



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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April 28, 2014 – CORRECTED May 2, 2014

TO: Teresa Parsons, SPHR
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR
Director's Review Program Investigator

SUBJECT: Bob Fortner v. Department of Corrections (DOC)
Allocation Review Request ALLO-13-032

This position review was based on the work performed for the twelve-month period prior to February 28, 2013, the date DOC Airway Heights Correction Center (AHCC) Human Resources received Mr. Fortner's request for a position review. As the Director's Review Investigator, I carefully considered all of the documentation in the file, the exhibits, and the comments provided by both parties. Based on my review and analysis of Mr. Fortner's assigned duties and responsibilities, I conclude his position is properly allocated to the Classification Counselor 2 (CC 2) classification.

Background

On February 28, 2013, AHCC HR received Mr. Fortner's Position Review Request (PRR), initially requesting that his Classification Counselor 2 (CC 2) position be reallocated to a class that more accurately addresses the work he performs as a cognitive behavior therapist. Mr. Fortner subsequently requested that his position be reallocated to Teacher 3 (Exhibit A-1).

DOC HR conducted a position review and notified Mr. Fortner on April 4, 2013 that his position was properly allocated to the CC 2 class (Exhibit B-1).

On April 11, 2013, State Human Resources, OFM received Mr. Fortner's request for a Director's review of DOC's allocation determination (Exhibit A-1).

Following multiple unforeseen postponements, I conducted a Director's review telephone conference with Mr. Fortner and Ms. Sarah Conly, Human Resource Consultant, DOC on April 3, 2014.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

Mr. Fortner's position is located in Unit T at the AHCC. His position performs counseling and custody treatment services for an assigned case load of offenders. The purpose of his position is to identify offender risk based on an internal risk management system and to hold offenders accountable for their offenses and daily behavior by enforcing specific restrictions and DOC and institution rules. His position collaborates with other institutional and field staff and community partners during the transition period of an offender from the prison system into the community.

Mr. Fortner describes his major job duties in the PRR (exhibit B-2) as follows:

- 20% Evidence Based Program Phase-Up.
- 20% Regularly review and update offender plans and programming needs.
- 10% Facilitation of Thinking for a Change (T4C).
- 10% Preparation required for T4C, evaluations and coupons after T4C.
- 10% Phase up packet review meetings and completion of individual evaluations per packet.
- 10% Complete Offender Release Plan – verify and submit release plans, apply for housing voucher, locate acceptable housing. Counsel and inform offenders regarding community resources and problems they might encounter in their transition to work release, parole, or release.
- 10% Collect information to complete facility plans, criminal history and risk management tools to determine needs.
- 5% Complete paperwork for special visits, death bed visits, funeral outings, job referrals, End of Sentence Review packets, EFV's, marriages, psych evaluation requests, offender to offender correspondence, and out of state and international transfers.
- 5% Maintain communication with offenders to assist with attorney calls, child custody/support hearings with DSHS and courts, and family contact through crisis/emergency situations.

In the PRR submitted for reallocation, Mr. Fortner notes the following changes to his assigned duties:

....the duties and expectations of the Classification Counselor portion of my job duties have not changed. They have been expanded to include 50% more duties and expectations that include facilitating the Evidence Based Program (Thinking for a Change) which has real and measurable outcomes in the way of reduced violence and lower recidivism rates.

Supervisor's Comments

Mr. Fortner's supervisor, James Watkins, Classification Counselor 3, indicates in the PRR that Mr. Fortner's duties and responsibilities are accurate and complete. In his comments Mr. Watkins

provides comments regarding changes that were to occur in March 2013; however these changes were to occur after the review time period and are therefore not germane to this discussion.

Summary of DOC's reasoning

DOC asserts that in its comparison of duties between Mr. Fortner's current PDF and the PRR submitted for reallocation, while his workload has increased, Mr. Fortner's work activities have remained consistent over time. DOC also asserts that although the percentages of time have shifted somewhat, there have been no significant increase or decrease in his level of responsibility, and the nature of his work remains the same.

DOC asserts it does not have the authority to create a job class titled, "Cognitive Behavior Therapist" to address the newly implemented treatment process that Mr. Fortner facilitates.

DOC contends Mr. Fortner's position does not meet the requirements of the Teacher 3 class.

For these reasons, DOC contends Mr. Fortner's position is properly allocated to the CC 1 level class.

Summary of Mr. Fortner's Perspective

Mr. Fortner asserts the Teacher 3 class more fully fits the additional expectations placed upon his position facilitating the Evidence Based Program, "Thinking for a Change". Mr. Fortner asserts that the duties he performs as an, "Evidence Based Corrections Counselor" which includes teaching high-risk offenders, preparing lesson plans, assisting with discipline, preparing progress reports, participating in meetings to discuss and resolve problems and coordinating efforts are more accurately reflected in the Teacher 3 class.

Mr. Fortner asserts that DOC's statement in the determination letter that, "...although the percentages have shifted somewhat, your work activities have remained consistent over time..." is inaccurate and does not take into account the PDF that was presented to him at the end of January, 2013 which describes his additional duties and responsibilities regarding the Evidence Based Program activities.

For these reasons Mr. Fortner asserts his position should be reallocated to the Teacher 3 class to more accurately reflect the level of responsibility and scope of duties in his position.

Comparison of Duties

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the Definition and Distinguishing Characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

Comparison of Duties to Teacher 3

The Class Series Concept for the Teacher 3 class states:

This category includes institution teachers with the "T" range salary designation.

There is no Definition for this class.

The Distinguishing Characteristics for this class state:

Positions at this level receive limited supervision and make decisions independently, exercising discretion in setting priorities, developing instructional strategies, and lesson plans. Positions are certified teachers and provide academic, recreational, and other educational services to children and adults at state residential schools or inmates at adult correctional institutions.

In accordance with these Distinguishing Characteristics, incumbents in the Teacher 3 class are certified teachers who provide academic, recreational, and other educational services which include inmates at an adult correctional institution. Workers in this class receive limited supervision and make decisions independently, exercising discretion in setting priorities, developing instructional strategies and lesson plans. The thrust of Mr. Fortner's position does not meet this intent.

For example, Mr. Fortner's position does not meet the primary allocating factor of this class of being a certified teacher. Additionally, his position does not provide academic, recreational, and other educational services to inmates at an adult correctional institution as the primary focus of his position.

The focus of Mr. Fortner's position is to provide counseling and custody treatment services. He manages a caseload of adult criminal offenders. The focus of his work is to provide professional classification guidance with the goal of placing offenders in appropriate custody designations. While a portion of his work during the review time period involved facilitating a newly implemented treatment process that required a training component, the overall focus of his position did not require providing elementary and secondary school subjects and directing educational services and classes as intended by the Instructional Teacher 3 class.

In addition, while several of the designated work expectations and responsibilities of implementing the Evidence Based Program (EPB) includes performing several similar duties to teaching, the focus of this work does not require making decisions independently and exercising discretion in setting priorities, developing instructional strategies and lesson plans as required.

For example, during the review telephone conference Mr. Fortner indicated that the training manuals, instructional materials and lesson plans (see exhibit A-8) were fully developed and implemented from a higher centralized level within the agency. Mr. Fortner acknowledged that the training manuals and lesson plans were fully developed and as a facilitator he was not provided an opportunity for deviation from the specified lesson plan structure. Mr. Fortner did put together and set up the daily in-class materials, charts and handouts for the students for each training session, however this does not rise to the level of developing instructional strategies and lesson plans within a classroom setting as required by the Teacher 3 class.

Mr. Fortner's position does not meet the requirements of the Teacher 3 class. The primary focus and thrust of his position and the overall scope of his assigned duties and level of responsibility as a classification counselor are more fully and accurately described within another class series.

The PRB has concluded that while one class appeared to cover the scope of a position, there was another classification that not only encompassed the scope of the position, but specifically encompassed the unique functions performed. Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008).

Additionally, when there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position, the position will be allocated to the class with the definition that includes the position Mikitik v Depts. of Wildlife and Personnel, PAB No. A88-021 (1989).

In Cerna v. Employment Security Dept., PAB No. ALLO-03-0014 (2003), the board stated that “[i]t is not intended for a more generic classification to be used to allocate a position where the duties and responsibilities of the position are more precisely described by a more specific classification.” [See also Nance v. Eastern Washington University, PAB No. 3769-A2 (1995)]. Board quoted above in Waldher; Firouzi; Makari; Korndorfer v. DOT; R-ALLO-08-026, R-ALLO-09-005, R-ALLO-09-006, and R-ALLO-09-009.

For each of the reasons stated above, Mr. Fortner's position should not be allocated to the Instructional Teacher 3 class.

Comparison of duties to Classification Counselor 2

The Definition for the Classification Counselor 2 class states:

Under limited supervision in an adult corrections institution

1. Provides both counseling and custody treatment services in the management of a caseload of adult criminal offenders;

OR

2. Performs pre-parole counseling, resident program planning and other counseling services.

The Distinguishing Characteristics for this class state:

This is a journey-level class. Incumbents perform varied, semi-intensive counseling under minimum supervision. This level of counseling is characterized by full programming responsibilities, scheduled and pre-planned sessions, development of periodic and final case reports, consultations provided to other comparable or higher-level staff regarding specific cases, and presentations before the Washington State Board of Prison Terms and Parole. Types of custody functions at this level include area searches, frisks, routine hall supervision, escapee apprehensions, resident transports, and participation on disciplinary committees.

Mr. Fortner's position at AHCC meets the primary allocating factor of this class of providing counseling and custody treatment services in the management of a caseload of adult criminal offenders.

Mr. Fortner's duties are consistent with the Distinguishing Characteristics of this class. For example, Mr. Fortner performs journey level work and he is fully competent and qualified in all aspects of the body of work he performs. He works under general guidance and completes his work assignments independently to standard under minimal supervision.

Mr. Fortner manages an assigned caseload and the level of counseling he performs includes full programming responsibility. For example, as stated in the PDF for his position (exhibit B4), Mr. Fortner investigates information for each arriving offender and determines the appropriate

documentation and programming needs. He administers risk assessments tools and collects information to complete facility plans and to prepare and submit the Offender Release Plan. He also counsels and informs offenders regarding community resources. He enforces court-ordered conditions and imposes sanctions. He also develops periodic and final case reports, and consults with other staff regarding specific cases. Mr. Fortner's duties are fully consistent with the Distinguishing Characteristics of this class.

While a significant portion of his work during the review time period involved facilitating a newly implemented treatment process that required a training component, the work that he performs with respect to the EPB meets the treatment program aspect of his assigned caseload and falls within the scope of his work as a classification counselor.

Further, although the examples of work do not form the basis for an allocation, they lend support to the work envisioned within a classification. The typical work statements at the CC 2 level provide examples of work performed by incumbents at this level.

Maintains and coordinates contact with employers and/or school personnel to evaluate a resident's progress;

Attends classification committee sessions, discusses and makes recommendation regarding resident's progress and program;

Counsels with and advises residents to assist them in improving their personal outlook, adjustment to basic living problems and social behavior;

Prepares reports, making recommendation regarding resident treatment, training, progress, and/or revocation; recommends resident placement in treatment programs; aids residents in located employment;

Participates in staff meetings; provides input to program policies, rules, and regulations; appears with resident at Parole Board hearings and makes recommendations;

Interviews residents to obtain and compile personal data and social background; contacts friends, relatives, teachers, and public and private agencies to secure information on the resident's background, personal history, and social adaptability;

Participates in meetings such as disciplinary, fair hearing, disposition, progress and planning and makes appropriate recommendations;

Processes furlough and/or work/training release applications, making recommendations; conducts investigations for furlough and/or work/training release status;

Serves legal papers on residents regarding court actions, divorce, separations, consents for adoption and other legal actions;

Monitors resident's progress in individual treatment plan and graduated responsibility program and recommends adjustments as necessary;

Approves and/or recommends approval of resident financial transactions; May be responsible for the supervision of student interns or volunteers; ...

The majority of Mr. Fortner's duties are fully consistent with these statements. In total, Mr. Fortner's position fully aligns with the typical work statements at the CC 2 level. In addition, Mr. Fortner's duties facilitating the EPB treatment is addressed in the CC class series which includes providing on-the-job instruction, guidance and mentoring of offenders in the development of pro-social attitudes and behavior.

Most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

Mr. Fortner's position should remain allocated to the CC 2 class.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides in relevant part, the following:

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, WA 98504-0911. An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The PRB Office is located on the 4th floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington, 98501-1342. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Bob Fortner, DOC
Sarah Conly, DOC
Lisa Skriletz, State HR

Enclosure: List of Exhibits

BOB FORTNER v DOC

ALLO-13-032

List of Exhibits

A. Bob Fortner Exhibits

1. Request for Director's Review from Bob Fortner received April 11, 2013
2. DOC allocation determination letter from Sarah Conly to Bob Fortner dated April 4, 2013
3. Position Description form for Bob Fortner's position dated January 28, 2013 without signatures
4. Rebuttal statement by Bob Fortner
5. Email from Amy Matero to James Watkins, et. al. dated May 20, 2013 regarding Offender class schedule
6. Document titled, "EBC Offender Class Schedule"
7. State HR Class Specification for Institution Teacher 3, 259C
8. Copy of the T4C Orientation training plan for, "Session 6: Introduction to Skill Streaming: Saying Thank You"

B. DOC Exhibits

1. DOC allocation determination letter from Sarah Conly to Bob Fortner dated April 4, 2013 (4 pages)
2. Position Review Request form for Bob Fortner received February 28, 2013 (8 pages)
3. Position Description form on file for Bob Fortner's position dated December 14, 2006 (7 pages)
4. Updated Position Description form for Bob Fortner's position dated February 11, 2013 (6 pages)
5. Unit T Organizational chart
6. State HR class specification for Class Counselor (Teamsters only), 354E
7. State HR class specification for Class Counselor 2, 354F