

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CLASSIFICATION APPEAL NO. 1-2008:

FRANCIS O. WESTHOFF, JR.,	)	Case No. 2096-2008
MAINTENANCE WORKER,	)	
DEPARTMENT OF PUBLIC	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Appellant,	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
vs.	)	<b>AND RECOMMENDED ORDER</b>
	)	
STATE PERSONNEL DIVISION,	)	
DEPARTMENT OF ADMINISTRATION,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

In this matter, Appellant Francis O. Westhoff challenges the finding of the Step 1 and Step 2 classification reviews of the Department of Administration that found his maintenance worker position at the Montana Mental Health Nursing Care Center was properly classified at a level 3 factor of complexity under the Benchmark Factoring System (BFM). Hearing Officer Gregory L. Hanchett conducted a contested case hearing in this matter on November 3, 2008. Richard Letang, MPEA, represented Westhoff. Denise Pizzini, agency legal counsel, represented the Department of Administration. Westhoff, Maintenance Supervisor Paul Grensten (appearing by telephone pursuant to the agreement of the parties), Denise Marshall, Human Resources Director at Montana Mental Health Nursing Care Center, Tammy Brummett-Scoggin, Department of Administration Human Resources Classifier, and Chris Blazer, Department of Administration Human Resources Classifier, all testified under oath. The parties stipulated to the admission of Westhoff's Exhibits 1 through 16 and 19 and 20 and Respondent's Exhibits A through P.

After taking testimony, the parties requested the opportunity to submit post-hearing briefs. The last of the parties' briefs was filed on January 8, 2009 at which time the hearings process concluded and the matter was deemed submitted for decision. Based upon the evidence adduced at the hearing as well as the post-hearing arguments and briefing of the parties, the following findings of fact, conclusions of law and recommended decision are made.

**II. FINDINGS OF FACT**

1. Westhoff is the incumbent holding maintenance worker position 69133183 at the Montana Mental Health Nursing Care Center located in Lewistown, Montana.

2. The job profile of that position (Respondent's Exhibit A) indicates that 70% of the position's time is allocated to the following duties:

A. Trouble-shoots, repairs, maintains, and replaces machinery, equipment, and electrical and mechanical systems. This requires working knowledge of the use of the tools and the repair items or modification.

1. Repairs costly mechanical equipment and records the information on the preventive maintenance card if parts were replaced.

2. Does preventative maintenance on systems, equipment, and infrastructure, and records the date and work that was done on the preventative maintenance cards for each item.

3. Trouble-shoots, repairs, maintains, and replaces equipment and machinery for the entire facility, to include commercial food service equipment such as pressure steamer, conveyor toaster, and warming carts; maintenance equipment such as power tools and lawn tractor; nursing equipment such as electric exam table and blood pressure cuffs; nursing home equipment such as washers and dryers; and housekeeping equipment such as floor buffers and scrubbers.

4. Repairs and/or replaces items associated with 110 and 220 volt electrical systems of the facility and its equipment.

5. Repairs and maintains facility systems to include fire alarms and sprinklers, air handling units and chilled water air conditioning unit, nurse call bell system, public address, and security systems.

6. Operates, maintains, and repairs boiler room equipment including 150 hp high pressure steam boilers, 50 hp high pressure steam boiler, and auxiliary equipment such as deaerator tank, and feed and condensate pumps. Also included are hot water heating plant and commercial water softeners. Operates and maintains auxiliary generator.

7. Maintains and repairs building plumbing systems including steam, hot water heating, condensate pumps, heating and ventilating units, fire sprinkler systems, water and sewer, and fixtures associate with each such as radiators, thermostats, and faucets.

8. Fabricate and repair metal items with the use of arc welding, including wire feed welder, acetylene weld, and cutting and soldering.

9. Maintain and make minor repairs to vehicles.

3. Westhoff spends only about three or four hours per month on preventative maintenance. The bulk of the maintenance work at the facility is performed by another worker.

4. The majority of Westhoff's work (over 50% of his work duties) is consumed with repairing various pieces of equipment and various systems at the Lewistown facility. He is often called upon to repair equipment such as floor buffers, vacuum cleaners, and various kitchen appliances (such as steamers, food mixers, commercial dishwashers, and the commercial coffee makers).

5. Many of the items that he repairs do not have manuals which can be consulted in order to repair the particular item being fixed. Instead, Westhoff follows a "troubleshooting" protocol to identify the particular problem involved, isolate the part that is causing the malfunction, and then proceeding to repair the piece of equipment. While he performs this troubleshooting protocol on varied pieces of equipment, and the number of steps required to complete the repair may be greater or lesser depending on the equipment being repaired, it is clear that the general protocol is the same and requires similar thought processes regardless of which piece of equipment is being repaired. As maintenance supervisor Paul Grensten noted in his testimony, "It's a process of elimination on most all of that stuff. You know, you, ah, kind of go, you know, when something like that breaks down, you try to start at the basics, you know, check the power and you kind of go through the process of trying to run down what the problem is with the equipment or system."

6. If something major goes wrong with larger pieces of equipment (such as the commercial washers), Grensten will call in an outside source to repair the problem. With respect to the electrical systems, Westhoff does some electrical repair work. Any new electrical wiring that is required is done by an outside Montana licensed electrician.

7. With respect to the facility's sprinkler system, Westhoff has had to replace frozen sprinkler piping in the past. Other more complicated repairs are completed by an outside Montana licensed plumber.

8. Westhoff's work also includes some repair and maintenance of the boilers used to heat and cool the facility. In order to carry out his duties, Westhoff must maintain a third class high pressure boiler's license which is issued by the State of Montana. Routine annual inspection of the boiler system is also required. All members of the staff are capable of doing and in fact do this routine maintenance.

9. In the state of Montana, there are four classes of boiler operator licenses. A first class boiler's license requires the highest amount of training and experience which includes three years of operating boilers. A second class boiler's license is the next highest, requiring two full years of experience in boiler operation. A third class license requires at least six months of boiler operation and requires the holder to have passed a written examination. None of the duties that Westhoff engages in require any special schooling. Exhibit C, Westhoff's answer to audit questions, page 2, Paragraph 7.

10. Westhoff troubleshoots and repairs plumbing systems at the facility in accordance with the duties described in A 7 of the job description stated above. He has completed repairs to the potable water system, the sewer system, natural gas connections, and the high pressure steam system.

11. Westhoff also does some fabrication as described in A 8 above. For example, he has built a few tools using his welding skills to make some of the jobs he does easier to complete. Westhoff does not repair vehicles.

12. The predominant duties of the position occupied by Westhoff are the duties described in Findings of Fact, Paragraph 2.

13. After reviewing the general description of the level 4 factor work under the state's benchmark factoring methodology (BFM), Westhoff became convinced that the duties of his position should be factored at complexity level 4, not complexity level 3. Accordingly, he filed a step 1 grievance seeking to have his position reclassified to level 4.

14. DOA assigned Tammy Brummett-Scoggin, a human resources classification specialist employed by DOA, to review Westhoff's step 1 review. Brummett-Scoggin has been a human resources classifier for two years. Brummett-Scoggin completed the original classification of Westhoff's position when the position was transferred from Pay Plan 60 to the Pay Plan 20 broadband pay system in April 2007. Brummett-Scoggin was thus thoroughly familiar with the position at the time she undertook the step 1 review of Westhoff's position.

15. In accordance with the requirements of the BFM, Brummett-Scoggin began her review of Westhoff's grievance by seeking input from Westhoff, Grensten, and the incumbent in the other maintenance position at the facility, Tim Stainbrook. To this end, she submitted questionnaires to Westhoff, Grensten, and Stainbrook which asked detailed questions about the various duties of the maintenance worker position. Westhoff, Grensten, and Stainbrook filled out and returned their respective questionnaires. Exhibits C, E, and D respectively.

16. Utilizing the responses contained in the questionnaires, as well as her knowledge of Westhoff's position, Brummett-Scoggin then went through the prescribed BFM process in order to evaluate the proper level at which Westhoff's position should be classified. She began by reading through the entire job description in order to understand both the predominant work of the position as well its complexity. After determining the predominant work in the position, she referred to the Broadband Classification Manual and compared the predominant job duties of the position to the factor level description. She started from the first level and continued through each level until she reached the level that matched the complexity of the job description. Brummett-Scoggin then compared the predominant job duties in Westhoff's position to those of the benchmarks noted for level 3 complexity jobs. One of the benchmark positions is the maintenance worker grade 10 position that Westhoff occupies.

Brummett-Scoggin concluded that Westhoff's position was properly factored at level 3. See Exhibit F, Appeal Response prepared by Brummett-Scoggin.

17. On March 25, 2008, Westhoff appealed Brummett-Scoggin's decision to a step 2 appeal. Chris Blazer, human resource consultant with the State Personnel Division of the Department of Administration, completed Westhoff's step 2 appeal. Blazer has worked for years as a human resources consultant classifying positions and completing research and writing on state personnel policies. She has classified many state positions and completed many step 2 appeals.

18. In reviewing Westhoff's appeal, Blazer followed the BFM methodology. She reviewed and considered all the documentation in the appeal applicable to the position, including the responses prepared by Westhoff, Grensten, and Stainbrook. She also conducted phone interviews with Westhoff, Grensten, and Denice Marshall.

19. Armed with these inputs, Blazer ascertained the predominant work of the maintenance worker position. Exhibit J, Blazer's job evaluation dated May 22, 2008. She then proceeded to evaluate each of the tasks listed in subpart A of the position profile (noted above in Findings of Fact, Paragraph 2). In doing so, she noted in exacting detail the functions performed under each task heading and allocated each of those tasks to the first level factor that met the full intent of the factor level classifications. She determined that the predominant duties of position factor level 3 was the first factor level that best reflected the nature of the maintenance worker position. Exhibit J, numbered Paragraph 8, pages 4 through 6. Finally, she completed comparisons to the benchmark positions for factor level 3 and factor level 4 to ensure that her ranking of the maintenance worker position at factor level 3 was appropriate. Based on the above analysis, Blazer concluded that Westhoff's position was properly factored at level 3 complexity.

20. In reaching her conclusions, Blazer specifically noted that the "record of the development of the maintenance benchmarks indicates that movement to higher level positions in this occupation is distinguished by specialized work in single or multiple crafts, requiring broader experience and typically requiring different classes of certification in such areas as boilers, sewage systems, and water systems. These higher range positions typically perform lead worker supervision over a progressively larger number of employees performing higher level work." Exhibit J, pages 3-4. Blazer's observations are absolutely correct as demonstrated by the evidence adduced at the hearing in this matter.

21. Blazer's comparison to benchmarks at factor level 3 included comparison to position 499404 (Exhibit K-1), maintenance worker grade 10, position 173133 (Exhibit K-2), design technician, and position 515223, duplicating press operator. As Blazer correctly noted, and the hearing officer finds, benchmark position 499404 provides a virtually identical match to Westhoff's position. The predominant work in both positions involves performing a variety of skilled and unskilled repairs to various

plumbing, electrical, and boiler systems and maintaining a variety of these systems. Notably, the maintenance worker grade 10 position:

- A. Performs manual, semi-skilled and skilled work using knowledge of carpentry, painting and welding in repairing and maintaining state buildings and structures.
  - 1. Builds and repairs doors, furniture, cabinets, walls, shelves and structural wooden items of the facility to maintain an appropriate living environment.
  - 2. Strips, primes and paints interior and exterior surfaces of buildings and structures using appropriate paints and chemicals.
    - \* \* \*
  - 4. Repairs and fabricates metal items by using knowledge of arc welding, acetylene welding and cutting, and soldering.
    - \* \* \*
  - 6. Repairs broken glass in windows, doors and cabinets to maintain a safe and energy efficient environment.
    - \* \* \*
- B. Performs manual, semi-skilled and skilled work using knowledge of plumbing, electrical, heating/ventilation/air conditioning, and welding in repairing and maintaining the utilities of state-owned buildings and grounds.
  - 1. Installs, repairs and replaces pipes, toilets, sinks, tubs and faucets to maintain functioning facility.
  - 2. Installs, repairs and replaces wiring, switches, outlets, fixtures, bulbs, relays, coils, elements, thermostats and timers in maintaining electrical components.
  - 3. Monitors and adjusts furnaces and boilers to maintain proper operating temperatures.

These descriptions match Westhoff's predominant job duties almost identically and provide the best match to any of the comparative benchmark positions.

22. Blazer also compared the predominant duties of Westhoff's position to two factor level 4 positions, positions 499405, maintenance worker grade 11 (Exhibit K-4), and position 173203, civil engineering technician (Exhibit K-5). She concluded that Westhoff's position description did not meet the factor level intent of the two level

factor 4 positions. In doing so, she correctly noted (and the hearing officer so finds) that Westhoff's position did not meet the 449405 position because that position "is a lead worker over 5 FTE [full time equivalents] and is responsible for assignments such as constructing cabinets, repairing boilers, rewiring electrical circuits or replacing plumbing parts that require fabricating or composing new or significantly modified objects 50% or more of the time . . . . Work in the benchmark also consists of skilled application of a number of unrelated methods and techniques to a variety of maintenance assignments, such as operating a sewage treatment plant, and supervising the repairing of heating, electrical and plumbing systems."

