LESLIE POLING, JR.

v. Docket No. 95-HHR-173

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/

DIVISION OF PERSONNEL

DECISION

___Grievant, Leslie Poling, Jr., employed by the Department of Health and Human Resources (DHHR) as a Recreation Specialist at Hopemont State Hospital, initiated grievance proceedings on June 29, 1994, at which time he complained that he was misclassified. The level one evaluator lacked authority to grant the requested relief. The matter was not resolved at level two, and Grievant advanced the matter to level three. Following a hearing on July 27, 1994, a level three decision issued on April 21, 1995, held that Grievant had proven misclassification as a Recreation Specialist, but failed to prove Supervisor III was the "best fit" for his position.

A level four appeal was filed on May 1, 1995. The Division of Personnel (Personnel) was joined as a party and a hearing conducted on October 20, 1995. At hearing, Grievant amended his complaint to request reclassification to Supervisor II, with negotiable backpay. Both parties declined the opportunity to submit proposed findings of fact and conclusions of law; however, Grievant filed additional documentation on October 27, 1995,"regarding the negative information presented by Mr. Basford and Ralph Raybeck at the grievance hearing . . . ." The matter became mature for decision with a final response by DHHR on March 1, 1996.

Upon review of the record in its entirety, it appears that the basis of this grievance may be found in 1990 . Grievant had held the position title of Recreation Supervisor since March 1988. A reorganization of personnel, effective June 1990, transferred the supervision of the Therapeutic Recreation staff to the Nursing Department. A grievance ensued at that time, but apparently was not pursued beyond level three. A Division of Personnel Position Description completed by Grievant and dated September 14, 1990, indicates that he supervised ten other employees at that time and was

essentially responsible for the development and implementation of a comprehensive Therapeutic Recreation program at the hospital. On that document, Grievant's supervisor, Ralph Raybeck, noted that Grievant was assigned the same supervisory responsibilities as other department heads, referred to as Program Directors. However, Hospital Administrator Dr. Michael Todt took exception to these representations, stating that Grievant only recommended individuals to be hired and exercised very limited, if any, input in all other areas of supervisory activity. Dr. Todt concluded that Grievant supervised a program, not the personnel.

Presently, Grievant argues that his correct classification is Supervisor II. Relevant portions of Personnel's classification specifications for that designation follow:

SUPERVISOR II

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 reviewedby 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 II is distinguished from Supervisors I 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 I 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.

Personnel asserts that Grievant's duties are primarily in the area of programming, making Recreation Specialist the "best fit" classification. The relevant portions of Personnel's classification specification for Recreation Specialist provides:

RECREATION SPECIALIST

Nature of Work

Under general supervision, at the full-performance level, performs recreation planning and participation work at a state health or rehabilitation facility. Plans and gathers materials, and leads activities for patients or clients. Ensures that activities are in compliance with court orders, certification guidelines and/or facility policy. Work may involve irregular hours. The position has significant latitude for planning activities within budgetary and programmatic limitations. Performs related work as required.

Examples of Work

Plans weekly and monthly activities to provide structural group or individual recreation for patients or clients.

Instructs groups in team sports, arts and crafts, and group activities such as board games or aerobics.

Oversees recreation room during leisure activities; instructs individuals in the safe use of equipment such as weights.

Gathers and dispenses equipment, materials, and supplies.

Organizes staff or volunteers to ensure adequate supervision and support services for activities

such as day camping and special occasion parties.

Evaluates activity-related injuries; applies first aid knowledge and/or contacts medical staff.

Documents patient or client participation and behavior; plans individual activities to encourage or reinforce patient or client behavior.

Monitors equipment usage; orders repairs or recommends replacement of equipment.

Purchases materials used for activities.

May drive buses or vans; may teach swimming, gardening, music, or other specialty area.

May care for pets used in pet therapy.

May attend staffing and treatment meetings; may conduct intake interviews with individuals arriving at the facility.

In order to prevail on this misclassification claim, Grievant must prove by a preponderance of the evidence that his duties more closely match Personnel's classificationspecification for Supervisor II than that of his current classification, Recreation Specialist, during the relevant period. See generally, Hayes v. W.Va. Dept. of Natural Resources, 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. Dept. 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 his required duties. Simmons v. W.Va. Dept. of Health and Human Resources, Docket No. 90-HHR-433 (Mar. 28, 1991). The predominant duties of the position in question are class controlling. Broaddus v. W.Va. Div. of Human Services, Docket No. 89-DHS-606 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if ambiguous, should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W.Va. 1993).

