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MAVIS SIEWERT,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 91-0235-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the denial of a request for reclassification from Nursing Supervisor 1 (NS 1) to Nursing Supervisor 2 (NS 2).

FINDINGS OF FACT

1. At all times relevant to this appeal, appellant has been employed in the classified civil service in a position at the Wisconsin Veterans Home at King, that has been classified as NS 1.

2. The duties and responsibilities of appellant's position are essentially accurately described in a position description (PD) dated 1/31/91 (Respondent's Exhibit 3). The position summary provides that her position is responsible for: "the management, direction and supervision of the Outpatient Clinic, Medical/Central Supply, and Barbers and Beauticians sections." Goal A (65%) is "Provision of management services to the Nursing Ancillary Services Section." This includes the following activities:

- a-1 Develop, initiate and provide member and employee immunization programs for: flu vaccine, PPD skin testing, Tetanus Diphtheria immunization, Hepatitis B, and Pneumovax, including developing, maintaining, and updating records for these programs.
- a-2 Arrange appointments; provide space, equipment, and assistance for: (1) all consulting physician services, podiatry, ophthalmology, and audiology services. (2) annual physical exams for cottage and MacArthur hall members and others as requested. (3)

physicians for emergency procedures. (4) monthly resumes for cottage members.

- a-3 Develop, initiate and maintain a program and records for adjustment and repair of member eyeglasses and hearing aids.
- a-4 Develop, implement, and maintain emergency treatment records to keep track of all emergency treatment provided to employees and visitors.
- a-5 Develop, initiate, maintain, and update Total Plans of Care and Minimum Data Set for cottage members according to established policy and procedure
- a-6 Establish positive relationships with other sections that facilitate the efficient operation of the nursing services and ensure quality service to members.
- a-7 Order and maintain supply levels for all Sections.
- a-8 Develop, initiate, maintain, and monitor Medical/Central Supply services including: medical supply usage (both building wide and individual member); new supplies obtained; when to reorder; special equipment needs of various members; repair and replacement of equipment; and trial of new products and equipment.
- a-9 Coordinate need, use, and delivery of supplies with direct care nursing staff.

This position also has responsibility for the supervision and direction of the barbers and beauticians program.

3. Since a prior PD dated 6/26/89 (Respondent's Exhibit 2), the primary changes in this position have included certain additions of material handled by the medical supplies and equipment operation and procedural changes in that operation, additions to the immunization program, a number of changes in federal nursing home requirements regarding records, assessments, etc., and the change in supervision from an LPN to an RN.

4. At one point during appellant's tenure at King, the medical supplies and equipment unit had been reassigned from her supervision to material management. This did not result in any change in the classification status of her position.

5. The medical supplies and equipment unit does not require an RN for a supervisor, although it would be helpful if its supervisor had a nursing background. This job could be handled by a Nursing Specialist except for the personnel supervision functions such as answering grievances, etc.

6. The class specification for NS 1 and 2 (Respondent's Exhibit 1) includes the following:

Nursing , Supervisor 1

Class Description

Definition:

This is supervisory nursing work in the management and supervision of all aspects of nursing care on a designated inpatient unit, outpatient clinic, operating room or recovery room. Also allocated to this level are positions which function as an assistant shift supervisor for a large institution, a shift supervisor for a small institution or a shift supervisor for a major nursing service area of a large institution where a supervisory position with total institution shift responsibility is not utilized. Employees at this level are responsible for the nursing care provided by the unit, the day-to-day administration of the unit and the long-range planning for the unit. Work is performed under general supervision of a higher level supervising nurse or a nurse administrator in accordance with established institution policies and nursing practices.

Examples of Work Performed:

Plan, implement and supervise the program of a designated patient care unit or area.

* * *

Nursing Supervisor 2

Class Description

Definition:

This is responsible supervisory nursing work in the management and supervision of a designated nursing program area or shift. Positions allocated to this level function as the supervisor of a major program area of nursing service in a large institution, the supervisor for the entire nursing service of a large institution on the evening or night shift or as the assistant director of nursing for a small institution. Employees at this level are responsible for providing administrative direction to multiple patient case units and their staff and coordinating program services between these units and the nursing administration office. Employees have a great deal of latitude for the implementation of program activities within established standards of nursing practice and institution policies. Work is performed under the general supervision of the nursing administrator.

Examples of Work Performed:

Direct, coordinate and evaluate the direct and indirect nursing care services of a major area or service consisting of multiple patient care units.