23. Blazer's observations regarding the inapplicability of the two level 4 benchmark positions are substantiated by the testimony provided in this case about Westhoff's duties. Westhoff does not install or replace entire electrical circuits. Such work is farmed out to a licensed electrical contractor. Likewise, while he may be quite capable of engaging in the work conducted by a grade 11 maintenance technician, the evidence does not substantiate that he does that as part of his predominant duties. The fact that on one occasion he plumbed a new routing system for the boiler does not make that type of work his predominant duty. Rather, his predominant duties are correctly classified at factor level 3.

### III. OPINION

Montana law requires the Department of Administration (DOA) to develop a classification plan for state employees and permits employees to appeal the allocation of positions to classes in the system. Mont. Code Ann. §§ 2-18-201(1) and 2-18-203(2) (emphasis added). The function of developing guidelines for classification is delegated to the DOA. Mont. Code Ann. § 2-18-202.

The Board of Personnel Appeals' function in this matter is limited to determining whether a position is properly classified. The purpose of that function is to review the actions of the DOA and to ensure that the DOA properly adheres to its rules, regulations, and practices. *Mead v. Board of Personnel Appeals* (1988), 235 Mont. 208, 213-14, 766 P.2d 1300, 1303. See also, *Department of Administration v. Board of Personnel Appeals* (1992), 255 Mont. 507, 844 P.2d 68. The appellant bears the burden of proof in this matter to demonstrate by a preponderance of the evidence that he has been aggrieved by the DOA classification of his position. Mont. Code Ann. § 2-18-1012; Admin. R. Mont. 24.26. 513(f).

In 2007, the Montana legislature enacted the broadband classification pay plan for state employees which utilizes a broadband classification plan to "measure the difficulty of the work and the knowledge or skills required to perform the work." Mont. Code Ann. § 2-18-101(5), (6). The broadband classification system looks to a "benchmark" to determine the pay band for an occupation. A benchmark is "a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to determine the pay band for an occupation." Mont. Code Ann. § 2-18-201(3). A job evaluation factor is defined as "a measure of the complexities of the predominant duties of the job." Mont. Code Ann. § 2-18-201(12). It is the classification of this single factor to one of nine levels of complexity

(classification factor levels) that determines the pay band assignment for a position. Broadband Classification Manual, Vol. III (Effective January 2007), pp. 6, 29 through 53.

The Broadband Classification Manual sets out the principles of application of the BFM to a given position and provides the framework against which the DOA's classification determination in any case must be measured. The BFM in place under the present rules requires a classifier to "evaluate the work performed against factor level definitions and the benchmarks." Broadband Classification Manual, p. 4. Under the applicable procedures, proper classification requires:

- (1) Use of the predominant work principle, meaning that the work to which the factors are applied must be work performed 50% or more of the position's work time.
- (2) That the predominant work be fully equivalent to the overall intent of the factor level chosen.
- (3) That the classifier start at the first factor level and progress to the first level that most fully describes the total predominant work.
- (4) Comparison to benchmark positions. Comparison requires more than just matching specific words and phrases to the position description. "It requires consideration of the full intent of each factor level and selection of the level that best reflects the nature of the position under review." The intent of factor level language is demonstrated in the benchmarks.

Broadband Classification Manual, Vol. III, pp. 4 through 6.

Classification review involves three basic steps: job analysis, job evaluation, and documentation. "Job analysis means collecting information about the position through the job profile and other sources, such as conversations with the supervisor or incumbent. Job evaluation applies the benchmark factoring methodology to determine the appropriate factor level for the job. Documentation summarizes the job analysis and job evaluation in a written statement that explains and defends the classification decision." *Id.* at page 6.

As stated above, it is the classification of a single job factor to one of nine levels of complexity (classification factor levels) that determines the pay band into which a particular occupation falls. There is no dispute between the parties as to the predominant work that Westhoff's position undertakes. Westhoff's closing brief contends that the classifier made errors in both the "methodology and application" of the BFM. Appellant's Brief, page 3. Westhoff argues in a conclusory fashion that the classifier's determination as to the position's predominant duties was wrong and that proper quantification of the duties would have lead to the conclusion that the predominant duties should have been factored at level 4. The preponderant evidence in this case does not bear this out. As demonstrated below, the complexity of the maintenance position, when compared to the benchmark positions, reveals that it is properly factored at level 3.



