DANIEL THORNHILL,

Grievant,

v. **DOCKET NO. 99-CORR-215**

DIVISION OF CORRECTIONS/

HUTTONSVILLE CORRECTIONAL CENTER,

Respondent.

D E C I S I O N

This grievance was filed by Grievant, Daniel Thornhill, against Respondent, Division of Corrections/Huttonsville Correctional Center ("Corrections"), on April 22, 1999, alleging he had completed the Correctional Officer Apprenticeship Program on November 12, 1998, and seeking backpay to that date.

The following Findings of Fact are made based upon the record developed at Levels III and IV. (See footnote 1)

Findings of Fact

1. Grievant was employed by Corrections on January 1, 1997, as a Correctional Officer I.

2. All Correctional Officer I's employed by Corrections are required to complete an Apprenticeship Training Program ("OAP"), which consists of two years of on-the-job training and 400 hours of related studies. When an employee completes the OAP and all the necessary paperwork is completed, the employee is eligible to move from Correctional Officer I to Correctional Officer II, and receives a 5% pay increase related to the difference in pay grade.

3. Grievant completed the OAP on November 12, 1998, and was issued a certificate of completion by the U.S. Department of Labor in January 1999, showing November 12, 1998, as the date of completion of the OAP.

4. Sergeant Randy Sprinkle is employed by Corrections at the West Virginia Corrections

Academy ("Academy") as the Institution Training Officer at the Huttonsville Correctional Center. He is responsible for submitting each employee's master file to the Academy upon completion of the OAP, which verifies the employee has completed all requirements to receive certification. Once he submits the masterfile, the Academy sends a letter to the Department of Labor and the certificate is issued.

5. Sergeant Sprinkle was informed by Ron Prince, who was filling in as the person responsible for the OAP at the Academy, that Grievant had not completed his two years of training as of November 1998, and his paperwork could not be turned in until he had completed two full years of training.

6. Sergeant Sprinkle did not send Grievant's master file to the Academy until he had completed his two full years of employment on January 1, 1999.

7. Sergeant Sprinkle later talked to the new Coordinator of Apprentices at the Academy, Jill Hudson, about the two year experience requirement, and she informed him the information provided to him by Mr. Prince was inaccurate, and that the two year experience requirement could be met by combining employment at Corrections with prior experience.

8. Grievant had experience prior to his employment with Corrections which should have been included as part of the two year experience requirement, so that he had two years of experience on November 13, 1998.

9. Corrections completed a Personnel Action Form for Grievant on February 16, 1999, reflecting the change in his classification and salary. It was approved by the Division of Personnel on February 19, 1999, and by the Department of Administration on February 22, 1999, which was the final approval required by Corrections. The Personnel Action Form states the effective date of the change is March 16, 1999. 10. Grievant was placed in the Correctional Officer II classification, and received a 5% pay increase, effective March 16, 1999.

11. The typical period of time for processing a WV-11 is 30 to 60 days. Some employees, however, have waited as long as six to eight months for the paperwork to be completed, and to receive their salary increase upon completion of the OAP.

Discussion

Grievant bears the burden of proving his allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30,

1997).

Corrections adopted a Policy governing the procedure after completion of the OAP, effective April 1, 1998. That Policy, 442, provides with regard to additional pay upon completion of the OAP:

> 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. Grievant acknowledged that it would take 30 to 60 days to implement his pay increase. This Grievance Board has found that:
>
> DOC has adopted Policy Directive 442 to deal with the specific issues involved in the management and administration of its [OAP], including the process for promotion and pay raises upon completion of the program. Quite reasonably, the policy does not place a time limitation on this process, which is understandable, in light of the several offices and agencies which are involved in the process. Policy Directive 442 is a lawfully adopted policy of DOC, which it appropriately followed in this case. While the undersigned agrees with Grievants that a five to six month delay in processing their salary increases was excessive and understandably frustrating, the undersigned is without authority to place an arbitrary time frame upon DOC and the other agencies involved in this matter. DOC does not control these other entities, so it would be unreasonable, and possibly futile, to require them to complete the process within a specified amount of time.

Reynolds, et al., v. W. Va. Div. of Corrections, Docket No. 99-CORR-006 (Feb. 22, 1999).

Grievant argued, however, that Corrections was in control of initiating the process for him to receive his pay increase, and due to the erroneous information provided to Sergeant Sprinkle by Mr. Prince, the process was not initiated until January 1999, when it should have been initiated about a month and a half to two months earlier; and thus, his pay increase was unnecessarily delayed. Corrections argued only that Policy 442 governs when the pay increase is effective, and the pay increase cannot take effect until the two Policy 442 conditions are met. Corrections did not dispute that Grievant had completed all the requirements of the OAP on November 13, 1998. "An administrative body must abide by the remedies and procedures it properly establishes to conduct its

affairs." Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). In addition to Policy 442 setting forth the conditions for implementation of the OAP pay increase, it also directs the Director of the Academy to initiate the process upon completion of the program. This did not occur. The Director did not initiate the process until Grievant had completed two years of employment.

It also appears to the undersigned that the two Policy 442 conditions were met on February 22, 1999. No one explained why the form stated the pay increase would not be effective until March 16, 1999, or why it could not have been made effective February 22, 1999.

Grievant has proven Corrections did not comply with Policy 442. As his pay increase was unnecessarily delayed from November 13, 1998, to January 1, 1999, it is appropriate to award him back pay for the same number of days as the delay, which is 48 days.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant bears the burden of proving his allegations by a preponderance of the evidence. W. Va. Code § 29-6A-6. Mowery v. W. Va. Dep't of Natural Resources, Docket No. 96-DNR-218 (May 30, 1997).

2. "An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). 3. Corrections' Policy 442 provides:

> 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.

4. Grievant proved Corrections did not follow Policy 442 when it delayed requesting a Certificate of Completion from November 13, 1998, when he completed the OAP, until January 1, 1999, due to erroneous information regarding the two year experience requirement.

Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to pay Grievant 48 days backpay in the amount of the difference between his pay as a Correctional Officer I and as a Correctional Officer II. No interest will be awarded as Grievant did not request it.

Any party or the Division of Personnel may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

_____

BRENDA L. GOULD

Administrative Law Judge

Date: August 9, 1999

Footnote: 1

Grievant's supervisor responded at Level I on April 22, 1999, that he was without authority to grant the relief sought. Grievant appealed to Level II on April 28, 1999, and his second level supervisor responded on April 30, 1999, that he was without authority to grant the relief requested, and that he questioned the timeliness of the grievance. Grievant appealed to Level III on May 2, 1999, and a Level III hearing was held on May 7, 1999. A Level III decision denying the grievance was issued on May 14, 1999. Grievant appealed to Level IV on May 24, 1999. A Level IV hearing was held on July 26, 1999. Grievant appeared pro se, and Corrections wasrepresented by Charles Houdyschell, Jr., Esquire. This matter became mature for decision upon receipt of Respondent's post-hearing written argument on July 28, 1999. Grievant did not wish to submit written argument. Although Respondent raised as a defense at Level II that this grievance was not timely filed, this argument was not pursued at Level IV, and is deemed abandoned.