

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF DELORIS JAY
DOCKET #99-C-3
DEPARTMENT OF LABOR

October 6, 1999

The New Hampshire Personnel Appeals Board (Wood, Johnson and Barry) met on Wednesday, August 25, 1999, under the authority of RSA 21-I:57, to hear the appeal of Deloris Jay, an employee of the Labor Department. Ms. Jay, who appeared pro se, was appealing the Personnel Director's decision denying her request for reclassification from Program Coordinator II, salary grade 20 to Program Specialist IV, salary grade 24. Virginia Lainberton, Director of Personnel, appeared on behalf of the Division of Personnel.

The appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits

- A. Memorandum requesting reclassification
- B. Position Reclassification Questionnaire
- C. Supplemental Job Description dated 8/15/88
- D. Supplemental Job Description dated 3/27/98
- E. Organizational Chart, Department of Labor

- F. Job Specification for Workers' Compensation/Rehabilitation Management Coordinator
- G. Job Specification for Program Specialist IV
- H. Director's decision letter dated September 8, 1998
- I. Request for Reconsideration dated September 21, 1998
- J. Director's decision on reconsideration dated October 5, 1998
- I.. Point Spreads

Appellant's Exhibits

- A. Memorandum requesting reclassification addressed to the Director of Personnel
- B. Position classification questionnaire completed by the appellant
- C. Department organizational chart
- D. Supplemental Job Description dated 11/10/88
- E. Supplemental Job Description dated 9/1/98
- F. Director's decision letter dated 9/8/98
- G. Request for reconsideration dated 9/8/98
- H. Response to request for reconsideration dated 1015198
- I. Appeal request dated 10120198
- J. Position factor ratings

The appellant also offered into evidence a copy of her performance evaluation dated August 6, 1999.¹ The Board declined to accept that exhibit as it related to the appellant's work performance rather than the requirements of the position under appeal. The Board explained that it can only consider evidence that was available for the Director to review at the time of the reclassification request. Information relating to the position after the date of the Director's decision could not have formed part of her review, and therefore is not admissible.

¹ Ms. Jay said that the review was significant because it discussed her actual job duties. She also said it was only the second performance evaluation she had received over the course of her entire career.

Ms. Jay argued that the supplemental job description submitted to the Division of Personnel as part of the reclassification request is significantly different from the supplemental job description approved in 1988. She argued that although the job has grown significantly as demonstrated by the changes in the Scope of Work, Accountabilities, Minimum Qualifications and Disclaimer, it has remained at the same salary grade since its establishment in 1983. She also noted that she has been employed at the same salary grade for almost 20 years.

Ms. Jay argued that the Communications and Independent Action factors should be increased to level 5. She said that she has 10 to 20 public speaking engagements a year, provides training for adjusters, vocational rehabilitation providers and Worlters' Compensation agents, and participates in dispute mediation. She argued that the current Worlters' Compensation rules require private rehabilitation vendors in New Hampshire to attend training twice annually, and that she has the authority to require their attendance at those sessions. Ms. Jay argued that she is responsible for approving all job modification requests in her department, and that that she works as the ADA coordinator and ergonomics specialist for her building.

Ms. Jay took exception to the Director's assertion that her position should not receive the same point allocation as her supervisor's position for the factors of Knowledge and Complexity. She argued that the difference in their areas of specialty (vocational rehabilitation versus insurance) has no bearing on the complexity of the work performed. Ms. Jay argued that if her position were reclassified to Program Specialist IV, her supervisor's position still would receive higher point allocations for the factors of Skill, Impact, Supervision, Communications and Independent Action, thereby differentiating between their roles and responsibilities.

Ms. Jay stated that she has a bachelor's degree and nineteen years of experience, and that her knowledge and experience in the field of vocational rehabilitation should be rated accordingly. Ms. Jay also argued that it was unreasonable to rate her position at level 1 for the Working Conditions and Physical Demands factors when the Administrator III position to which she reports is rated at level 2.

