

Issue: Qualification/Position/Classification/Working out of Class-Failure to Take Action; Ruling  
Date: April 23, 2003; Ruling #2003-007; Agency: Department of Mental Health, Mental  
Retardation and Substance Abuse Services; Outcome: not qualified



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Mental Health, Mental Retardation  
and Substance Abuse Services

No. 2003-007

April 23, 2003

The grievant has requested a ruling on whether his June 20, 2002 grievance with the Department of Mental Health, Mental Retardation and Substance Abuse Services (the agency) qualifies for a hearing. The grievant claims that the agency misapplied or unfairly applied state policy by failing to reclassify his position to a Psychologist II.<sup>1</sup> For the reasons discussed below, this grievance does not qualify for a hearing.

**FACTS**

The grievant is employed as a Psychologist I with one of the agency's mental health facilities. The grievant has a master's degree in Psychology (received in 1991), and he was originally hired by the facility as a classified employee in 1997.

On May 28, 2002, the grievant submitted a Classification Action Request to his supervisor, requesting to be reclassified as a Psychologist II (an upward role change). The supervisor denied his request and then forwarded it to the Psychology Director ("Director").<sup>2</sup> The Director concurred with the supervisor's determination based on the fact that the grievant had not completed a doctoral degree in psychology nor was licensed in Virginia as a mental health professional.

On June 20, 2002, the grievant initiated a grievance challenging the agency's denial of his Classification Action Request as a misapplication or unfair application of policy. After the second step meeting, the step respondent (the Director), issued a detailed written report discussing the grievant's claim. Included within that report were a number of relevant statistics obtained by the Director through his review of facility personnel records.

Nineteen employees in the Psychology Department are in the Psychology II role; fourteen have a doctoral degree and five have a master's degree. Since 1998, a doctoral degree in psychology and eligibility for licensure as a clinical psychologist have been hiring prerequisites

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<sup>1</sup> In a letter to the Commissioner, dated December 18, 2002, the grievant requests qualification of his grievance, but also raises new issues. This ruling will not address those new issues. See *Grievance Procedure Manual* § 2.4, page 6 ("once the grievance is initiated, additional claims may not be added").

<sup>2</sup> In his qualification response, the agency head noted that the supervisor should have submitted the Classification Action Request to the Director for the initial decision because this type of action is reserved exclusively to management. See Agency Head Qualification Response, page 1, dated December 23, 2002.

for the Psychologist II role. Five of the current doctoral level psychologists were hired after the change in requirements, and all have a Ph.D or Psy.D in clinical psychology from an APA-approved program.<sup>3</sup>

Of the five employees in the Psychologist II role that have master's degrees, two are Licensed Professional Counselors (LPCs) in the state of Virginia. One of the two LPCs, whom the grievant uses as a comparator to his situation, requested a classification audit and was given an upward role change from the position of Psychologist I *prior to* becoming a LPC. The Director reviewed at length the qualifications of the three other employees who have master's degrees but are not LPCs, finding that they all have at least ten years with the facility, extensive clinical training and supervisory experience, more experience as psychologists than the grievant when they became Psychologist IIs, and more programmatic responsibility in their work. However, the grievant disputes many of the Director's determinations, including the application of the degree/licensure requirements and the evaluation of his clinical experience, job duties and comparative performance.<sup>4</sup>

The grievance advanced through the management resolution steps without relief, and the grievant requested qualification of his grievance from the agency head on August 28, 2002. In an effort to facilitate a final resolution of the grievance, the agency granted the grievant's request for an audit of his position. The grievant and the agency entered into a formal agreement whereby an "impartial Compensation Consultant" from the central office of the agency would conduct a classification/compensation audit.<sup>5</sup> Under the terms of the agreement, after the grievant received the determination of the audit, the grievant could then decide whether he wished to proceed with his grievance. The audit report was completed on December 12<sup>th</sup>, with the auditor finding the grievant correctly classified as a Psychologist I. On December 19<sup>th</sup>, the grievant notified the agency head that he wished to proceed with his former request for qualification of his grievance.<sup>6</sup> On December 23, 2002, the agency head denied qualification. Consequently, the grievant has requested a qualification determination from this Department.

In support of his grievance, the grievant claims that the Psychologist I and II roles differ only in number of group hours required (noting that he completed more group hours in 2002 than all but one of the psychologists), and his unit has more patients with behavior plans/skills training than any other unit. Additionally, the grievant cites his clinical experience, drafting of Behavior Plans and Functional Assessments, supervision of students and Behavioral Specialists, and membership on the Cognitive Awareness Program Committee.<sup>7</sup> Furthermore, the grievant maintains that his assigned work (and his performance of such) is comparable to that of those employees in the role of Psychologist II. For instance, he notes his development of a Token Economy program, with the long hours it required, and his assignment to a psychiatrically complex unit.

