

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

EDMUND J. WIATR, JR.,
Appellant,

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DOCKET NUMBER
NY122190C0311

DATE: MAY 29 1991

Debra L. Roth, Esquire, Neill and Shaw, Washington,
D.C., for the appellant.

Major Susan Parker-Hotchkiss, Washington, D.C., for the
agency.

BEFORE

Daniel R. Levinson, Chairman
Antonio C. Amador, Vice Chairman
Jessica L. Parks, Member

OPINION AND ORDER

The appellant seeks enforcement of the agreement reached by the agency and the appellant for settling his appeal of a 14-day suspension on charges of deliberate disregard of agency directives. The agreement was incorporated into the record at the parties' request by the administrative judge, who found that the Board had jurisdiction over the appeal under 5 U.S.C.A. § 1221(a) (West Supp. 1990), the agreement was lawful on its face, and the parties understood its terms and entered into it voluntarily. The appellant's enforcement petition alleges

that the agency has breached provision 7 of the agreement in which the agency undertook to reassign the appellant to a legitimate, nonsupervisory, GS-11 position in the area of financial management and/or accounting and/or contracting. The appellant contends that, although the agency has placed him in a GS-11 accountant position, it has failed to assign him the substantive duties described in the position description. There is no dispute that the provision in question contemplates more than a "paper" reassignment and requires that the appellant be assigned the actual job duties of a GS-11 position in one of the specified areas.

In his Recommendation, the administrative judge found that the appellant submitted two affidavits on November 28, 1990, which support his contention that his assignments were clerical and administrative in nature and did not require financial or accounting analysis. In his own affidavit dated November 28, Tab 14, Exhibit 2, the appellant recounted in detail his daily work assignments between November 14 and November 27, 1990.¹ The appellant also submitted the affidavit of Glen Peterson, an analyst of federal positions for a private consulting firm who, prior to retirement from the federal service, was the personnel officer for the Department of Interior's Bureau of Mines for

¹ The November 28 affidavit supplemented an affidavit dated November 21, 1990, Tab 10, Exhibit A, which the appellant submitted in reply to the agency's response to his petition for enforcement. The appellant's November 21 affidavit recounts in detail his work assignments for the period September 24 through November 13, 1990.

18 years. Mr. Peterson stated in his affidavit that the work described in the appellant's affidavit of November 21, 1990 (see note 1) was not the work of a GS-11 accountant but was technician/clerical work of a much lower grade. Tab 14, Exhibit 1.

The administrative judge concluded that the agency failed to rebut the appellant's evidence. He determined that the appellant's supervisor's affidavit that he assigned the appellant specified accounting tasks and some of his own duties did not establish that these assignments were accounting work at the GS-11 level. He also found that the appellant, whose background was in non-appropriated funds accounting, needed instruction in appropriated funds accounting in order to perform his duties, but that the agency failed to provide him with adequate training for this purpose. He determined that the agency did not show that the training which was provided was at the GS-11 level or that the agency had a plan for future on-the-job or formal training at that level. Thus, he concluded that the agency breached provision 7 of the agreement by failing to assign the appellant GS-11 accounting duties or to provide him with the training necessary to perform them within the 60-day time limit specified in the agreement.

On February 11, 1991, the agency responded to the administrative judge's Recommendation with "Evidence of Compliance." The appellant filed a response to the agency's submission on March 5, 1991.

ANALYSIS

The agency states that it is in compliance with the administrative judge's recommendation because it has assigned the appellant GS-11 accounting duties and is in the process of giving him the necessary training to perform those duties. The principal items of evidence on which the agency relies are affidavits of the appellant's first-level and second-level supervisors and a copy of the training plan presented to the appellant on December 10, 1990. Captain Hinote, the second-level supervisor, states that the appellant's duties have included "professional accounting tasks at the GS-11 level (e.g., accounting system operation and maintenance tasks, and analyzing the accounts receivable, refunds and trial balance reports)" as well as more technical tasks. Agency's Evidence of Compliance (AEC), Exhibit 1, at 1. Capt. Hinote does not respond to the appellant's account of his assignments and idle time during the period September 24 to November 27, but he asserts that the appellant has been given sufficient work to keep him busy since December. *Id.* at 2. However, the only specific assignment alleged to require professional accounting expertise which Capt. Hinote mentions is a December 7, 1990, assignment to make "an in-depth evaluation of the Air Force Trial Balance . . . to ensure no discrepancies existed." *Id.* Pointing out that the appellant objected to this assignment because he believed

his lack of experience in the appropriated fund area made him unqualified for it, Capt. Hinote notes that the agency is currently sending the appellant to a training course designed to remedy this lack of experience. *Id.* at 3.

The bulk of the agency's evidence relates to the training provided or to be provided the appellant. Anthony Gonyea, Chief of the Accounts Control Section and the appellant's first-level supervisor, states in his affidavit that he presented the appellant with a detailed training plan on December 10, 1990, and informed the appellant that he would receive training on all the items listed in the plan as near to the scheduled dates as possible. AEC, Exhibit 2. Capt. Hinote states that the one-year training plan indicates when training on specified duties from the appellant's position description would begin and end, that 6 of the 16 duties listed are "uniquely applicable" to a GS-11 accountant, and that the other duties, although "technician oriented," are "essential" "building blocks" to an understanding of appropriated funds accounting. AEC, Exhibit 1, at 1-2. According to his affidavit, the appellant has had training on 5 of the 6 uniquely GS-11 duties - No.'s 2, 5, 7, 8 & 11. *Id.* The appellant's first level supervisor has signed the training plan opposite each of the duties on which the agency contends the appellant has been trained. AEC, Exhibit 1, Attachment 3. The dates on the plan indicate that the training actually began around the first of October.

In his response to the Agency's Evidence of Compliance, the appellant contends that the agency has not demonstrated compliance with the administrative judge's Recommendation because its evidence is "conclusory and only serves to confuse its actions and intentions." Appellant's Response (AR) at 3. According to the appellant, Mr. Gonyea's affidavit (like the one submitted to the administrative judge) fails to address the grade level of the duties assigned him, and Capt. Hinote's statement that he was assigned GS-11 accounting duties is unsupported and conclusory. The appellant notes that Capt. Hinote cited only one specific task in support of his statement, and he contends that his expert has rebutted this assertion. AR at 4; AR, Exhibit 2, at para. 17. To counter the agency's assertions, the appellant has submitted another affidavit describing his daily work assignments, this one covering the period from December 10, 1990 to February 13, 1991. AR, Exhibit 1. The appellant has also submitted an additional affidavit from Alan Peterson, his personnel expert, evaluating the appellant's description of his assignments from December to February. Mr. Peterson determines that the appellant's enumerated duties did not "require analysis, interpretation, evaluation or creation and therefore do not constitute GS-11 accounting under the Office of Personnel Management's classification standards for professional accounting." Mr. Peterson also concludes that the

appellant's training plan does not reflect the duties in his position description. AR, Exhibit 2, Paras. 5-6, 9.

The first professional accounting duty in the training plan on which the agency contends the appellant has had some training is No. 2: "Compiles data for SACMET" and "Researches data for the Economic Research Impact Statement (ERIS)." AEC, Exhibit 1, Attachment 3. The plan indicates the appellant was given this training between October 3 and October 16, 1990, but the agency has not directly challenged the accuracy of the appellant's November 21, 1990 affidavit describing his assignments during this period, Tab 10, Exhibit A, paras. 8-17. As to this duty, the appellant records only that he extracted statistical data for the ERIS report for an hour and a half on October 10 and summarized this data for a half hour on October 16. In his March 2, 1991 affidavit responding to the agency's evidence of compliance, he states that his duties related to SACMET data and the ERIS Report involved a few minutes work of obtaining figures and transferring them to a pre-formatted line-item report and that no analysis or interpretation was performed. AR, Exhibit 2, para. 36. Mr. Peterson states in his affidavit that such compilation of figures is low level technician work. AR, Exhibit 2, para. 17.

As to the four other alleged professional accounting duties cited by Capt. Hinote as the subject of training received by the appellant, the training plan shows only the starting dates. AEC, Exhibit 1, Attachment 3. Duty no. 5,

The Board finds that the agency has failed to show that it has taken the recommended actions of assigning the appellant GS-11 accounting duties and providing him with the training necessary to perform those duties. The agency's evidence that it has assigned the appellant professional accounting tasks at the GS-11 level is conclusory in character, only one specific assignment allegedly of this

kind being cited. Moreover, the agency's description of the assignment is insufficiently detailed to show that it requires analysis and interpretation at the GS-11 level. The accounting position-classification standards indicate that while professional accountants and technicians/bookkeepers may perform superficially similar tasks, the two kinds of work can be distinguished on the basis of the purpose of the tasks performed, the nature of the mental processes involved, and the kinds of knowledge brought to bear. Office of Personnel Management, Position-Classification Standard for Accounting Series GS-510, 4. The agency's submission makes no attempt to demonstrate how the appellant's assignments reflected the types of analytical work which are given as examples of professional accounting in the classification standards. *Id.* It is true, as the agency points out, that OPM's position-classification standards permit setting a position's grade where the highest level, grade-determining work occupies at least 25% of the employee's time. AEC, Exhibit 1, Attachment 2. However, the agency's evidence fails to demonstrate that even 25% of the appellant's time was spent on professional accounting tasks. (We also note that OPM recommends in the interest of cost-effectiveness that work be organized so that a majority of an employee's time is spent on grade-controlling duties. *Id.*)

To show compliance, the agency primarily relies on its training plan under which it contends that the appellant has

been provided with training on GS-11 accounting duties. But the descriptions of the duties involved are again very general and largely consistent with the performance of merely clerical or technician tasks such as reconciliation. Moreover, the agency does not explain how the particular training was designed to familiarize a non-appropriated funds accountant with specialized methods peculiar to appropriated funds accounting, and the plan does not clearly show when most of the training occurred. We can give it little weight in view of the appellant's detailed account of his assignments during the same period which describes the work of a technician or clerical employee.

Accordingly, we conclude that the agency's evidence is insufficient to show the appellant has been given GS-11 accounting assignments or appropriate training for them, and we find that the agency is not in compliance with provision 7 of the settlement agreement.

ORDER

The agency is ORDERED to submit to the Clerk of the Board within 35 days of the date of this order satisfactory evidence of compliance with the Board's decision enforcing provision 7 of the parties' agreement. The agency shall show the specific assignments which it has given the appellant during the period of 35 days following this order. The agency's evidence shall show that the duties assigned the appellant are GS-11 accounting duties in accordance with

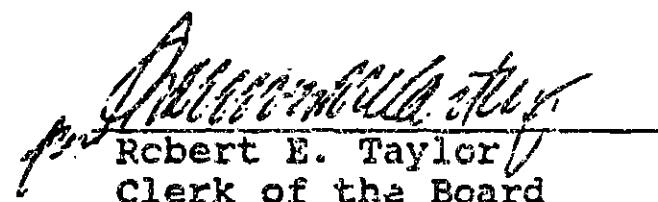
his position description and the position-classification standards of the Office of Personnel Management. The agency shall explain the purpose of any training provided the appellant and how it relates to the performance of duties at the GS-11 level.

The agency is ORDERED to identify the individual who is responsible for ensuring compliance and file the individual's name, title and mailing address with the Clerk of the Board within five days of the date of this order. This information must be submitted even if the agency believes that it has fully complied with the Board's order. If the agency has not fully complied, it must show cause why sanctions, pursuant to 5 U.S.C. § 1204(a) and (e)(2)(A) (West Supp. 1990) and 5 C.F.R. § 1201.183(c), should not be imposed against the individual responsible for the agency's continued noncompliance.

NOTICE TO APPELLANT

You may respond to the agency's evidence of compliance within 15 days of the date of service of that evidence. If you do not respond, the Board will assume that you are satisfied and will dismiss the petition for enforcement as moot.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.