

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CLASSIFICATION APPEAL NO. 2-2002:

<b>ROSEANNE SORVIG, EMPLOYMENT SERVICES</b>	)	Case No. 2408-2003
<b>SPECIALIST, WORKFORCE SERVICES DIVISION,</b>	)	
<b>LEWISTOWN JOB SERVICE, DEPARTMENT OF</b>	)	
<b>LABOR AND INDUSTRY,</b>	)	
Appellant,	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
and	)	AND RECOMMENDED ORDER
<b>STATE PERSONNEL DIVISION,</b>	)	
<b>DEPARTMENT OF ADMINISTRATION,</b>	)	
	)	
Respondent,	)	

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**I. INTRODUCTION**

In this appeal, Roseanne Sorvig (Sorvig) contends that the Department of Administration's Step 1 and Step 2 classification reviews incorrectly found that her predominant work duties are that of an employment services specialist, grade 12. Sorvig contends that her predominant work duties are those of a case manager, grade 13. Based upon her contention, she believes that her position has been incorrectly classified as employment services specialist, grade 12 and it should be reclassified to case manager, grade 13.

Hearing Officer Gregory L. Hanchett conducted a contested case hearing in this matter on January 28 and February 4, 2004. Richard Letang represented Sorvig. Ron Wilson represented the Department of Administration. Sorvig and Dan Bradley, employment services specialist at the Lewistown Job Service, testified on behalf of the Appellant. Mark Bowlds, Chief of Workforce Services Bureau of the Department of Labor and Industry, Roy Jones, manager of the Lewistown Job Service, Barbara Malensek, position classifier with the Department of Labor and Industry, Marty Roos, human resources consultant with the Department of Administration, and Chris Blazer, classification specialist of the Department of Administration, testified on behalf of the Respondent. The parties stipulated to the admission of Appellant's Exhibits 1 through 15 and Respondent's Exhibits A through I. Having considered the testimony of the witnesses and arguments of the parties' representatives, the hearing officer makes the following findings of fact, conclusions of law, and order.

**II. ISSUE**

Have substantial changes occurred in Sorvig's employment services specialist position that would warrant reclassification?

### III. FINDINGS OF FACT

1. At all times relevant to this appeal, Sorvig has been employed as an employment services specialist, position #31653, in the Lewistown Job Service office.

2. Employment services specialists at the Lewistown Job Service engage in a variety of tasks owing to the fact that the office is in a small community and has a small staff (at the time of the hearing, three people). Employment services specialists engage in some duties that are considered grade 13 work, but because their predominant duties are grade 12 and not grade 13 work, they are paid at a grade 12 level.

3. The position description which describes the duties of a grade 12 employment services specialist (Exhibit 2) also provides position descriptions for case manager, Disabled Veterans Outreach Program (DVOP) specialist, and Local Veterans Employment Representative (LVER). These latter three positions are grade 13 positions. The position description is broken into six broad categories of essential functions denominated as Duties A through F. Each of these essential functions is then broken down into tasks. Duty A has 9 tasks, Duty B has 4 tasks, Duty C has 12 tasks, Duty D has 10 tasks, Duty E has 6 tasks, and Duty F has 1 task. Some of these tasks are considered grade 12 tasks and some are considered grade 13 tasks. The determination of whether a particular position is an employment services specialist (a grade 12 position) or a case manager, DVOP or LVER (a grade 13 position) is dependent on which tasks the incumbent performs and the percentage of the incumbent's time spent in completing each task. In other words, if the incumbent in the position spends more than 51% of his or her time completing grade 13 tasks, he or she is classified as a case manager, DVOP or LVER and is eligible for grade 13 pay.

4. Of particular consequence to this case are the grade 13 tasks associated with Duties A, B, C, and D. There is only one grade 13 task under Duty A, specifically Task 4. That task relates to "providing job seekers with vocational guidance in making limited occupational choice, change and adjustment using knowledge of applicant's interests and abilities and current labor market."