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<sup>3</sup> In 1998, the facility did hire a Behavior Analyst who had a master's degree and had completed all requirements for the doctorate except his dissertation. One of the conditions of his hiring was that the dissertation be completed. However, he is no longer with the facility.

<sup>4</sup> See letter to Hospital Director, dated August 15, 2002.

<sup>5</sup> Letter to Grievant from Human Resource Consultant, dated September 17, 2002.

<sup>6</sup> Letter to Commissioner and Central Office of Human Resources from Grievant, dated December 19, 2002.

<sup>7</sup> Letter to Hospital Director, dated August 15, 2002.

On the other hand, the agency maintains that the grievant erroneously relies upon the quantity of patients, groups and time spent in certain job functions, when the most important distinctions between the two roles, the agency asserts, are qualitative rather than quantitative. As the Director states, “[c]omprehensiveness of service, level of training, leadership and provision of supervision are emphasized rather than the quantity of any one type of service.”<sup>8</sup> Furthermore, although recognizing that the grievant is an asset to the psychology department and to the facility, management maintains that the grievant does not have the same duties and responsibilities, work experience, education, knowledge, skills, training, certification and licensure as current employees in the role of Psychologist II. Moreover, the agency notes that the classification audit agreed to by the grievant and performed by the agency’s Central Office Human Resource Manager found that the grievant is in the correct role as a Psychologist I, with a substantial difference between the level and complexity of duties performed by the grievant and those of psychologists in the role of Psychologist II.

### DISCUSSION

By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications “shall not proceed to hearing”<sup>9</sup> unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy. In this case, the grievant alleges that the agency’s denial of his Classification Action Request for an upward role change to the role of Psychologist II was a misapplication or unfair application of policy.

For such a claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.<sup>10</sup> In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”<sup>11</sup>

The above statutes evince a policy that would require state agencies to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. Accordingly, this Department has long held that a hearing officer may not substitute his or her judgment for that of management regarding the correct classification of a position.<sup>12</sup> Thus, a grievance that challenges the substance of an agency’s assessment of a position’s job duties does not qualify for a hearing unless there is sufficient evidence that the assessment was arbitrary or

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<sup>8</sup> Second step Grievance Report, from the Psychology Director to Grievant, dated July 31, 2002.

<sup>9</sup> Va. Code § 2.2-3004(C).

<sup>10</sup> Va. Code § 2.2-2900.

<sup>11</sup> Va. Code § 2.2-103(B)(1).

<sup>12</sup> See EDR Ruling No. 2001-062 ( July 18, 2001).

capricious,<sup>13</sup> or that the resulting determination was plainly inconsistent with other similar decisions within the agency.

Under Department of Human Resource Management (DHRM) policy, the Psychological Services Career Group consists of roles (including the roles of Psychology I and II) that define the typical career paths for employees who pursue careers as psychologists in the state system.<sup>14</sup> A role for each of these occupations represents different levels of work or career progression, and roles are distinguished based upon the Compensable Factors of Complexity, Results, and Accountability, which determine position classification.<sup>15</sup> As discussed below, while there are similarities in the role descriptions, the role of Psychologist II requires a significantly higher level of practice than that required of an individual in the role of Psychologist I.<sup>16</sup>

### *Complexity*

Significant differences exist between the “complexity”<sup>17</sup> components for the two roles: the role of Psychologist II requires extensive knowledge of clinical practices and may require court testimony as an expert witness and expertise in areas requiring an advanced degree or licensure. Furthermore, the Psychologist II may be licensed to independently practice psychology. None of these components are listed under for the role of Psychologist I, however.<sup>18</sup>

In this case, although the grievant disputes management’s determination of the extensiveness of his clinical background and the complexity of his work (past and present), the evidence does not establish that management’s decision was in disregard of the facts, without a reasoned basis, or plainly inconsistent with other similar job classification decisions. Indeed, management appears to have thoroughly reviewed the facts and found that the grievant’s clinical education and experience is less than that of those individuals who are currently in the Psychologist II role.<sup>19</sup> Additionally, during this Department’s investigation, the agency provided

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<sup>13</sup> See *Grievance Procedure Manual* § 9, page 23. Arbitrary or capricious is defined as a decision made in disregard of the facts or without a reasoned basis.

