DONNA RAMSELL,

Grievant,

v. **Docket No. 04-HHR-262**

DEPARTMENT OF HEALTH and HUMAN RESOURCES/BUREAU OF BEHAVIORAL HEALTH and HEALTH FACILITIES and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Donna Ramsell, is employed by the Department of Health and Human Resources ("HHR" or "Agency"), and filed this grievance on May 17, 2004. She is grieving her classification as an Accounting Technician 4, and asserts she should be reallocated to an Administrative Services Assistant 2. The relief sought is, "[b]ack pay at the rate of two pay grades from the date [the] Position Description was submitted (April 1, 2004), and salary of pay grade 11." The Division of Personnel ("DOP") asserts Grievant is correctly classified, and the Accounting Technician 4 classification is the "best fit" for her duties. HHR defers to DOP in matters dealing with classification.

This grievance was waived at Level I, at Level II Grievant's second level supervisor stated she did not have the authority to render a decision, and the grievance was denied at Level III on June 28, 2004. Grievant appealed to Level IV on July 8, 2004. The parties agreed to submit this case on the record developed below. This case became mature for decision on September 1, 2004, after receipt of the lower level record. (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 is employed as an Accounting Technician 4 by the Department of Health and

Human Resources in the Bureau for Behavioral Health and Health Facilities.

2. Grievant sought reallocation, and to support her request, she completed a Position Description Form and submitted it to the Division of Personnel on April 7, 2004. On April 30, 2004, Lowell Basford, Assistant Director of Classification and Compensation for the Division of Personnel, determined Grievant was properly classified as an Accounting Technician 4. Grievant then filed this grievance on May 17, 2004.

3. Grievant works for HHR under the supervision of Becky Wolfe, Director of Accounting for Behavioral Services. She supervises one employee, an Accounting Technician 3. The organization chart identifies her duties and responsibilities as, "enter invoices, State car, change orders, forensics/special needs." Grt. No. 1A at Level III.

4. Grievant works in the fiscal unit for Behavioral Health Services. She "monitor[s] and process[es] payments for grant allocations and prepares documents for internal audit." Position Description Form at Level III. Grievant also provides technical assistance to care providers on issues dealing with complex invoices and back up materials. She gives these providers updates and information. Grievant also supervises an Accounting Technician 3, processes change orders, and takes care of the payment of invoices for court ordered mental health evaluations. These duties take up approximately80% of her time. Grievant also takes care of the equipment needs for Assistant Commissioners, prepares monthly reports on two state vehicles, monitors office equipment usage, and orders supplies.

5. The accounting duties Grievant performs are complex and involve multiple accounts and large sums of money. Additionally, Grievant prepares reports and summaries. Grievant has the authority to resolve a variety of problems within her area, and is expected to make sure accounting laws and agency and federal regulations are followed.

6. The posting for Grievant's position dated August 3, 2001, identified the duties of the position. These are the duties Grievant is currently performing.

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

ACCOUNTING TECHNICIAN 4

Nature of Work

Under general supervision, performs advanced accounting support duties. The incumbent is

responsible for posting complex journal entries that require the use of specialized accounting procedures, assisting the supervisor in preparing agency budgets, and examining records to assure adherence to accounting laws and regulations. Performs related work as required.

Distinguishing Characteristics

This is advanced level paraprofessional accounting work. Job duties include performing complex balancing and reconciling of multiple accounts. Employees in this class are responsible for accuracy of accounts for others and require little supervision. Responsibilities may also include being a lead worker.

Examples of Work

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

Transfers funds and balances multiple accounts such as hospital billing.

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

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

Makes complex journal entries and other transactions which require use of specialized accounting procedures.

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

Assists supervisor in preparing budget by compiling data, preparing summaries and requests, and/or developing cost projections.

Contacts associates, administrators, and general public in order to obtain information, discuss changes in documents, or resolve problems with more complex accounts.

Makes recommendations on the development or revision of agency policies and procedures.

May assign account/department codes.

May train Accounting Technicians and subordinate staff.

May lead and review work of other Accounting Technicians.

ADMINISTRATIVE SERVICES ASSISTANT 2

Nature of Work

Under limited supervision, performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency. Develops policies and procedures for resolving operational problems and for improving administrative services. Supervises the work of office support staff in rendering required services. Work is typically varied and includes extensive inter- and intra governmental and public contact. Has some authority to vary work methods and policy applications and to commit the agency to alternative course of action. Performs related work as required.