On his most recent position description, dated May 27, 1994, Grievant states that he supervises ten employees, selects individuals to be hired, conducts performance evaluations, assigns and reviews their work. He recommends disciplinary actions, gives verbal and written reprimands, and is

a step in the grievance process. Under the "Work Performed" section, Grievant reveals that his time is consumed primarily in the scheduling, supervision,and instruction of subordinates in the implementation of therapeutic recreational and leisure activity programs within state and federal regulations (10 hours per week); planning and implementation of programs of a special nature such as picnics, and working in subordinates place when necessary (6 hours per week); developing a calendar of events at least one month in advance (4 hours per week); and reviewing resident charts to approve or make changes in documentation to comply with state and federal regulations (4 hours per week). Numerous other duties require an hour or less per week. (See footnote 1)

In addition to the foregoing documentation, Grievant presented the testimony of Martha Hollis, a Recreation Specialist at Hopemont Hospital, who identified Grievant as her immediate supervisor. Ralph Raybeck, the Director of Therapeutic Programming at Hopemont and Grievant's supervisor, testified that Grievant coordinates and directs the activities of the recreation department. Mr. Raybeck opined that Grievant should be classified as a Supervisor I. Kay Goddard, Activities Director at Pinecrest Hospital, an intermediate care facility housing more than one hundred fifty patients, stated that she supervises four Recreation Specialists in a program similar to that in place at Hopemont and that she is classified as a Supervisor II.

Personnel argues that Supervisor II is not the appropriate classification for Grievant because he does not function in a technical area. Addressing the area of supervisory duties performed by Grievant, Personnel characterizes any such responsibilities as pro forma.Programming was identified as the primary responsibility of a Recreation Specialist.

A review of the record establishes that Grievant optimally functions as a Recreation Specialist. His own documentation states that he engages in recreation planning and participation, gathers materials, and ensures that the residents are offered activities in compliance with court orders, state and federal regulations. Clearly, he is given significant latitude for planning activities within budgetary and programmatic limitations. Grievant is assisted in providing recreation activities by numerous Health Service Aides. Because he directs their daily activities and has been given a role in their selection and other personnel actions, Grievant may correctly characterize these duties as supervisory. This does not entitle him to classification as Supervisor II.

The primary responsibility of a Supervisor II is to insure that subordinate employees perform technical work requiring advanced training in a satisfactory manner. The primary responsibility of a

Recreation Specialist is to plan and implement a therapeutic recreation program. The employees assigned to assist a Recreation Specialist, in this case, do not perform technical work requiring advanced training. Because Grievant's primary responsibility is to provide a recreation program with the assistance of employees who are not required to perform technical work or to possess advanced training, the classification into which he best fits is Recreation Specialist.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed by the Department of Health and Human Resources at Hopemont State Hospital.

2. Grievant has been classified by the Division of Personnel as a Recreation Specialist.

3. Grievant's primary responsibility is the planning and implementation of a therapeutic recreation program for the Hospital residents. Grievant is assisted in the implementation of the program by numerous Health Service Aides. These individuals do not perform technical work and are not required to acquire advanced training.

4. Grievant performs duties which may be considered supervisory, including the scheduling of his subordinates in their day to day activities, issuing reprimands, participating in hiring, and the grievance process.

CONCLUSIONS OF LAW

1. In order for a grievant to prevail upon a claim of misclassification, he must prove by a preponderance of the evidence that his duties for the relevant period more closely matched another cited Personnel classification specification than that under which his is currently assigned. Hayes v. W.Va. Dept. Of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989).

2. The predominant duties of the position in question are class controlling. Collier, et al. v. W.Va. Dept. Of Health and Human Resources/Off. Of Maternal and Child Health and Div. of Personnel, Docket No. 94-HHR-039 (Sept. 19, 1994). 3. Personnel's interpretation of the classification specifications for the position in question, as they apply to the duties Grievant performed, are not

clearly erroneous and should be accorded great weight. W.Va. Dept. Of Health v. Blankenship, 431 S.E.2d 681 (W.Va. 1993); Hager v. Dept. Of Health and Human Resources/Office of Social Services and Division of Personnel, Docket No. 95-HHR-241 (Sept. 29, 1995).

4. Grievant's primary duties involve the planning and implementation of a recreation program. Although he may perform some duties outside the classification of Recreation Specialist, this does not render him misclassified. Dooley v. W.Va. Dept. Of Health and Human Resources, Docket No. 90-H-498 (Mar. 19, 1991).

Accordingly, the grievance is **DENIED**.

March 30, 1996

Footnote: 1

It is noted that neither the supervisory nor administrative review sections of this position description were completed; however, Mr. Raybeck indicated at hearing that the Nursing Department no longer supervises the Recreation staff. In an Affidavit dated July 26, 1996, Mr. Raybeck confirms many of Grievant's duties.