5. Tasks 1, 2, and 3 of the Duty B tasks are rated as grade 13 tasks.<sup>(1)</sup> Task 1 relates to preparing presentations tailored to meet the specific needs of employers, community groups, and other advisory groups for the purpose of enhancing the public's use of local job service offices. Task 2 involves coordinating with the business community to facilitate employment or preemployment of applicants. Task 3 centers on preparing and editing newsletter articles and press releases that publicize and explain the local job office and office programs.

6. Only tasks 3 through 12 of Duty C tasks are rated as grade 13 tasks. Generally, these tasks relate to monitoring and working as a case manager with specific clients to insure their initial and continued employability. Sorvig does not do any work associated with Task 9. Case management involves longer term, more in depth management of clients than what an employment services specialist undertakes. Of these tasks, Tasks 10, 11, and 12 are specifically reserved for the

DVOP and LVER position. Task 10 requires an incumbent to coordinate local office services with Veterans Administration (VA) vocational rehabilitation for job ready disabled veterans. Task 11 involves reviewing local office records and analyzing and reporting to the job office manager on the adequacy of services to veterans. Task 12 requires the incumbent to act as a resource to office co-workers, employers, and veterans by explaining veterans laws and benefits.

7. The position of DVOP and LVER involves active, long term case management of veterans designed to get them into stable employment and to keep them gainfully employed. A DVOP or LVER meets with a client on a regular basis and enhances the client's employability by finding resources that develop a client's employment skills (such as job training). A DVOP or LVER also helps a client deal with ancillary issues that might impede a client's employability (such as substance abuse problems or mental health issues) by locating and suggesting community resources the client can use to overcome these problems.

8. With respect to Duty D, only Task 10 is pertinent to the determination in this case (since Sorvig did not engage in any of the other tasks associated with Duty D). That task requires the incumbent to "develop strategies to promote the use of the employer services unit" and to provide employers with information on human resources available through job services.

9. In September 2002, Roy Jones, manager of the Lewistown Job Service, restructured some of the work duties assigned to the Lewistown Job Service employees. He assigned certain duties to Sorvig that had previously been undertaken by Dan Bradley. These duties reassignment of work with veterans (as the veteran's contact of the office) and some responsibilities for the program related to displaced mining and timber workers. Some of the tasks associated with these two functions are grade 13 tasks. The amount of time Bradley devoted to grade 13 tasks varied but on average was somewhat less than 51% of his time. During certain times, however, the amount of time he spent working on grade 13 tasks could exceed 51% of his time.

10. There is no DVOP or LVER located in the Lewistown Job Service office. Sorvig fulfills some functions related to these positions. First, she serves as the Lewistown Job Service's veteran's contact. Second, she prepares a newsletter for veterans that is published by the Lewistown Job Service. Sorvig is not permitted to undertake case management for veterans. Jones has instructed Sorvig that if a veteran is in need of case management, she must refer that veteran to the LVER located in the Bozeman Job Service office. In addition, because Sorvig is not a veteran, she is not qualified to fill the position of DVOP or LVER.

11. Sorvig's work with the displaced mining and timber workers involves case management.

12. After taking over Bradley's former duties, Sorvig became convinced that she was spending more than 50% of her time engaged in grade 13 tasks. She felt she was acting more as a case manager. In January 2003, she talked to Jones about her concerns and requested that she be paid at a grade 13 level if she continued to do the tasks assigned by Jones.

13. Because she believed the job service office management was not responsive to her request, Sorvig filed her Step 1 grievance. After the grievance had been filed, Jones asked Sorvig to keep detailed accounts of the time she spent each day doing her specific tasks so that Jones

could get a better understanding of how Sorvig's work time was distributed between grade 12 and grade 13 tasks. In compliance with his request, Sorvig monitored her work tasks in minute detail between February 17, 2003 and March 21, 2003 (Exhibit 9).

