ARVELLA FRUIT, et al.,

Grievants,

v. **Docket No. 04-HHR-040**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILD SUPPORT ENFORCEMENT AND DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants (See footnote 1) are employed by the Bureau of Child Support Enforcement ("BCSE") as Office Assistant 2s and 3s, throughout the State of West Virginia. Grievants initiated this claim on August 29, 2003, alleging they are misclassified. Grievants had previously alleged a default occurred at level three, which was denied by Order Denying Default issued by the undersigned. See Fruit, et al., v. Dep't of Health and Human Res., Docket No. 04-HHR-040D (Aug. 13, 2004). Thereafter, this matter proceeded to a hearing on the merits, which was held in Westover, West Virginia, on January 10, 2005. Grievants represented themselves (See footnote 2), the Department of Health & Human Resources ("DHHR") was represented by B. Allen Campbell, Senior Assistant Attorney General, and the Division of Personnel ("DOP") was represented by Assistant Director Lowell D. Basford. This matter became mature for consideration upon receipt of the parties' fact/law proposals on February 10, 2005.

The following material facts have been proven by a preponderance of the evidence.

Findings of Fact

___1. Grievants are employed at various offices of the BCSE throughout the state. They are classified as Office Assistant 2s and 3s.

2. Grievants' duties involve assisting attorneys who work for the BCSE. These attorneys must participate in court proceedings to obtain child support for the agency's clients.

3. Grievant's duties include the following:

-- Answering the phone, which often involves dealing with irate individuals

-- Typing court orders, both from transcription and from computer forms

-- Entering data into the agency's computer database

-- Copying documents

-- Filing documents

-- Taking legal documents to the courthouse for filing

-- Reviewing court records for missing documents

4. The classification specification for Office Assistant 2 describes the position as follows, in pertinent part:

> **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.
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> 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 isreviewed by the supervisor in process, randomly or upon completion. Contacts are usually informational and intergovernmental.

5. Similarly, the classification specification for Office Assistant 3 provides:

> **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.

6. The classification sought by Grievants is Secretary 1, the specification for which provides, in pertinent part:

> **Nature of Work** Under general supervision, at the full-performance level, relieves supervisor of clerical and minor administrative duties, exercising discretion and independent judgment. Necessity for dictation, familiarity with word processors, and other special requirements vary depending upon supervisor's preference. Performs related work as required.
>
> **Distinguishing Characteristics** This class is distinguished from the Office Assistant series by the assignment of support duties to a specific individual overseeing a section, or a division. The incumbent composes routine correspondence for the supervisor, screens calls and visitors and responds to inquiries requesting knowledge regarding office procedure, policy and guidelines, and program information. The position has limited authority to speak for the supervisor.
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> At this level, the work requires the knowledge necessary to complete complex procedural assignments. Incumbent determines appropriate procedures from among a variety of resources, methods, and processes. Incumbent is responsible for his/her own work, and may assign and direct the work of others. Although some tasks are defined and self-explanatory, the objectives, priorities, and deadlines are made by the supervisor. Work isreviewed, usually upon completion, for conformance to guidelines. Contacts at this level are frequent and often non routine and/or of a confidential or sensitive nature, requiring tact and the ability to judge which inquiries can be answered or must be referred.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievances by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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). "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 & Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

In order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match another cited DOP classification specification than that under which they are 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 their 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).

Under the foregoing 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:

(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.

The crux of Grievant's argument for reclassification is that, because of the legal nature of their duties, they are performing more complex tasks than Office Assistants assigned to other DHHR offices. They contend that the numerous legal documents they are responsible for creating, and the legal terminology with which they must be familiar, raise their duties to the more complex nature of those of Secretary 1. However, as explained by Mr. Basford, the fact that Grievants assist attorneys who perform legal work does not make their duties any more complicated than those of other Office Assistants in specialized offices of various state agencies. The focus of the question of whether Grievants are misclassified goes to the nature of their work, which consists of copying, typing, filing and answering telephones, which are the usual duties of Office Assistants. Grievants do not exercise the independent judgment and discretion of Secretary 1s, nor do they assist the director of a section or division of their agency. Although Grievants areresponsible for “generating” a variety of court orders and pleadings, these documents are contained in computer-generated forms, where names

and dates are merely inserted by the typist. The attorneys in Grievants' offices are responsible for the actual content of these documents. The evidence in this case establishes that Grievants' duties fit perfectly within the Office Assistant 1 and 2 classification specifications, and they are not misclassified.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievants have the burden of proving their grievances by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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 Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match another cited DOP classification specification than that under which they are currently assigned. See generally, Hayes v. W. Va. Dep't of Natural Res., Docket No. NR- 88-038 (Mar. 28, 1989).

3. The key to the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dep't of Health and Human Res., Docket No. 90-H-433 (Mar. 28, 1991). 4. The evidence in this grievance establishes that Grievants are properly classified as Office Assistants.

5. Grievants failed to prove by a preponderance of the evidence that the Secretary 1 classification is the best fit for their positions.

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.

Date: March 4, 2005

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants include Ms. Fruit, Paulette Stewart, Ruth Plum, Eleanor Totten, Sandra Wallace, Brenda Martin, Joy Belcher, Shirley Jones, Christine Holton and Lisa Pinkerman.

Footnote: 2

Only Grievants Stewart, Plum, and Totten appeared at the hearing.