requiring some depth of analysis and interpretation of theory, principles, practices, and regulations of a professional or administrative field. Involves the supervision of professional, technical, and clerical employees. The scope of responsibility includes planning the operations and procedures of the unit; directing the work of employees; developing employees; evaluating unit operations; developing budget needs; researching new procedures and improvements; interpreting statutes, regulations, and policies. Performs related work as required.

Distinguishing Characteristics

The Administrative Services Manager 2 is distinguished from the Administrative Services Manager 1 by the responsibility to manage a complex secondary mission or unit of a primary statewide mission of the department. The allocations of positions to this class is determined by the higher complexity of the work performed relative to that assigned to the Administrative Services Manager 1 class.

Examples of Work

Plans, develops, and executes through professional, technical, and clerical staff, a complex mission of a statewide program or a primary department-wide program. Directs the daily operations of the staff and may direct regional or other field staff.

Develops and implements operating procedures within regulatory and statutory guidelines; develops and approves forms and procedures.

Renders decisions in unusual or priority situations; consults with supervisors and other state managers in reviewing same.

Evaluates the operations and procedures of the unit for efficiency and effectiveness.

Recommends the selection and assignment of staff to supervisors; conducts interviews and background evaluations for prospective employees.

Determines need for training and staff development and provides training or searches out training opportunities.

Assists in the development of the division and/or agency budget for personnel services, supplies, and equipment.

Researches professional journals, regulations, and other sources for improvements to agency and unit programs and procedures.

Compiles a variety of data related to the operation of the unit and/or the agency.

Interprets statutes, regulations and policies to staff, other managers, and the public.

May serve as a witness in grievance hearings or other administrative hearings.

Prepares reports reflecting the operational status of the unit and or agency programs.

May participate in local conferences and meetings.

A review of Grievant's Position Description Form and the testimony of her supervisor and of herself, indicate Grievant is correctly classified, and Accountant/Auditor IV is the best fit for her duties. As noted in the testimony of DOP at Level III, the focus of the Accountant/Auditor IV classification is on auditing/fiscal activities and the various tasks that surround this function. The focus of the Assistant Services Manager II classification is on the management of employees that are professional, technical, and clerical. Grievant's duties, both the ones she was assigned when she assumed the position and the new ones she listed on her Position Description Form, are in the area of accounting and auditing. These are duties relating to budgets, fiscal responsibility, and complex audits. Further, Grievant has not demonstrated "a significant change in the kind or level of duties and responsibilities" that would indicate a need to reallocate her position. DOP Rule 3.78. Additionally, while Grievant has shown she developed new forms, assumed new duties, and now supervises one additional employee, an increase in the number of duties and the number of employees supervised

does not necessarily establish a requirement for reallocation. Kuntz, supra. The new duties Grievant has assumed are within her class specification. Accordingly, the Accountant/Auditor IV class specification is the best fit for her position.

The above-discussion will be supplemented by the following Conclusions of Law.

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, 348, 431 S.E.2d 681, 687 (1993). 3. DOP's Rule 3.78 defines "Reallocation" as "Reassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position."

4. Without additional information, an increase in number of duties and the number of employees supervised does not necessarily establish a need for reallocation. Kuntz/Wilford v. Dep't of Health and Human Resources, Docket No. 96-HHR-301 (Mar. 26, 1997).

5. "An increase in the type of duties contemplated in the class specification, does not require reallocation. The performing of a duty not previously done, but identified within the class specification also does not require reallocation." Id.

6. Grievant has not demonstrated the Assistant Services Manager II classification is the best fit for her position.

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." Any such appeal must be filed within thirty (30) days of receipt of thisdecision. 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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: September 30, 2002

Footnote: 1

No proposals were received from Mr. Williams.

Footnote: 2

Although not explained in the record, it is believed this acronym stands for Women, Infants, and Children.