14. As part of her appeal, Sorvig, who has no background or training in position classification systems, filled out a position description form wherein she estimated the amount of time she devoted to each of the tasks assigned under the duties (Exhibit 2). For Duty A, she estimated that she spent 5% of her time working on Task 4 items. For Duty B, Sorvig estimated that she spent approximately 1% of her time on Task 1 items, 1% on Task 2 items, and 4% on Task 3 items. For Duty C, Sorvig estimated she spent 10% of her time on Task 4 items, 10% on Task 8 items, and 10% on Task 11 items. She also estimated that she spent 5% of her time on Task 7 items and 5% on Task 12 items. The balance of Task C items were estimated as follows: 1% on Tasks 5 and 10, 2% on Task 6, and 8% on Task 3 items. In addition, Sorvig opined that she was spending 10% of her time working on Duty D, Task 10 functions.

15. After Sorvig filed her Step 1 grievance, the Department of Labor and Industry assigned Barb Malensek to review Sorvig's position to determine if in fact she was spending over 50% of her time completing grade 13 work. Malensek has been a department classifier since 1994 and developed the department benchmark positions for both the employment services specialist position and the case manager position. In addition, Malensek has classified over 200 employment services specialist positions during her tenure as a classifier.

16. Prior to reviewing Sorvig's grievance, Malensek reviewed benchmark position descriptions for both the employment services specialist position (Exhibit 5) and the case manager position (Exhibit 6). In March 2003, Malensek spent approximately 3½ hours with Sorvig going over each of the tasks assigned to each of the duties.

17. Sorvig does not perform any of the tasks enumerated in Duty C, Tasks 8, 10, or 11. With respect to Task 8 functions, Sorvig does not develop curriculum nor does she conduct classes based on the curriculum she has developed. She does work one-on-one with some of her clients to assist in resume writing. However, this is not the type of work envisioned in Task 8. With respect to Task 10 functions, Sorvig does not coordinate local office services with VA vocational rehabilitation for job-ready disabled veterans. Neither is there evidence that Sorvig carries out the functions contained in Task 11. Most notably, she does not analyze local office records and then report to management on the adequacy of office services to veterans. In fact, while reviewing her position with Malensek, Sorvig conceded that she did not undertake the tasks outlined in Duty C, Tasks 10 and 11. She also conceded that she did not undertake curriculum development nor did she conduct classes as described in Duty C, Task 8 (which she reiterated at the hearing in this matter).

18. Sorvig does not undertake the functions listed in Duty D, Task 10. She erroneously concluded that her work in providing basic information to employers and applicants about certain employment laws were Duty D, Task 10 functions. In fact, these tasks are Duty A, Task 9 functions which encompass general explanations of some of the employment laws and benefits rights in the course of her general contact with clients and employers.

19. After carefully comparing the position descriptions and considering Sorvig's own descriptions of how she spent her time, Malensek concluded that only 37% of Sorvig's time was devoted to grade 13 duties. Her breakdown showed that Sorvig spent 7% of her time on Duty A, Task 4 functions, 8% on Duty C, Task 3 functions, 5% on Duty C, Task 4, 2% on Duty C, Task 5 and Task 7 functions, and 1% on Duty C, Task 6 functions. Malensek concluded Sorvig spent no time on Duty C, Task 8, 9, 10, 11, or 12 functions. Malensek further determined that Sorvig spent no time on Duty D, Task 10 functions. As a result of her findings, Malensek concluded that Sorvig's Step 1 grievance should be denied.

20. Sorvig appealed her Step 1 grievance. Marty Roos, a trained position classifier of the DOA, investigated this appeal. He reviewed the scope and effect factor for Sorvig's position to determine whether her position should be factored at level 3 or level 4. Utilizing the BFM, Roos compared Sorvig's position to the benchmark position and various other positions having either a level 3 or level 4 rating for scope and effect. Based upon his analysis, he concluded that Sorvig's position was properly factored at level 3 for scope and effect (Exhibit C, Position Review Form Addendum prepared by Marty Roos).

21. Sorvig does not spend more than 50% of her time on duties considered to be grade 13 duties. Also, comparison of Sorvig's duties to the duties of the benchmark position shows that Sorvig's position is properly factored at level 3 rather than level 4 for Scope and Effect.

