REBECCA LEMLEY,

Grievant,

v. **Docket No. 04-HHR-159**

DEPARTMENT OF HEALTH and HUMAN RESOURCES/MILDRED MITCHELL-BATEMAN HOSPITAL and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Rebecca Lemley, grieves her classification as an Office Assistant 2 and asserts she should be reallocated as an Office Assistant 3 because she performs the duties of that classification. The Division of Personnel ("DOP") argues Grievant is correctly classified, and the Office Assistant 2 classification is the "best fit" for her duties. The Department of Health and Human Resources ("HHR") defers to DOP in matters dealing with classification.

This grievance was waived at Levels I and II and denied at Level III. Grievant appealed to Level IV, and a hearing was held on July 6, 2004. This case became mature for decision on that day, as the parties elected not to submit proposed findings of fact and conclusions of law. (See footnote 1)

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

Findings of Fact

1. Grievant has been employed as an Office Assistant II by the Department of Health and Human Resources ("HHR") at Mildred Mitchell-Bateman Hospital ("MMBH") since 1999.

2. Grievant sought reallocation, and to support her request she filled out a Position Description Form on August 7, 2003. Her supervisor, Patricia Franz, completed her section of this form on November 13, 2003, and it was forwarded to Division of Personnel. On January 9, 2004, Lowell Basford, Assistant Director of the Classification and Compensation Section of the Division of

Personnel, found Grievant was correctly classified as an Office Assistant 2.

3. Grievant's Position Description Form reflects she spends the majority of her time preparing a variety of forms, reports, and charts for her supervisor. Additionally, she prepares agendas, transcribes and distributes minutes for a variety of meetings, maintains policy manuals, and keeps the contract for services book. Grievant answers routine questions about the contract book independently, and this takes approximately one to two hours a week. Grievant also takes care of the mail, files materials, types letters, schedules meetings, and very occasionally fills in for her supervisor at meetings. For approximately one hour a day, Grievant relieves and/or assists the Chief Executive Officer's Administrative Assistant. During this time, Grievant answers phone calls, files, prepares graphs and reports, and distributes information. Because Grievant had previously filled-in for this position, she trained the current Administrative Assistant.

4. During the past several years, the number of reports Grievant prepares has increased.

The pertinent sections of the classification specifications at issue are written below:

OFFICE ASSISTANT 2

Nature of Work

Under general supervision, performs full performance level work in multiple-step clerical tasks calling for interpretation and application of office procedures, rules and regulations. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures as the predominant portion of the job. Tasks may include posting information to logs or ledgers, and checking for completeness, typing a variety of documents, and calculating benefits. May use a standard set of commands, screens, or menus to enter, access and update or manipulate data.

At this level, the predominant tasks require the under standing of the broader scope of the work function, and requires an ability to apply job knowledge or a specific skill to a variety of related tasks requiring multiple steps or decisions. Day-to-day tasks are routine, but initiative and established procedures are used to solve unusual

problems. The steps of each task allow the employee to operate with a latitude of independence. Work is reviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

Examples of Work

Posts information such as payroll, materials used or equipment rental to a log or ledger; may be required to check for completeness; performs basic arithmetic calculations (addition, subtraction, division or multiplication); corrects errors if the answer is readily available or easily determined.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; reviews files for data and collects information or statistics such as materials used or attendance information.

Answers telephone, screens calls, takes messages and complaints; gives general information to callers when possible, and specific information whenever possible.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as adding machine, calculator, copying machine or other machines requiring no special previous training.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Collects, receipts, counts and deposits money.

Calculates benefits, etc., using basic mathematics such as addition, subtraction, multiplication, division and percentages.

Posts records of transactions, attendance, etc., and writes reports.

May compile records and reports for supervisor.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database.

OFFICE ASSISTANT 3

Nature of Work

Under general supervision, performs advanced level, responsible and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and regulations. May function as a lead worker for clerical positions. Performs related work as required.

Distinguishing Characteristics

Performs tasks requiring interpretation and adaptation of office procedures, policies, and practices. A significant characteristic of this level is a job-inherent latitude of action to communicate agency policy to a wide variety of people, ranging from board members, federal auditors, officials, to the general public.

Examples of Work

Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.

Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information.

Types a variety of documents from verbal instruction, written or voice recorded dictation.

Prepares and processes a variety of personnel information and payroll documentation.

Plans, organizes, assigns and checks work of lower level clerical employees.

Trains new employees in proper work methods and procedures.

Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit.

Receives, sorts and distributes incoming and outgoing mail.

Operates office equipment such as electrical calculator, copying machine or other machines.

Posts records of transactions, attendance, etc., and writes reports.

Files records and reports.

May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management.

Discussion

W. Va. Code § 29-6-10 authorizes the Division of 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 Res., 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." 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 Res., Docket No. 96-HHR-301 (Mar. 26, 1997). "An increase in the type of duties contemplated in the [current] 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.

Additionally, 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 Personnel classification specification than the one 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). Personnel 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. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991). 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 a grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va.

Dep't of Health and Human Res./Div. of Personnel, 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). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993). Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with asubstantial obstacle to overcome in attempting to establish that they are currently misclassified.

Further, as stated in Division of Personnel Rule 4.4, "Class Specifications":

> **The Director shall consider the class specification in allocating positions and shall interpret it as follows:**
>
> **(a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.**
>
> **(b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. The Director shall give consideration to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.**
>
> **(c) A class specification is a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.**
>
> **(d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.**

Mr. Basford testified at Levels III and IV that Grievant was correctly classified. He stated

Grievant's position did not warrant reallocation because there had been no significant change in her duties, and her current duties were within the Office Assistant 2 classification. Mr. Basford pointed out Grievant is not a lead worker and concluded the Office Assistant 2 classification was the "best fit" because Grievant's duties do not rise to the level of complexity of an Office Assistant 3. While Grievant does answer routine questions about the contract book, this task is within the expectations for an OfficeAssistant 2. Additionally, Mr. Basford noted Grievant's daily relief of the Administrative Assistant was not a predominant duty. Broaddus, supra.

After a review of Grievant's Position Description Form, Grievant's testimony, and the rules and regulations governing reallocation, the undersigned Administrative Law Judge finds Grievant is correctly classified as an Office Assistant 2, and this classification is the best fit for her duties. Grievant only relieves the Administrative Assistant approximately one hour a day, is not a lead worker, and does not complete complex clerical assignments of a complicated nature. See Office Assistant 2 class specification. As noted by Mr. Basford the duties Grievant performs fall squarely within those identified in her classification specification. 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.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. 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 § 4.19 (2000); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). 2. 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 not demonstrated by a preponderance of the evidence that she is misclassified or that the position of Office Assistant 2 is the "best fit" for her normal duties, as the majority of the tasks she performs fall squarely within the class specifications for this classification.

4. Grievant has not demonstrated by a preponderance of the evidence that her additional duties warrant reallocation. Kuntz/Wilford v. Dep't of Health and Human Res., Docket No. 96-HHR-301 (Mar. 26, 1997).

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 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.

_____ JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 27, 2004

Footnote: 1

Grievant was represented by Harold Albertson, Esq., DOP was represented by Lowell Basford, Assistant Director of the Classification and Compensation Section of the Division of Personnel, and HHR was represented by Robert Miller, Assistant Attorney General.