CECIL PRITT,

Grievant,

v. **Docket No. 98-CORR-501**

DIVISION OF CORRECTIONS,

Respondent.

D E C I S I O N

Grievant, Cecil Pritt, employed by the Division of Corrections (Respondent) as a Correctional Officer II (COII) at the Huttonsville Correctional Center (HCC), filed a level one grievance on or about October 23, 1998, in which he alleged, “I failed to receive a pay raise upon dated competition [sic] of the Offiecer's [sic] Apprenticeship Program (OAP).” For relief, Grievant requested back pay retroactive to June 23, 1998, and interest. Grievant's immediate supervisor lacked authority to grant the requested relief at level one. The grievance was denied at level two, based upon a letter from Randy Perdue, Coordinator of Apprentices, which advised that eight officers, including Grievant, could be reclassified as CO IIs.

The promotion was subsequently processed, and Grievant amended his complaint at level three, requesting backpay from June 23, to October 15, 1998. Following an evidentiary hearing, the grievance was denied, and appeal to level four was made on December 15, 1998. A level four hearing was conducted in the Grievance Board's Elkins office on January 25, 1999. Grievant represented himself, and Respondent was represented by Charles P. Houdyschell, Jr., Assistant Attorney General. The matter became mature for decision on February 26, 1999, the last date for submission of proposed findings of fact and conclusions of law.

The facts of this matter are undisputed and may be set forth as the following formalfindings of fact and conclusions of law.

Findings of Fact

1. Grievant is employed by Respondent at the Huttonsville Correctional Center and is presently classified as a Correctional Officer II (COII).

2. While a Correctional Officer I (COI), Grievant completed the Officer Apprenticeship Program on June 23, 1998.

3. By memorandum dated August 27, 1998, Randy Perdue, Director of Training at the West Virginia Corrections Academy, advised a number of Respondent's administrators that eight (8) Correctional Officers had successfully completed the Correctional Officer Apprenticeship Program, and those who were then classified as COI could be reclassified as COII, providing all other requirements had been met. Mr. Perdue enclosed copies of the officers' Certificates of Completion, which he directed to be attached to Division of Personnel's WV-11 form, used to process the promotion.

4. The WV-11 “Personnel Action Form” reclassifying Grievant from COI to COII, with a five (5) percent salary increase, received final approval by Personnel on September 14, 1998, with an effective date of September 16, 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. Dept. 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 asa whole shows that the fact sought to be proved is more probable than not. Hundley v. Div. of Corrections, Docket No. 98-CORR-218 (Sept. 2, 1998).

Grievant asserts that he is entitled to the salary increase beginning the date he completed the OAP. His Certificate of Completion is dated June 23, 1998. In support of his claim, he relies upon a settlement agreement entered into by Donald Mowery, a co- worker, which he claims compensated Mr. Mowery from the date he completed the program. At hearing, Grievant also mentioned that Mr. Jeffers, who was not further identified, was paid from the date he completed the program.

Respondent concedes that some officers did receive the higher pay from the date of completion, but asserts the practice was eliminated with the adoption of Policy 442. HCC Business Manager Phillip Hanline testified that Grievant received the appropriate salary increase upon approval of the WV-11 form, effective September 16, 1998.

Respondent's Policy 442 “Apprenticeship Program for Correctional Officer I”, effective March 12, 1998, provides in pertinent part:

The Director of the Academy shall request a Certificate of Completion of Apprenticeship from the

Bureau of Apprenticeship and Training upon the officers completion of the program. This certificate shall be the basis for initiating a process to reallocate the journeyman Correctional Officer I to the classification of Correctional Officer II in accordance with Section 4.07 of the West Virginia Division of Personnel Administrative Rule, and each incumbent shall be compensated as specified in Section 5.05 of such rule.

Additional pay or promotion shall not be effective until compliance with the following:

1. Proof of completion of Apprenticeship Program (Certificate) 2. Submission and final approval of a West Virginia Personnel Action Form WV-11.

This Policy clearly states that the salary increase will not be effective until final approval of the WV-11 form. Grievant promptly received a salary increase, effective two days after the form received final approval by Personnel. The settlement agreement signed by Mr. Mowery and dated October 11, 1998, states only that he was paid back wages and interest for the period from December 19, 1997 to May 16, 1998, which was the date of completion of the OAP.

Since the payment was for a period to the completion of the program, it is not supportive of Grievant's claim. Further, attachments to the agreement indicate the payment was for overtime worked. The record contains no information regarding Mr. Jeffers, therefore, it cannot be determined that Grievant provided any evidence in support of his claim. Although the delay from the completion of the program to the date of Mr. Perdue's letter is longer than would be expected, it cannot be determined that it was the result of any wrongdoing.

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

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. Dept. 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. Hundley v. Div. of Corrections, Docket No. 98-CORR-218 (Sept. 2, 1998).

___2. Respondent properly applied Policy 442 in processing Grievant's promotion and salary increase upon his completion of the OAP.

3. Grievant failed to establish that any other employees were granted a salary increase from the date of their completion of the program, contrary to Policy 442.

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, andshould 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: March 11, 1999 _____

Sue Keller

Senior Administrative Law Judge