#### **IV. OPINION**

Sorvig presented no evidence comparing the scope and effect of her actions to any benchmark position as required by the Benchmark Factoring Method implemented by the DOA. The parties appear to agree, however, that if Sorvig's predominant work (more than 50% of her work) involves work that the parties agree to be grade 13 work, then she would be properly classified at grade 13. The parties' disagreement centers on the amount of grade 13 work completed by Sorvig. Sorvig contends she spends more than 50% of her time engaged in grade 13 tasks. DOA contends that Sorvig spends less than that, only 37% of her time, engaged in grade 13 tasks. Since Sorvig has presented the issue to the hearing officer in terms of whether she spends more or less than 50% of her time in completing grade 13 tasks, the hearing officer will limit his determination to that issue.<sup>(2)</sup>

Sorvig has failed to show that more than 50% of her work is engaged in completing grade 13 tasks. This much is demonstrated by simply considering the amount of time Sorvig spends on Duty C, Tasks 8 and 11, and Duty D, Task 10. Sorvig asserts that each one of these tasks requires 10% of her time (or a total of 30% of her total work time for all three tasks). The evidence does not reflect this. To the contrary, the evidence shows that she spends 0% of her time on these three tasks. While it is clear that Sorvig may help individual clients develop resumes, she does not develop curriculum nor does she conduct classes based on the curriculum she has developed (Duty C, Task 8). Furthermore, she does not analyze local office records relating to veterans and then report to the office manager on the adequacy of services to veterans (Duty C, Task 11).

Moreover, Sorvig does not develop strategies to promote the use of the employer services unit (Duty D, Task 10). She does not do this type of work, which would include, among other things, job analysis, writing job descriptions, writing interview questions, creating specific tests, and actually teaching employers in structured settings about labor and employment laws. Sorvig does engage in general explanations of some of the employment laws and benefits rights in the course of her general contact with clients and employers. This work, however, is more appropriately categorized as a Duty A, Task 9 function which is grade 12 work.

As Sorvig does not perform Duty C, Task 8 or 11 work nor any Duty D, Task 10 work, her grade 13 work accounts for at most 48% of her time, even if the hearing officer takes at face value Sorvig's contentions about the amount of time she spends on other grade 13 tasks.<sup>(3)</sup> Thus, her predominant work is not grade 13 work. There is no basis for her appeal under the evidence presented in this case.

## **V. CONCLUSIONS OF LAW**

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Mont. Code Ann. § 2-18-203 and Admin. R. Mont. 24.26.508.

2. Sorvig's grade 13 tasks account for less than 50% of her work.

3. Because Sorvig's grade 13 tasks account for less than 50% of her work, no substantial changes have occurred in Sorvig's position that would warrant reclassification.

4. Sorvig is properly classified as an employment services specialist, grade 12.

## **VI. RECOMMENDED ORDER**

Based on the foregoing, the hearing officer recommends that Classification Appeal No. 2-2002 be DISMISSED.

DATED this 26th day of April, 2004.

BOARD OF PERSONNEL APPEALS

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than May 19, 2004. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals  
Department of Labor and Industry  
P.O. Box 6518  
Helena, MT 59624-6518

1. Task 4 is also a grade 13 task, however, Sorvig has never contended at any step of the appeals process that she devotes any time to Duty B, Task 4.
2. A far more pertinent inquiry in this matter is the question of whether a comparison of the scope and effect duties of Sorvig's position to the benchmark positions shows that those duties are more properly factored at level 3 or whether they should be factored at level 4. The only meaningful evidence presented in this regard-that coming from the Step 1 and Step 2 appeals analysis conducted by Malensek and Roos-demonstrates that the scope and effect factor of Sorvig's position is properly factored at a level 3. However, as Sorvig has failed even to undertake this analysis, and instead chooses to frame the inquiry in terms of whether her predominant duties are grade 12 or grade 13, the hearing officer will also limit his analysis to that issue.
3. Indeed, the evidence shows that Sorvig does not undertake Duty C, Task 10 or 12 functions, which would further reduce the percentage of her grade 13 tasks to 42% of her work.