GABRIELE LOHR,

Grievant,

v. **Docket No. 03-HHR-408**

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES/SHARPE
HOSPITAL AND DIVISION OF PERSONNEL,

Respondents.

DECISION

Gabriele Lohr ("Grievant") initiated this proceeding on October 7, 2003, alleging she was misclassified. She seeks to be classified as a Supervisor 2, along with back pay and interest. The grievance was denied at level one on October 8, 2003, and at level two on October 10, 2003. A level three hearing was conducted on December 5, 2003, and the grievance was denied in a decision dated December 12, 2003. Grievant appealed to level four on December 23, 2003. After several continuances granted for good cause shown, a hearing was held in Elkins, West Virginia, on April 15, 2004. Grievant was represented by Kevin McHenry, the Department of Health & Human Resources ("DHHR") was represented by Robert Miller, Assistant Attorney General, and the Division of Personnel ("DOP") was represented by Assistant Director Lowell Basford. This matter became mature for consideration at the conclusion of the level four hearing. (See footnote 1) The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

___1. Grievant is employed by Sharpe Hospital, assigned to the Admissions Department. The majority of Grievant's work time is spent admitting patients and preparing reports related to admissions issues. She supervises five employees, who are classified as Office Assistant IIs. Grievant performs her subordinates' evaluations, approves their leave, trains them, and gives them

work assignments. Grievant is also responsible for diverting patients temporarily to other facilities when there are not enough beds at Sharpe Hospital, and she must keep track of those patients.

2. The employees whom Grievant supervises spend most of their time admitting and discharging patients, which includes inputting and maintaining a patient information database. They occasionally fill in at the switchboard, if needed, so they are trained to operate the switchboard equipment.

3. The supervisors of the Dietary, Housekeeping and Security Departments at Sharpe Hospital are classified as Supervisor 2s.

4. Grievant is classified as a Supervisor 1, the classification specification for which provides, in pertinent part:

Nature of Work

Under general supervision, performs full performance supervisory work overseeing the activities of clerical support staff, semi-or-fully-skilled trade workers, or inspectors. Completes annual performance appraisals, approves sick and annual leave, makes recommendations and is held responsible for the performance of the employees supervised. Work is reviewed by superiors through results produced or through meetings to evaluate output. Performs related work as required.

Distinguishing Characteristics

Supervisor 1 is usually a working supervisor who makes work assignments, reviews employees' work, and compiles reports on section activities in addition to performing tasks similar to their employees. In some instances, may be a working supervisor performing related work of a more advanced level than subordinates.

Examples of Work

Performs duties that are similar or related to the work performed by subordinates. Makes work assignments to employees; reviews the work of subordinates to ensure accuracy. Trains employees in proper work methods. Ensures that equipment, supplies, and materials are available to complete work. Inspects work areas to ensure that tasks are completed in a timely manner. Evaluates employees' performance; counsels employees and recommends corrective action. Answers inquiries from employees; relays information from management. Updates and compiles reports outlining the unit's activities, including other factors such as amount of work produced, monies spent or collected, or inventory. Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

5. The classification specification for Supervisor 2 provides, in pertinent part:

Nature of Work

Under general supervision, performs full performance supervisory work overseeing a section of employees engaged in technical work requiring advanced training. Work is reviewed by superiors through results produced or obtained in meetings. May represent the agency before committees and the general public. Performs related work as required.

Distinguishing Characteristics

Supervisor 2 is distinguished from Supervisor 1 by the nature of the work supervised and by the level of collateral work assigned to the position. The nature of work supervised is typically of a technical nature as opposed to clerical at the Supervisor 1 level. May be a working supervisor performing related work of a more advanced level than the subordinates supervised.

Examples of Work

Plans, assigns, and coordinates the work of subordinates; trains employees in work methods.Interprets and applies departmental policies and regulations for employees and others in state government. Advises subordinates of changes in policy and procedure. Responds to questions or problems of subordinates; restructures work procedures to align with changes in state or federal laws and programs. Performs field visit inspections and spot-checks records to document activities and evaluate the performance of the unit. Ensures that equipment, supplies, and materials are available to complete work. Represents the unit before agency management, administrative hearings, business or civic groups, or other forums. Performs employee performance evaluations, approves annual and sick leave, and recommends hiring, disciplinary actions and other employee activity. Discusses personnel issues with employees; answers grievance issues within mandated time frames in an effort to solve problems.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6.

