BARBARA SIMMONS,

Grievant,

v. **Docket No. 03-HHR-380**

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

Respondents.

DECISION

Barbara Simmons ("Grievant") initiated this grievance on March 24, 2003, alleging she is misclassified. She seeks to be classified as a Supervisor 2 with back pay and interest. The grievance was held in abeyance at level one for an extended period of time, while the Division of Personnel ("DOP") reviewed Grievant's position. After reclassification was denied by DOP, the grievance was denied at level one on October 17, 2003, (See footnote 1) at level two on October 27, 2003, and, after a hearing conducted on December 5, 2003, it was denied at level three on December 12, 2003. Grievant appealed to level four on December 17, 2003. A hearing was held in Elkins, West Virginia, on March 1, 2004, where Grievant was represented by Jack Atchison; the Department of Health & Human Resources ("DHHR") was represented by Assistant Attorney General Robert Miller; and DOP was represented by Assistant Director Lowell D. Basford. This matter became mature for consideration upon receipt of the parties' final fact/law proposals on April 15, 2004.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

___1. Grievant is employed as the Supervisor of the Expressive Therapy Center & Patient Library at Sharpe Hospital. She currently supervises a librarian, a ceramics instructor, and a woodworking instructor, who provide instructional services to patients in the rehabilitation unit of the hospital.

Grievant is responsible for her employees' performance evaluations, approval of leave, discipline, and daily supervision of their work. She evaluates patients who are referred to her department and makes recommendations for training which would benefit their particular treatment. She also takes part in development of educational programs administered by her department, conducts training sessions, prepares periodic reports for the department, and serves on various hospital committees.

2. The librarian whom Grievant supervises teaches some computer classes. The other two employees in the unit utilize tools and equipment such as grinders, drills, kilns and saws. All of Grievant's subordinates are classified as Health Service Assistants.

3. 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 sectionactivities 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.

4. 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. Dept. 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. Dept. 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. Dept. of Health, Docket No. 90- H-444 (Apr. 22, 1991); See generally, Dollison v. W. Va. Dept. of Empl. Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant'scurrent classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. 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. Dept. 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. Dept. of Health v. Blankenship, 189 W. Va. 342, 348, 431 S.E.2d 681, 687 (1993).

In the instant case, Grievant does not dispute that the class specification for Supervisor 1 does, in fact, accurately describe her job duties and responsibilities. Rather, she contends that, due to what she believes is a “new interpretation” of the Supervisor 2 specification by DOP, she is entitled to that classification. Specifically, Grievant bases her entire argument on the Grievance Board's decision in Thomas v. W. Va. Dept. of Health and Human Res., Docket No. 01-HHR-385 (Nov. 20, 2001). In that case, Ms. Thomas, who was the housekeeping manager at Welch Community Hospital, was reclassified as a Supervisor 2 as a result of classification changes which had been made for some employees of the Division of Corrections, which was experiencing recruitment and retentionproblems with certain types of supervisory positions. Because Ms. Thomas was similarly situated to those employees, in that she supervised large numbers of employees on multiple shifts and was not a “working supervisor,” DOP believed it was only fair to also reclassify Ms. Thomas as a Supervisor 2. Accordingly, Grievant contends that DOP has “done away” with the requirement that a Supervisor 2 must supervise technical employees, thus making her eligible for reclassification.

Thomas, supra, did not address the propriety of Ms. Thomas' classification, because the only issue was the amount of back pay to which she was entitled as a result of DOP's and DHHR's agreement to reclassify her. 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. What Grievant does not seem to understand is that, while 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. Dept. of Tax and Revenue, 194 W. Va. 456, 460 S.E.2d 702 (1995). Since Grievant does not dispute that her current classification accurately encompasses her job duties, there is no question that the Supervisor 1 classification is the best fit for her. DOP defines “technical” as “work requiring the practical application of scientific, engineering, mathematical or design principles.” Glossary of Classification Terms, DOP Website. A librarian, a woodworker, and a ceramics instructor are clearly not engaged in technical work, so Grievant is not supervising technical employees. Therefore, it can only be concluded that she is correctly classified as a Supervisor 1.

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 is currently assigned. See generally, Hayes v. W. Va. Dept. 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. Dept. 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: April 29, 2004 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant's supervisor supported her request, but lacked the authority to grant it.