<sup>14</sup> See [www.dhrm.state.va.us/services/compens/careergroups/health/Psychologica49210.htm](http://www.dhrm.state.va.us/services/compens/careergroups/health/Psychologica49210.htm) (website visited March 12, 2003).

<sup>15</sup> *Id.*; see also DHRM’s Human Resource Management Manual, Chapter 6, *Job Evaluation*, pages 2-3 (describing in detail Compensable Factors).

<sup>16</sup> See general description of the roles contained on DHRM’s website ( *supra*, note 14). The Psychologist I role provides career tracks for psychologists that are primarily devoted to conducting psychological assessments, administering, scoring and interpreting a variety of psychological tests and providing treatment to clients using didactic, psychotherapeutic and behavioral techniques and principles. The Psychologist II role provides career tracks for advanced-level psychologists that deliver a variety of comprehensive psychological/neuropsychological services to clients. Services include diagnosis, treatment planning an intervention, on-going therapy, screening, diagnostic testing, evaluation, and may supervise subordinate psychologists.

<sup>17</sup> The Complexity of Work factor encompasses the difficulty of the work, the scope and range of assignments, the knowledge, skills and abilities required, and the nature of contacts. See DHRM’s Human Resource Manual, Chapter 6, *Job Evaluation*, page 2.

<sup>18</sup> See *supra*, note 14 ( DHRM’s website discussing Role Descriptions for Psychologist I and II).

<sup>19</sup> Second step Grievance Report, from the Psychology Director to Grievant, dated July 31, 2002. The second step respondent discussed with great particularity the educational background and work history of the grievant and the four employees currently in the role of Psychologist II cited by the grievant as comparators.

a number of Employee Work Profiles (EWPs) to the investigating consultant, including the grievant's and those for employees in the role of Psychologist II named by the grievant as comparators. Review of these EWP's indicates that the difficulty of the work, the scope and range of assignments, and the knowledge, skills and abilities required of the comparators appears to be more complex than that required of the grievant, with one exception: one employee (hired by the facility in 1987 as a Psychologist II) has duties and responsibilities that appear to be very similar to those of the grievant.<sup>20</sup> While it is of some concern that an employee performing similar work to the grievant may be classified as a Psychologist II, this fact alone does not establish that management's denial of an upward role change in the grievant's case was arbitrary and capricious, when, as noted by the auditor, classification of a position into a role is predicated upon matching it to the predominate set of duties and KSAs rather than finding a position that may be out of alignment with the Career Group Description.<sup>21</sup>

With respect to the other specified components of the "complexity" factor for the role of Psychologist II, the grievant has not served in the capacity of an expert witness nor is he a Licensed Professional Counselor. While acknowledging that he is not licensed, he maintains that LPC certification is not necessary for an upward role change because of management's alleged inconsistent application of the degree and licensure requirements. As evidence, the grievant cites three Psychologist IIs employed at the facility who, like himself, have master's degrees and are not Licensed Professional Counselors (LPCs). Additionally, he states that a fourth employee was granted an upward role change from Psychologist I to Psychologist II *prior* to her licensure.

In response to the grievant's claim, the agency states that, in order to increase staff clinical skills and competencies, for the past five years it has been facility policy that those individuals seeking to be hired as a Psychologist II must have a doctoral degree in psychology *and* eligibility for licensure as a clinical psychologist. Further, the Director decided that he would consider upward role changes to Psychologist II from those employees at the facility who do not have a doctoral degree in psychology, but are licensed in the state as a mental health professional. Clearly, all of the employees presently in the role of Psychologist II do not meet the above criteria. However, the examples cited by the grievant to establish an inconsistent application of the policy are not analogous to the grievant's situation. With respect to the three employees who have master's degrees and are not LPCs, all were employed at the facility as Psychologist IIs long before the new hiring requirements were instituted or the new upward role change rules were developed -- one was a Psychologist II at another state facility before being hired in 1989, another was hired at the Psychologist II level in 1987, and the third became a Psychologist II in 1986.<sup>22</sup> Therefore, these employees are not similarly situated to the grievant, who has recently requested the upward role change and is thus subject to current classification policies.

Regarding the employee who was granted an upward role change to Psychologist II *prior* to the completion of her licensure requirements, the agency states that the upgrade was granted in her case due to the complexity of her workload and because she had concurrently completed the

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<sup>20</sup> Memorandum to Director of Facility from the Human Resource Manager, dated December 12, 2002.