Ms. Lamberton explained that the title of administrator is from a generic class series. She argued that although some positions in that class series may not perform work at level 2 for Working Conditions or Physical Demands, the majority of the positions in the classification are accurately rated at those levels. She said that the appellant's duties would not support that rating.

Ms. Lamberton argued that the position held by Ms. Jay is accurately classified as a Program Coordinator II, salary grade 20. She argued that scope of work outlined in the 1988 supplemental job description is essentially the same as the scope of work in the 1998 version. She said that although Ms. Jay has 20 years of experience in the field, and that the Department certainly has benefited from her expertise, if Ms. Jay's position were reclassified to a Program Specialist, the appropriate title and grade would be Program Specialist II, salary grade 20.

Ms. Lamberton said that when a position is reviewed for reclassification, the Division of Personnel is looking for change in the level of responsibility, not how well an employee does or doesn't do the job. She referred the Board to the classification questionnaire completed by Ms. Jay and Ms. Barger, the Director of Workers' Compensation, and their assessment of the qualifications an applicant would need to possess in order to certify as meeting the minimum qualifications for appointment to the position. She said that Director Barger listed a bachelor's degree and 5 years of experience as appropriate qualifications, and that those requirements are reflected in the current point assignments for Skill and Knowledge.

Ms. Lamberton argued that positions classified as Program Specialist IV are responsible for management and direction of multiple programs within an agency. She argued that the appellant is not responsible for evaluating work procedures and planning the development and modification of data, policies and procedures for multiple state and/or federal programs as described by the specification for Program Specialist IV. She argued that coordinating the vocational rehabilitation component for Workers' Compensation does not support classification at that level.

After considering the evidence, arguments and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The points assigned to the appellant's current and proposed job classifications are as follows:

Position Title Classification	Skill	Knowledge	Impact	Supervision	Working Conditions	Physical Demands	Communi- cations	Complexity	Independent Action	Total Points	Salary Grade
WC/VR Coordinator	4 65	4 85	4 40	3 15	1 5	1 5	4 35	4 80	4 55	385	20
Program Specialist IV	5 95	5 110	4 40	3 15	1 5	1 5	5 55	5 110	5 75	510	24

2. Reclassification to Program Specialist IV would require an increase in the factors of Skill, Knowledge, Communications, Complexity and Independent Action.
3. The Director of the Workers' Compensation Division requested that the minimum qualifications for Ms. Jay's position include possession of a bachelor's degree and five years of relevant experience.
4. The Evaluation Manual defines Skill as, "...the combination of preparation and learning through experience and training necessary to perform a specific job function. This factor measures the amount of time spent in practical preparation in the same or related work."
5. According to the Technical Assistance Manual, Skill level 4 represents the requirement for 3 to 6 years of experience, while level 5 represents the requirement for 4 to 8 years of experience.
6. Ms. Jay's duties and responsibilities, and the requirement for 5 years of experience, are most accurately reflected in the 4th level, which is defined by the Evaluation Manual as, "Requires skill in developing formats and procedures for special applications..."

7. The requirement for a bachelor's degree is rated at level 4 for the Knowledge factor, described by the Evaluation Manual as, "Requir[ing] logical or scientific understanding to analyze problems of a specialized or professional nature in a particular field."
8. Coordinating the provision of worlters' compensation services does not require "...logical or scientific understanding to analyze problems of a specialized or professional nature in a wide range of applications," as described by the 5th degree for the Knowledge factor.
9. Reclassification of this position to Program Specialist IV would require reallocation of the Communications factor fi-om level 4 to level 5. According to the Evaluation Manual, the Communications factor, "...measures the requirements of the position to articulate and express the goals of the agency."
10. The appellant's position is accurately rated at the 4th level for the Communications factor, described by the Evaluation Manual as, "Requires summarizing data, preparing reports, and making recommendations based on findings which contribute to solving problems and achieving work objectives. This level also requires presenting information for use by administrative-level managers in making decisions."
11. Although Ms. Jay has regular speaking engagements, provides training, and can compel employer and provider attendance at training sessions, that work does not rise to the level of "...reviewing summaries and reports and making management level decisions..." at the departmental level, nor does it rise to the level of "...formal presentations of solutions and goals to employees and the general public to increase the responsiveness of the agency toward the demands of its client system" as defined by the 5th level for Communications.
12. The evidence does not support reallocation of the Complexity factor from level 4 to level 5, where the appellant would be responsible for "...planning policies and long-term strategies, drawing conclusions based on available criteria, and evaluating the effectiveness of program objectives."
13. The current allocation for Complexity involves, "...coordinating a combination of diverse job functions in order to integrate professional and technical agency goals. This level also requires considerable judgment to implement a sequece of operations and action," and accurately describes the complexity of the appellant's duties and responsibilities.

14. The evidence does not support a finding that Ms. Jay's position, "Requires independent judgment in planning and evaluating work procedures and in supervising the development of professional, technical, and managerial standards under administrative direction and according to broad departmental guidelines" as described by the 5th level for Independent Action.
15. The appellant's responsibilities for decision-making require, "...objective assessment in analyzing and developing new work methods and procedures subject to periodic review and in making decisions according to established technical, professional or administrative standards," as described by level 4 for the Independent Action factor.
16. Under the classification plan and the Director's rules, the appellant's duties and responsibilities within the Workers' Compensation Division of the Department of Labor do not support reallocation to Program Specialist IV.

Rulings of Law

- A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]
- B. "The duties and work assignments for each position in the state classified service shall be defined by a supplemental job description established by this rule." [Per 301.03 (a)]
- C. The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position." [Per 301.03 (b)]
- D. "Any work assignment which affects more than 10 percent of the total working time of the position shall be listed on the description by the appointing authority, designated supervisor or the employee of the position in accordance with this rule." [Per 301.03 (c)]
- E. An employee's supplemental job description must include, "A statement of the scope of work for the position, which shall be related to the basic purpose section of the class specification

and shall specify how the broad purpose of the specification translates into a specific role within the goals and objectives of the agency." [Per 303.03 (d) (6)]

F. "...The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction." [RSA 21-I:57]

Decision and Order

The evidence reflects that Ms. Jay is responsible for coordinating the provision of rehabilitation services to Workers' Compensation recipients and ensuring that such services are provided in compliance with the applicable statutes and administrative rules. Although the evidence reflects that Ms. Jay functions very independently and effectively within her division, classification decisions rely on an assessment of job function, not the incumbent's level of performance.² In this case, the evidence does not support the appellant's request for reclassification to Program Specialist IV.

The "Basic Purpose" for the Program Specialist IV classification is, "To evaluate work procedures and to plan the development and modification of data, policies and procedures for state and federal programs." In the appellant's classification questionnaire (Appellant's Exhibit B), former Commissioner Syrmonds indicated that the basic purpose of the appellant's position was "To coordinate all vocational rehabilitation services being provided by private vendors to workers' compensation recipients." The Board does not consider the coordination of services equivalent in scope or complexity to planning the development of those services.

² The fact that Ms. Jay has only received two performance evaluations throughout her long career in State government has no bearing on the correct classification of her position. Nonetheless, the Board considers it a significant fact that bears discussion. RSA 21-I:42, XIII, requires agencies to conduct performance evaluations of all classified employees at least once annually. The Board consistently has taken the position that agencies failing to carry out that responsibility not only violate the law, they do an enormous disservice to themselves and their employees.

Ms. Jay brings a wealth of experience to her position, and the Department of Labor clearly has reaped the benefit of that experience. However, a position must be classified on the basis of its duties and responsibilities within the framework and organizational structure of the agency as a whole, not on the qualifications of the incumbent. The Board did not find that Ms. Jay's duties and responsibilities are equivalent to those of a Program Specialist IV.

Therefore, on the evidence, argument and offers of proof, the Board voted to DENY Ms. Jay's appeal, finding that her position is correctly classified as a Program Coordinator II (Workers' Compensation Rehabilitation Management Coordinator), salary grade 20.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Robert J. Johnson, Commissioner


James J. Barry, Commissioner

cc: Virginia A Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Commissioner James Casey, Department of Labor, State office Park South, 95 Pleasant St., Concord, NH 03301
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