LARRY W. LOWE,

Grievant,

v. Docket No. 99-CORR-095

WEST VIRGINIA DIVISION OF CORRECTIONS/
MOUNT OLIVE CORRECTIONAL COMPLEX,

Respondent.

DECISION

Larry W. Lowe (Grievant) is employed by the West Virginia Division of Corrections (CORR), as a Correctional Officer at the Mount Olive Correctional Complex (MOCC). He filed this action on December 18, 1998, seeking reimbursement for travel expenses he incurred while temporarily assigned to the West Virginia Penitentiary (WVP) in Moundsville. This grievance was denied at Level I, by Sgt. Robert Rhodes, on December 18, 1998, and at Level II, by Linda Coleman, on January 11, 1999. A Level III hearing was held on February 18, 1999, before Hearing Evaluator Paula K. Gardener. This grievance was denied at Level III, by Commissioner William K. Davis, on February 22, 1999.

A Level IV hearing was held on June 1, 1999, before the undersigned Administrative Law Judge, at the Grievance Board's Beckley office. Grievant was represented by Captain Steve Berryman, and CORR was represented by Assistant Attorney General Leslie Kiser Tyree. The parties declined to submit proposed findings of fact and conclusions of law, and this grievance became mature 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 CORR as a Correctional Officer at MOCC.

2. Grievant was temporarily assigned to WVP, from August 22, 1994, to March 2, 1995, when MOCC opened.

3. Grievant lives near Cannelton in Fayette County, and commuted weekly in his private vehicle from there to WVP.

4. Grievant, and other officers assigned to WVP pending MOCC's opening, received a one-time payment of $500.00 to defray living expenses.

5. On May 22, 1997, Grievant received his $500.00 payment after entering into a settlement agreement with CORR, dismissing with prejudice any and all claims against CORR arising from his temporary service at WVP. (See footnote 1)

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 seeks reimbursement for travel expenses he incurred while temporarily assigned to WVP, arguing that he was paid such reimbursement while a student at the 85th State Basic Corrections Class at the West Virginia Corrections Academy. CORR responds that Grievant entered into a settlement agreement that resolved all matters relating to his temporary service at WVP. CORR did not raise a timeliness defense at or before the Level II conference in this grievance. See W. Va. Code § 29-6A-3(a)(2).

On May 22, 1997, Grievant entered into a settlement agreement with CORR, which awarded him $500.00 to “defray expenses incurred living in Moundsville until [MOCC] opened.” This agreement contained the following language pertinent to this grievance: “Larry Lowe and [CORR] are desirous of entering into this Settlement Agreement to resolve all matters relating to this issue. . . . Larry Lowe

shall dismiss with prejudice this claim and any and all other claims against [CORR] arising from the facts and circumstances of this issue. . . . Larry Lowe agrees to accept [$500.00] as full settlement of all claims."

The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994). If settlement agreements could be nullified by non-parties at some later date, employers would be discouraged from entering into such contracts or settlement agreements with their employees.

It is clear that the sweeping language of this settlement agreement encompasses Grievant's current claim. Grievant acknowledges signing this agreement and receiving payment under its terms. Accordingly, Grievant has failed to prove, by a preponderance of the evidence, that he is entitled to reimbursement for travel expenses he incurred while temporarily assigned to WVP.

The following Conclusions of Law support the Decision reached.

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. 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).

2. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforcesuch contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (1994).

3. Because Grievant entered into a settlement agreement encompassing this grievance, Grievant failed to prove, by a preponderance of the evidence, that he is entitled to reimbursement for

travel expenses he incurred while temporarily assigned to WVP. 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. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated June 10, 1999

Footnote: 1

A previous grievance, alleging that Grievant was subjected to discrimination when CORR did not pay him $300.00 in relocation expense reimbursement for his temporary assignment to WVP, was denied. Lowe v. W. Va. Div. of Corrections/Mount Olive Correctional Complex, Docket No. 98-CORR-350 (Dec. 16, 1998).