Distinguishing Characteristics

Positions in this class are distinguished from the Administrative Services Assistant 1 by the supervisory nature of the work performed, by the size of the unit served and by the independence of action granted. Positions in this class are responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a large state agency.Authority to vary work methods and to commit the agency to alternative course of action is granted.

Examples of Work

Confers with inter- and intra-agency personnel to transact business, gather information, or discuss information; may be in a position with public or federal government contact.

Conducts performance surveys and reviews agency methods of operation; devises flowcharts and graphs; may conduct cost analysis studies.

Gathers and compiles information for state records; writes reports, balances tally sheets, and monitors inventories, purchases, and sales.

Updates records and contacts employees to gather information; represents the agency in the area of assignment in both internal and external meetings.

Maintains files of information in hard copy files or electronic format; runs reports for regular or

intermittent review.

Determines the need for changes in procedures, guidelines and formats; devises a solution; monitors the success of solutions by devising quantitative/qualitative measures to document the improvement of services.

Writes manuals in the area of assignment; clarifies the wording and describes new procedures accurately.

Supervises the work of Office Assistants, Accounting Assistants or other support staff.

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 thekind 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 in 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 Division of Personnel classification specification than the one to 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 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 clearlyerroneous. W. Va. Dep't of Health v. Blankenship, 189 W.Va. 342,348, 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 a substantial obstacle to overcome in attempting to establish that they are currently misclassified.

Further DOP Rule 4.4 states:

> The Director shall consider the class specification in allocating positions and shall interpret it as follows:
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> (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 that the positions within the Administrative Services Assistant class series were developed to be generic classifications used by a broad range of agencies. Grievant's duties, however, are specific to accounting. Mr. Basford stated thatin order to be classified as an Administrative Services Assistant 2, an employee must perform administrative and supervisory work, and Grievant does neither. (See footnote 2) Administrative work is defined by the Division of Personnel as "work activities relating to planning, organizing, directing, controlling, supervising and budgeting of agency or unit operation, programs and mission." A review of the Distinguishing Characteristics Section makes it clear that an Administrative Services Assistant 2 is "responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a large state agency." Grievant is supervised by the Director of Accounting and is housed within a four-person section/unit. She is clearly not "responsible for a significant administrative component in a medium size agency or state facility" and is not "an Assistant Director of a major administrative support component of a large state agency."

Grievant also averred she performed supervisory duties. The Division of Personnel defines a supervisor is one who is "formally delegated responsibility for planning, assigning, reviewing and approving the work of three or more full-time employees which also includes initiating disciplinary actions, approving sick and annual leave requests, conduct[ing] performance evaluations, recommend[ing] salary increases, and is a step in the grievance process." (Emphasis added). Grievant only supervises one employee, and at the time of the Level III hearing, that position was not filled. While Grievant maydisagree with the Division of Personnel's definition, that difference does not mean the definition is wrong. The Division of Personnel is responsible for defining the terms used in its classification system, and this definition is not clearly wrong or arbitrary and capricious. Loudermilk v. Dep't of Health and Human Res., Docket No. 00-HHR-304 (Dec. 29, 2000).

Mr. Basford testified and the undersigned Administrative Law Judge agrees that Grievant's duties fall squarely within the Accounting Technician 4 class specification. Accordingly, Grievant has failed to demonstrate the Division of Personnel was “clearly wrong” in its interpretation of the duties and

differences between the two class specifications at issue, and Grievant is properly classified.

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 § 4.21 (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. 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 more closely match another cited Personnel classification specification than the one under whichshe is currently assigned. See generally Hayes v. W. Va. Dep't of Natural Res., Docket No. NR-88-038 (Mar. 28, 1989).

3. 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).

4. 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./Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). 5. 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).

6. The Division of 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, 431 S.E.2d 681, 687 (W. Va. 1993).

7. Grievant has not demonstrated by a preponderance of the evidence that she is misclassified, or that the position of Administrative Services Assistant 2 is the "best fit" for her duties.

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: September 29, 2004

Footnote: 1

Grievant represented herself, HHR was represented by Robert Miller, Assistant Attorney General, and the Division of Personnel was represented by Lowell Basford, Assistant Director of Classification and Compensation.

Footnote: 2

The Administrative Services Assistant 2 class specification states in the "Nature of Work" Section, "[u]nder limited supervision, performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency."