PARIS DULANEY,

Grievant,

v. **Docket No. 98-CORR-384**

WEST VIRGINIA DIVISION OF CORRECTIONS/
MOUNT OLIVE CORRECTIONAL COMPLEX,

Respondent.

DECISION

Paris Dulaney (Grievant) is employed by the West Virginia Division of Corrections (Corrections), as a Correctional Officer II at the Mount Olive Correctional Complex. He filed this action on September 8, 1998, requesting that the date he completed his Correctional Officer Apprenticeship Program be moved back in time by two years. This grievance was denied at Level I by Grievant's immediate supervisor, Corporal Eva Lucas, on September 8, 1998. The grievance was denied at Level II, by Associate Warden of Administration Linda Coleman, on September 18, 1998. A Level III hearing was held on October 2, 1998. The grievance was denied at Level III, by Grievance Evaluator Claudette C. Ladika, on that date.

A Level IV hearing was held on November 19, 1998, before the undersigned Administrative Law Judge, at the Grievance Board's Beckley office. Grievant was represented by Jack Ferrell of the Communication Workers of America, and Corrections was represented by Assistant Attorney General Leslie K. Tyree, Esq. The parties declined to submit proposed findings of fact and conclusions of law and this grievance becamemature for decision at the conclusion of the Level IV hearing. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievant is employed by Corrections as a Correctional Officer II at the Mount Olive

Correctional Complex. He has been employed by Corrections since 1993.

2. In 1993, a voluntary apprenticeship program was available for employees classified as Correctional Officer I, which would enable them to be promoted to Correctional Officer II.

3. In 1994, the apprenticeship program became mandatory.

4. Grievant was given credit towards completion of the apprenticeship program for 3,000 hours of on-the-job training and 200 hours of related training. Grievant refers to this as being allowed to "back-date" these hours.

5. Grievant completed the program on May 31, 1998.

6. Grievant was promoted to Correctional Officer II on October 1, 1998.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant requests that the date he completed his Correctional Officer Apprenticeship Program be moved back in time or "back dated" by two years. He bases this request on the fact that he was given credit towards completion of the apprenticeship program for 3,000 hours of on-the-job training and 200 hours of related training. Grievant refers to this as being allowed to "back-date" these hours. Grievant also argues that Corrections' Policy 8911 requires the relief he seeks.

Corrections' Policy 8911 reads, in pertinent part, "[a]pplicants hired after April 1, 1994, shall successfully complete the Correctional Officer Apprenticeship Program within two years of appointment."

However, Grievant was unable to explain, and the undersigned administrative law judge is unable to understand, how this policy requires or permits the relief sought by Grievant. Grievant did not cite

any other statute, policy, rule, or regulation which would require or permit the relief he seeks. Grievant also testified at Level IV that he knew of no other Correctional Officer whose graduation date from the Correctional Officer Apprenticeship Program had been moved back in time or "back dated."

Grievant did not meet his burden of proving his grievance by a preponderance ofthe evidence. Accordingly, this grievance must be denied.

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

2. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993).

3. Grievant did not cite any statute, policy, rule, or regulation which would require or permit the relief he seeks.

4. Grievant did not meet his burden of proving his grievance by a preponderance of the evidence.

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7(1998). 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.

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ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated December 1, 1998