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 DOP classification specification than that under which she is currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989). DOP 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. Dep't of Health, Docket No. 90-H-444 (Apr. 22, 1991); See generally, Dollison v. W. Va. Dep't of Empl. 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. Dep't of Health and Human Res., 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).

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. Div. of Personnel Admin. Rule, § 4.04(a); Coates v. W. Va. Dep't 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. DOP Admin. Rule, § 4.04(d). Finally, DOP's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

In support of her misclassification claim, Grievant offered the testimony of her supervisor, who based her recommendation of reclassification on a level three grievance decision involving the switchboard supervisor at Sharpe Hospital, Saundra Bush. In that case, the hearing evaluator found that, although Ms. Bush only supervised five employees who were not specifically engaged in “technical” work, she was entitled to the Supervisor 2 classification. The evaluator's conclusion was based entirely upon the Grievance Board's decision in Thomas v. W. Va. Dep't of Health and Human Res., Docket No. 01-HHR-385 (Nov. 20, 2001), which he believed supported the proposition that DOP no longer requires supervision of technical employees for Supervisor 2s. In addition, the Bush grievance apparently involved evidence regarding similarly-situated employees who were classified as Supervisor 2s, and the finding that it was discriminatory for the grievant to not be similarly classified. Accordingly, Grievant's supervisor testified that, since Grievant also only supervises five employees and is in charge of a department operating on a 24-hour basis--like the switchboard--she should be reclassified.

As was recently discussed in Simmons v. Dep't of Health and Human Resources, Docket No. 03-

HHR-380 (Apr. 29, 2004), Thomas, supra, involved DOP's voluntary reclassification of the housekeeping supervisor at Welch Community Hospital to Supervisor 2, because of her supervision of large numbers of employees on multiple shifts. (See footnote 2) However, as noted in Simmons, supra, the issue of Ms. Thomas' appropriate classification was not at issue at level four. Therefore, the decision does not serve as a precedent for a "new interpretation" of the Supervisor 2 class specification, as argued by Grievant. Note the following portion of the discussion in Simmons:

> While Grievant is correct that, in Ms. Thomas' situation, DOP made an exception to the requirement of supervision of technical employees, this was only because she supervised numerous employees on multiple shifts, contributing to the complexity of her duties. . . . [W]hile this exception was made for Ms Thomas because of those specific job duties, there is nothing in the Thomas decision which states that the technical requirement was eradicated, as Grievant contends. If Ms. Thomas is appropriately classified, and that fact has not been established nor is at issue at this time, the only legitimate argument Grievant could make would be that she is entitled to the same classification as Ms. Thomas because of similarities in their job duties. Of course, Grievant has not made that argument, because she clearly only supervises three employees, and her duties are very dissimilar from those of Ms. Thomas. If, in fact, Ms. Thomas is misclassified, this could not serve as the basis for changing Grievant's classification. See Akers v. W. Va. Dep't of Tax and Revenue, 194 W. Va. 456, 460 S.E.2d 702 (1995).

Similarly, in the instant case, it would be improper to reclassify Grievant on the basis of the classifications of other employees who may be misclassified. Grievant's job function falls squarely within the Supervisor 1 class specification, and it is undisputed that she does not supervise technical employees, who must be engaged in "work requiring the practical application of scientific, engineering, mathematical or design principles." Glossary of Classification Terms, DOP Website. The office assistants whom Grievant supervises operate only computers, which does not qualify as technical work. While Grievant argued that her subordinates' occasional assistance with the switchboard constitutes technical work, the evidence in this case does not support such a finding. Moreover, Grievant provided no comparison of the duties of other Supervisor 2s at Sharpe Hospital to her own. Accordingly, Grievant is properly classified.

The following conclusions of law support the decision reached.

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 DOP classification specification than that under which she iscurrently assigned. See generally, Hayes v. W. Va. Dep't of Natural Res., Docket No. NR- 88-038 (Mar. 28, 1989).

2. 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. Dep't of Health and Human Res., 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).

3. Grievant has failed to show by a preponderance of the evidence that her duties more closely match those of the Supervisor 2 classification specification.

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: May 12, 2004 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Because of the similarity of issues, the parties requested that their fact/law proposals submitted in the recent grievance of Simmons v. Dep't of Health & Human Resources, Docket No. 03-HHR-380 (Apr. 29, 2004) also serve as their arguments for the instant case.

Footnote: 2

This reclassification also came about due to the classification of supervisors at correctional facilities as Supervisor 2s, because of recruitment and retention problems.