Positions factored at level 3 have predominant work that:

“involves systematic, detailed, skilled application of related methods and techniques, and examination of multiple procedural or technical variables. Typical work requires the selection of appropriate courses of action based upon identification and examination of data. Decisions are based on a combination of variables that are readily observable in nature, and modification of the structure of the work elements, the content of the data, or basic work formats. Work requires the knowledge of appropriate standardized procedures, or sources of information, and the ability to determine courses of action based upon standardized rules and regulations, or the skill to operate tools and equipment that require some training or the completion of on-the-job training programs.”

Broadband Classification Manual, Vol. III, p. 39.

Work examples to which this factor level applies include the maintenance worker position, which position “performs a wide variety of related manual and semi-skilled work, repairing and maintaining buildings, grounds and related facilities. The assigned work requires the ability to choose the correct procedures from a variety of systematic and manual and semi-skilled maintenance methods and techniques to accomplish tasks.” *Id.*, p. 40.

One of the benchmark positions for level 3 jobs is the grade 10 maintenance worker position that Westhoff occupies. Needless to say, Westhoff’s position, being a level 3 benchmark position, matches this benchmark identically.

Positions factored at level 4 have predominant work that:

“Involves seeking out and gathering data that is not readily available, summarizing and drawing conclusions from data, and/or fabricating and composing work elements into new arrangements. Procedures include interpretation of data, information and guidelines; coordinating predetermined, sequential activities to complete projects in a project driven work environment, and evaluation of related procedures and circumstances. Work requires knowledge of an occupationally specialized vocation, in which procedures may be modified to fit conditions.”

Work examples for this complexity level include maintenance workers whose work:

“involves less routine assignments, unrelated assignments such as constructing cabinets, repairing boilers, rewiring electrical circuits, or replacing plumbing parts. Requires fabricating or composing new or significantly modified objects such as carpentry, electrical, and plumbing duties. Work also consists of skilled application of a number of related methods and techniques to a variety of maintenance assignments. This position performs skilled work and supervises the repairing of heating and plumbing systems and duties in electrical, carpentry, welding, masonry and plumbing work of a maintenance nature.”

Comparing the predominant duties of Westhoff's position to those of factor level 4 demonstrates that Westhoff's position does not meet the intent of factor level 4 positions. As Blazer correctly notes, and the hearing officer so finds, Westhoff's position is weaker than the benchmark 449495 position. The benchmark position is a lead worker over five FTE positions and is responsible for assigning such things as constructing cabinets, repairing boilers, rewiring electrical circuits, and replacing plumbing parts that require fabricating new or substantially modified objects more than 50% of the time. While Westhoff does this on occasion, there is no evidence, even from Westhoff himself, that he does such work more than 50% of the time in his position. Nor does he supervise the repairing of heating, electrical, or plumbing systems. It is apparent that Westhoff does not spend the majority of his work in engaging in the types of jobs that would raise his position to a factor level 4 position. The predominant duties of Westhoff's position do not meet the intent of factor level 4.

Westhoff is incorrect in asserting that Blazer's step 2 review improperly considered the lack of supervisory functions in Westhoff's position in concluding that Westhoff's position is properly factored at level 3 complexity. First of all, Blazer never stated that she used the position's lack of supervisory status as a basis for reviewing the proper classification of Westhoff's position. She stated simply that it was unlikely that the position could be classified at level 4 in the absence of some indication that supervisory duties were involved.

Second, nothing in the policy manual as it is now written suggests that supervisory considerations may never be considered in determining the factor level. While the manual notes that generally the factor level descriptions apply to the characteristics of the non-supervisory duties, that is not always the case. As made evident by the language of the level 3 and level 4 classification factors quoted above, one of the potentially distinguishing factors between level 3 and level 4 is that a maintenance worker at level 4 complexity also supervises the skilled repair "of heating and plumbing systems and duties in electrical, carpentry, welding, masonry and plumbing work of a maintenance nature." Moreover, looking beyond the supervisory issue to the actual task, it is also apparent, as demonstrated above, that Westhoff's predominant duties simply do not match the predominant duties of the grade 11 maintenance worker. Accordingly, the hearing officer can discern no error in Blazer's step 2 review that would require a finding that Westhoff had been aggrieved in the classification of his position to factor level 3.

**IV. CONCLUSIONS OF LAW**

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Mont. Code Ann. § 2-18-1011.

2. Westhoff's maintenance worker position is properly factored at level 3.

**V. RECOMMENDED ORDER**

Based on the foregoing, the hearing officer recommends that Classification Appeal No. 1-2008 be DISMISSED.

DATED this 17th day of February, 2009.

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 March 12, 2009. 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