THOMAS GEORGE,

Grievant,

v. **Docket No. 97-CORR-023**

WEST VIRGINIA DIVISION OF CORRECTIONS,

Respondent.

DECISION

Thomas George, Grievant, filed this grievance on December 10, 1996, against Respondent, West Virginia Division of Corrections, alleging:

> I[,] C.O. I Thomas George[,] am filing this grievance due to the fact I have completed the apprenticeship program in May 1996. I have submitted my apprenticeship file to the Institutional Training Officer four separate times.
>
> On two of the occasions before I submitted my apprenticeship file I talked to Corporal Randy Sprinkle to have him look over my files. Corporal Sprinkle advised me that my file was in order and that I was finished with the apprenticeship program.
>
> It has been seven months since I have completed my apprenticeship program. I have not received my certificate of completion. I feel I have given appropriate time for the processing of my file.
>
> I also feel that I am being discriminated against because other officers that submitted their apprenticeship files the same time as I have received their certificates of completion and their raise.

As relief, Grievant seeks his certificate of completion and back pay from May 1996 to present.

Grievant was denied relief at Levels I and II on December 11, 1996, and December 30, 1996, respectively. The Level III grievance evaluator ruled on March 17, 1997, that “Grievant[']s request to becredited with completion of the 4,000 hours O[n the] J[ob] T[raining] requirement should be granted effective April 1996.” (Level III decision.) There are two phases of the Apprenticeship program. Phase I requires 4,000 hours of actual on-the-job (OTJ) training. Phase II consists of 400 hours of “Related

Studies". Although not specifically stated in the grievance statement, Grievant only appealed the second ruling contained in the Level III decision which denied the allegation that Grievant had completed the 400 hour Related Studies component.

A Level IV evidentiary hearing was scheduled for June 4, 1997. On June 4, 1997, the parties jointly requested a continuance to allow Respondent time to find Grievant's records, and to attempt to settle the matter without a hearing. The grievance was continued for good cause, and rescheduled for July 10, 1997.

On August 4, 1997, the Grievance Board received certain documents from Respondent concerning Grievant's apprenticeship certification. A Level IV evidentiary hearing was held on August

27, 1997, at the Grievance Board's office in Elkins, West Virginia,
and the case became mature for decision at that time because the parties waived filing post-hearing submissions.

DISCUSSION

Shortly after Grievant completed the Apprenticeship Program in May, 1996, he assembled the necessary and appropriatedocumentation, and submitted it to the proper person, Sgt. James Adkins, Institution Training Officer, who is in charge of reviewing the documentation before forwarding it up the chain-of-command. Since May 1996, Grievant has turned in his documentation on four separate occasions. Finally, Grievant was issued a certificate for completing the Apprenticeship Program which is dated April 16, 1997. Therefore, currently Grievant seeks backpay associated with completing the AP from May 1996 to April 16, 1997.

The Grievance Board has had at least four cases similar to this one where it was alleged that documents were lost or misplaced. See, Sickles v. Monongalia County Bd. of Educ., Docket No. 96-30-207 (Oct. 30, 1996); Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992); Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990); Delaney v. Harrison County Bd. of Educ., Docket No. 89-17-352 (Sept. 25, 1989). Although each particular case must be decided based on the evidence in the record, including the credibility of the witnesses,

the four cases cited above are based on the same principle:

> It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application but also to ensure that the application is submitted to the proper personnel
>
> in charge of reviewing the application. See, Delaney v. Harrison County Board of Education, Docket No. 89-17-352 (Sept. 25, 1989).

Merritt, supra, at 8. (Emphasis added.) During the Level III hearing, Corporal Randy Sprinkle, CO III, firearms instructor, and Field Training Officer (FTO), who handles the paperwork pertaining to the apprenticeship program for day shift officers, testified:

> [O]n November 5th of 1996, I received a call from Sgt. Adkins, which he was down at the academy at the time and I was scheduled to go down to the academy on the sixth of November to help with a defensive tactics class. Sgt. Adkins had called me and asked if I would bring a packet of papers that was on his desk pertaining to [Grievant's] apprenticeship program, since I was coming down the next day. So on the afternoon of the fifth of November, I was ... doing my paperwork up on my, the qualifications of firearms, and [Grievant] went through the packet and I checked everything to make sure everything was in order, ... he had more than ample hours to get him thru [sic] the apprenticeship program. I think it was in excess of 90 some hours over what was required.

Level III, Tr. 9. Emphasis added.

During the Level IV hearing, Shift Commander Billy Carter similarly credibly testified that he examined Grievant's Apprenticeship Program documents, and Grievant had completed the program. He also testified that several officers on his shift and throughout the institution have had problems with Apprenticeship Program documents being lost or misplaced by Respondent. He also testified that Sgt. James Adkins, Institutional Training Officer (ITO) is seldom at the institution, has a poor recording policy, and that the ITO office is unkempt, and unorganized.

Corporal John Barnhart, an FTO, agreed that the ITO keeps poor records, and he has found documents behind file cabinets. He also testified that he saw Grievant's documentation in the ITO's office, and that later he checked again, and some of it was missing. Hehad a similar problem with lost and missing documentation, but won his grievance at Level III. Mr. Joseph P. Kisner, CO II, also testified at Level IV that he has completed the Apprenticeship Program three times, and still has not been issued a certificate of completion because of lost and missing documentation.

The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant has been employed by Respondent for three years. 2. There are two phases of the

Apprenticeship Program. Phase I requires 4,000 hours of actual on-the-job (OTJ) training. Phase II consists of 400 hours of “Related Studies”.

3. Grievant is supposed to be notified if he failed a test in the Related Studies Phase of the Apprenticeship Program, and he was never informed that he failed any of the tests.

4. Grievant completed both Phase I and Phase II of the Apprenticeship Program in May 1996, and also submitted the appropriate paperwork to Respondent, specifically the ITO, in May 1996.

5. For whatever reason, Respondent has not properly processed Grievant's paperwork associated with his completion of the requirements of the Apprenticeship Program.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW 1. In nondisciplinary matters, a grievant must prove all of the allegations constituting his grievance by a preponderance of the evidence. Miller v. W. Va. Div. of Corr., Docket No. 96-CORR- 168 (Dec. 23, 1996).

2. Grievant proved, by a preponderance of the evidence, that he completed the Apprenticeship Program in May 1996, and forwarded the required paperwork at that time to the appropriate personnel.

Accordingly, the grievance is **GRANTED**. Respondent is **ORDERED** to compensate Grievant beginning May 1, 1996, for completion of the apprenticeship program through April 16, 1997. Respondent is also **ORDERED** to award Grievant all other rights associated with completing the Apprenticeship Program back to May 1, 1996.

Any party may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

Dated: 9/24/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE