JOHN SHANNON,

Grievant,

v. Docket No. 97-CORR-466

WEST VIRGINIA DIVISION
OF CORRECTIONS,

Respondent.

DECISION

Grievant, John Shannon, initiated this proceeding to challenge his superiors' decision to remove Grievant from voluntary assistance during religious services. (See footnote 1) He requests as relief that he be allowed to supervise prisoners during church services and that the institution be ordered to hire a full-time chaplain. After denials at levels one and two, a level three hearing was conducted on September 26, 1997, followed by a written decision denying the grievance dated October 1, 1997. Grievant appealed to level four on October 23, 1997, where a hearing was held in the Grievance Board's Morgantown, West Virginia, office on December 23, 1997. This matter became mature for decision upon receipt of the parties' proposed findings of fact and conclusions of law by February 2, 1998. (See footnote 2)

The following findings of fact are made from a preponderance of the evidence of record, including all testimony and exhibits introduced at levels three and four.

Findings of Fact

1. Grievant is employed as a correctional officer at Pruntytown Correctional Center ("Pruntytown"), which houses both male and female adult prisoners.

2. Pruntytown provides religious services for its inmates, and correctional officers assist during those services on a voluntary basis. These officers are to provide security supervision of the inmates while services are being conducted.

3. Grievant has voluntarily supervised inmates during church services for approximately seven years.

4. On July 16, 1997, after consultation with Grievant's immediate supervisor, Warden James Liller decided that Grievant should no longer supervise during church services.

5. The only reason given to Grievant for the decision was that such decisions are within Warden Liller's administrative discretion.

6. Shortly before July 16, 1997, Grievant had "written up" **(See footnote 3)** **an inmate for talking during church service.**

___7. Although officer supervision during church services is provided by the officers on a voluntary basis, the warden has final approval over all such assignments.

Discussion

As this is not a disciplinary matter, Grievant must prove all the allegations constituting his grievance by a preponderance of the evidence. See W. Va. Code § 29- 6A-6; Tucci v. W. Va. Dept. of Transp., Docket No. 94-DOH-592 (Feb. 28, 1995). Grievant's chief contention appears to be that he should have been consulted and givenan "opportunity to defend himself" prior to being taken off supervisory duty during church services. He has cited no policy, regulation or other basis for this contention.

It is well-settled that, with regard to assignments to work units and work shifts, Division of Corrections ("DOC") officials have very broad discretion in transferring employees, absent some improper motivation. See Stoneking v. W. Va. Div. of Corrections, Docket No. 93-CORR-530 (Nov. 30, 1994); Titus v. W. Va. Div. of Corrections, Docket No. 93-CORR-528 (Nov. 22, 1994); Crow v. W. Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989). Grievant agreed during the level three hearing that institution officials have such discretion. In the instant case, Grievant has made no allegations nor provided any evidence of improper motivation, such as discrimination, favoritism or harassment. Moreover, Grievant's assignment to church services was completely voluntary.

Grievant has attempted to forge a connection between the incident involving his discipline of an inmate for talking during service and his removal from church duty. However, this allegation is unsupported by any other evidence, and, even if proven, it does not appear it would be a violation of any institution policy or be otherwise improper.

W. Va. Code § 29-6A-2 defines a "grievance" as a claim "alleging a violation, a

misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which . . employees work." Grievant has provided absolutely no basis for this grievance, and he has established no right to a continued assignment to church service supervision. In addition, Grievant's request for a full-time chaplain at Pruntytown Correctional Center is not appropriate subject matter for the grievance process. He has not established that DOC or Pruntytown officials acted contrary to law, regulation or policy. In addition to the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In a non-disciplinary grievance, Grievant must prove all the allegations constituting his grievance by a preponderance of the evidence. See W. Va. Code § 29- 6A-6; Tucci v. W. Va. Dept. of Transp., Docket No. 94-DOH-592 (Feb. 28, 1995).

2. Grievant did not allege or establish that Respondent violated any law, policy or regulation applicable to his employment in removing him from supervisory duty during church services.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or 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.

Date: April 29, 1998 _____

V. DENISE MANNING

Administrative Law Judge

Footnote: 1

Grievant had initially alleged that this action violated a general policy that institution officials "never take an inmate's word on anything." However, no further mention was made of this claim during the level three or level

four hearings, so it is deemed abandoned.

Footnote: 2

Grievant was represented at level four by Jack Ferrell, representative from the Communication Workers of America, and Respondent was represented by counsel, Stacy K. Parker.

Footnote: 3

Although not explained in the record, it is assumed by the undersigned that being "written up" is some sort of disciplinary measure used against inmates.