7. Appellant's position does not fit within the NS 2 class description because it manages and supervises an outpatient clinic as described in the NS 1 definition rather than managing and supervising a nursing program area, as described in the NS 2 definition.

8. A representative NS 2 position is the position at Central Wisconsin Center (CWC) occupied by Beatrice Doering and described by a PD marked as Respondent's Exhibit 9. This position "supervises and coordinates the Hospital Nursing Service, which provides for Medical and Surgical programs, Post-trauma, Community Services Area, Central Supply, specialty clinics and the Community Services evaluation and short-term care programs."

9. Another representative NS 2 position is the position at the Veterans Home occupied by Jerome Stark, see Respondent's Exhibit 10. This position is responsible for the entire nursing inservice training program at the institution. It also is responsible for the institution quality assurance and nursing assistant certification and employment programs, and in collaboration with the medical director, the infection control program. This position also serves as the director of nursing for one of the four nursing care buildings or for the institution, as necessary.

10. Appellant served on an acting basis in her supervisor's position (Director, Bureau of Nursing Services) for a period of time when the position was vacant.

11. A request for reclassification of appellant's position to NS 2 was denied first by DVA personnel and then by DER following an independent audit, and this appeal ensued.

CONCLUSIONS OF LAW

1 This matter is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. Appellant has the burden of proof to establish that respondent's decision to deny the request for reclassification of her position from NS 1 to NS 2 was incorrect.

3. Appellant has not sustained her burden of proof.
4. Respondent's decision to deny the request for reclassification of appellant's position from NS 1 to NS 2 was not incorrect.

OPINION

Appellant's position is responsible for, among other things, the management and supervision of an outpatient clinic, which is one of the functions included in the class description for NS 1. Appellant's position also is responsible for other functions -- the medical supplies and equipment operation and the barbers and beauticians unit. However, in order to be eligible for classification at the NS 2 level, a position must satisfy the requirements of the NS 2 class specification. As relevant here, this means that appellant's position must "function as the supervisor of a major program area of nursing service," Respondent's Exhibit 1.

There is some ambiguity on this record of the meaning of the term "major program area of nursing service." The NS 2 definition includes this language:

Employees at this level are responsible for providing administrative direction to multiple patient care units and their staff and coordinating program services between these units and the nursing administration office. (emphasis added)

The first example of work performed in the NS 2 class specification is:

Direct, coordinate and evaluate the direct and indirect nursing care services of a major area or service consisting of multiple patient care units. (emphasis added)

These provisions strongly support a conclusion that the concept of a "major program area of nursing service in a large institution," as used in the NS 2 class specification, involves responsibility for multiple patient care units, and this conclusion is reinforced by respondent's expert testimony. Therefore, this leads to the question of whether appellant's other responsibilities could be characterized as falling within the scope of a "major program area of nursing service."

Appellant concedes that supervision of the barber and cosmetician unit does not involve a nursing program. The medical supplies and equipment program does not, in the Commission's view, fall within the concept of a

"major program area of nursing service." It is clear from the record that it is not necessary for effective performance of this function that the incumbent be a Registered Nurse. In fact, while appellant contended that a nursing background was necessary for effective performance, it was conceded that, except for personnel supervision such as answering grievances, etc., which required a supervisory classification, the substantive activities of the job could be accomplished by a Nursing Specialist. Furthermore, this activity cannot reasonably be characterized as "providing administrative direction to multiple patient care units."


Appellant brought up the fact that she served on an acting basis for a period of time in her supervisor's position. However, the classification of a position is based on its permanently assigned duties and responsibilities, and cannot be affected by sporadic acting assignments. Graham v. DILHR & DER, 84-0052-PC (4/12/85).

In conclusion, while appellant's position certainly seems to have more functions than the bare minimum needed for NS 1, its primary function is clearly identified at the NS 1 level, the position does not meet the criteria for classification at the next level in the series (NS 2), and therefore respondent's decision to deny reclassification to the NS 2 level has not been shown to have been incorrect. It also is noted that DER did give some consideration to a more general administrative classification that would recognize the additional duties performed and lead to a classification with a higher pay range, but were unable to find such a classification that was a better fit for appellant's position than NS 1.

ORDER

Respondent's action denying the request for reclassification of appellant's position from NS 1 to NS 2 is affirmed and this appeal is dismissed.

Dated: September 18, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


GERALD F. HODDINOTT, Commissioner

Parties:

Mavis Siewert
DVA
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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such

application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.