<sup>21</sup> *Id.*

<sup>22</sup> The position was formerly classified as a Psychologist Senior before the institution of the Compensation Reform plan in 2000.

academic requirements and the 4000 work hours of supervised counseling necessary for licensure.<sup>23</sup> She received her upward role change on April 10, 2002, and her LPC certification two months later, on June 10, 2002. To support the statement that her work had increased in complexity, management notes her forensic risk assessments of jail transfer patients and her substantial involvement in their treatment planning. Furthermore, the audit requested by the grievant specifically reviewed the work of this employee, with the auditor concluding that the grievant's assignments are less complex than that of the cited employee.<sup>24</sup> Moreover, although this employee was granted an upward role change shortly before her actual licensing, she had completed all the mandates for certification, which is not comparable to the grievant's situation, as he has not completed the requisite course work nor has he performed the supervised counseling. Thus, the agency's decision to deny the grievant's request for an upward role change does not appear inconsistent with management's previous determination.

### *Results*

The second Compensable Factor is "results,"<sup>25</sup> and in addition to the one "results" component required of a Psychologist I, individuals in the role of Psychologist II also make decisions that "may affect systems beyond the immediate clinical area such as the legal system or the overall provision of psychological/neuropsychological services."<sup>26</sup> Although the grievant indicates that he is a member of the Cognitive Awareness Program Committee and attends Clinical Leadership meetings when needed, the grievant has not presented evidence that his administrative decisions impact systems beyond the immediate clinical area. As this component uses the term "may" rather than the mandatory "shall" (or other obligatory phraseology), a lack in this area, however, would not necessarily preclude a determination that the grievant is performing at the level of a Psychologist II.

### *Accountability*

The final Compensable Factor to consider is "accountability,"<sup>27</sup> which requires an employee in the role of Psychologist II to exercise independent judgment and assume a "leadership role in the mentoring and development of interns, postdoctoral fellows, or other educational or research affiliates."<sup>28</sup> Additionally, the psychologist "may serve as a lead service

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<sup>23</sup> Before granting her upward role change request, the agency conducted an audit of her position. While the facility was not currently accepting applications for a Psychologist II position from those with master's degrees, the audit indicated that another facility in the state required only a master's degree for the role of Psychologist II, if the candidate was eligible for licensure as a LPC. *See* Director's second step response, dated July 31, 2002.

<sup>24</sup> The auditor indicates that it was his determination that the Employee Work Profile (EWP) of the cited employee reflects more complex duties than that of the grievant. To corroborate this determination, he asked a Ph.D. Psychologist in the Central Office to review both EWPs. The psychologist concurred that there are substantial differences in the EWPs, with the cited employee's being much more complex.

<sup>25</sup> The Results factor includes the impact of the employee's work, the effect of services based upon the employee's work and the consequence of error by the employee. *See* DHRM's Human Resource Management Manual, Chapter 6, *Job Evaluation*, pages 2-3.

<sup>26</sup> *See supra*, note 14 ( DHRM's website discussing Role Descriptions for Psychologist I and II).

<sup>27</sup> The Accountability factor encompasses the employee's level of leadership, judgment and decision-making, and independence of action. *See* DHRM's Human Resource Management Manual, Chapter 6, *Job Evaluation*, page 3.

<sup>28</sup> *See supra*, note 14 ( DHRM's website discussing Role Descriptions for Psychologist I and II).

provider, project team leader, or may supervise less experienced psychologists.”<sup>29</sup> As evidence, the grievant cites his supervision of two students and two Behavioral Specialists.<sup>30</sup> While the grievant has been involved in some mentoring situations, it is not clear that he has had a “leadership” role as contemplated by the role descriptions, and he clearly has not had the amount of supervisory experience as those currently in the role of Psychologist II.<sup>31</sup>

In light of all the above, the grievant has presented insufficient evidence that the agency’s denial of his upward role change to the role of Psychologist II was arbitrary or capricious or plainly inconsistent with other similar agency decisions. On the contrary, it appears that management carefully considered the grievant’s qualifications and made a reasoned decision based upon all the facts and circumstances.

### CONCLUSION

For additional information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to circuit court, he should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court’s decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

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Claudia T. Farr  
Director

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Susan L. Curtis  
Employment Relations Consultant

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<sup>29</sup> *Id.*

<sup>30</sup> See letter to Hospital Director, dated August 15, 2002, in which the grievant asserts that he “met with two students for one hour per week over the course of several weeks to supervise their interview process of [his] patients.” In the same response, the grievant notes that he met with one Behavioral Specialist for one hour per week and with another on an “as needed” basis to advise on behavioral plans and skills training.

<sup>31</sup> See Second step Grievance Report from the Psychology Director to Grievant, dated July 31, 2002.