HAROLD CONNER, II,

Grievant,

v. **DOCKET NO. 03-DJS-102**

DIVISION OF JUVENILE SERVICES and

DIVISION OF PERSONNEL,

Respondents.

DECISION

In a grievance filed directly at level two on January 5, 2003, Grievant stated: "Working in a [Correctional Officer] IV Job Description without Compensation of pay or work." Grievant's stated relief requested is: "Appointed the rank of [Correctional Officer] IV and back pay (to include overtime rate) for past 3 years 3 months."

After being denied at the lower levels, a level four hearing was held May 30, 2003, at the Grievance Board's Charleston Office. Grievant was represented by Jack Ferrell, Respondent Division of Juvenile Service was represented by its counsel, Assistant Attorney General Beth Elkins, Esq., and Respondent Division of Personnel was represented by Lowell D. Basford. The parties agreed to submit their proposed findings of fact and conclusions of law by June 30, 2003, whereupon the matter became mature for decision.

I find the following facts have been proven by a preponderance of the evidence:

FINDINGS OF FACT

1. Grievant holds the rank of Corporal and the Personnel Classification of Correctional Officer [CO] 3, and is employed by Division of Juvenile Services [DJS] at the North Central Regional Juvenile Detention Center (NCRJDC) as a shift supervisor. His direct supervisor is Timothy D. Melton, Facility Administrator.

2. There are four CO 3's employed at NCRJDC. Grievant does not supervise other CO 3's but does supervise CO 2's and CO 1's.

3. NCRJDC has about 13 residents, and is staffed by the Facility Supervisor, 19 officers (See

footnote 1) and seven other support staff.

4. Because of the staff size and the facility, all personnel are occasionally used outside their classifications if the need arises, as in the absence of the person who usually does the job. On occasion, officers or the Facility Supervisor have cooked or done laundry, officers have mowed the lawn, and a cook has been used to help search a female inmate. 5. The Division of Personnel Classification Specification for CO 3 states in part:

Nature of Work

Under direct supervision, serves as a first line supervisor of Correctional Officers. The officer is responsible for enforcing or supervising the enforcement of the rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer supervises and reviews the work of subordinates to ensure facility security or the functioning of a specialized post or unit. Performs related work as required.

Distinguishing Characteristics

This is first-line supervisory work. Holds the assigned rank of Corporal.

6. The Division of Personnel Classification Specification for CO 4 states in part:

Nature of Work

Under general supervision, serves as a shift or unit supervisor or in a mid- level specialized supervisory capacity. The officer supervises theenforcement of rules, regulations and state law necessary for the control and management of offenders and the maintenance of public safety. The officer supervises and reviews the work of subordinates to ensure the orderly functioning of a facility or unit. Performs related work as required.

Distinguishing Characteristics

Factors such as size of correctional officer complement or offender population are considered in determining assignment of a position to this rank. Holds the assigned rank of Sergeant.

7. There has never been a CO 4 assigned to NCRJDC or any other *detention* center operated by DJS. CO 4's are employed at the two *correctional* centers operated by DJS.

8. The classification specifications for CO 3 and CO 4 overlap, in that there are some common

duties.

9. A first-line supervisor is a supervisor with no other supervisors below him in the chain of command. The CO 3 position is the first CO position with supervisory responsibilities.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. 156 W. Va. C. S. R. 1 § 4.21. Grievant argues that the duties he performs are those of a Sergeant, or CO 4. Respondents' position is that Grievant is properly classified. In a misclassification grievance, the Grievant must prove that the work he is doing is a better fit in a different classification than the one his is currently in. *See* Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989); Oiler v. W. Va. Dep't of Health and Human Resources/Bureau for Child Support Enforcement, Docket No. 00-HHR-361 (Apr. 5, 2001). 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. Franklin v. W. Va. Dep't of Health and Human Resources/Sharpe Hospital and Div. of Personnel, Docket No. 02-HHR-316 (Feb 18, 2003); 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 "Nature of the Work" sections of the CO 3 and CO 4 specifications differ in the level of supervisory responsibility each position holds. According to Mr. Basford, due to the rank structure in which all CO 3's are corporals, a CO 3 does not supervise another CO 3. A CO 4, as Sergeant, however, outranks and may supervise CO 3's. Although Grievant, as Shift Supervisor, occasionally directs the work of another CO 3, the other Corporal is not under his direct supervision in the chain of command. Grievant is a first-line supervisor, exactly as contemplated by the CO 3 specification. The CO 4 classification in which Grievant contends his duties better fit, is a second-line supervisory

position, in that it supervises other supervisors, such as CO 3's. Grievant's duties do not match this requirement of the CO 4 classification. The Division of 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, 398, 431S.E.2d 681, 687 (1993). There is no evidence that Mr. Basford's interpretation in this regard is clearly wrong.

The evidence shows that NCRJDC is an understaffed, small facility, operating 24- hours per day every day, and that in order to meet the operational needs of the facility, all staff must sometimes perform work that is not explicitly described in their classification specifications. Grievant, one day per week, assigns duties to another CO 3, but not does not supervise that officer. Grievant has a great deal of responsibility and independence of operation as a shift supervisor, but not beyond that anticipated by the CO 3 specification. In reading the class specifications, "mention of one quality or requirement does not exclude others. W. Va. Div. of Personnel Rules § 4.04(a). Even though a job description does not include all the actual tasks performed by a grievant it does not make that job classification invalid. Id. at § 4.04(d)." Lee v. W. Va. Dep't of Admin./General Serv. Div. Docket No. 02-ADMN-014 (May 30, 2002). Although some of the work Grievant performs is not listed in his class specification, performing that work does not render him misclassified.

The following conclusions of law support this discussion.

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486(May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. In a misclassification grievance, the Grievant must prove that the work he is doing is a better fit in a different classification than the one his is currently in. *See* Hayes v. W. Va. Dep't of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989); Oiler v. W. Va. Dep't of Health and Human Resources/Bureau for Child Support Enforcement, Docket No. 00-HHR-361 (Apr. 5, 2001).

3. 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. Franklin v. W. Va. Dep't of Health and Human Resources/Sharpe Hosp. and Div. of Personnel, Docket No. 02-HHR-316 (Feb 18, 2003); 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).

4. 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). 5. The Division of Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly wrong. W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 398, 431 S.E.2d 681, 687 (1993).

6. In reading the class specifications, "mention of one quality or requirement does not exclude others. W. Va. Div. of Personnel [Administrative Rule] § 4.04(a). Even though a job description does not include all the actual tasks performed by a grievant it does not make that job classification invalid. Id. at § 4.04(d)." Lee v. W. Va. Dep't of Admin./General Serv. Div. Docket No. 02-ADMN-014 (May 30, 2002).

7. Grievant did not meet his burden of proving he is misclassified.

For the foregoing reasons, this grievance is hereby **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: July 29, 2003 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

Currently, only 17 of the officer positions are filled.