AMY GASTON,

Grievant,

v. **Docket No. 99-CORR-230**

DIVISION OF CORRECTIONS and

DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Amy Gaston, employed by the West Virginia Division of Corrections (Respondent) as a Correctional Officer I at the Northern Correctional Center (NCC), filed a level one grievance on or about April 22, 1999, in which she alleged that she had been denied the opportunity to interview for a position of Correctional Officer III (COIII), even though she met the eligibility requirements for the assignment. The grievance was denied at levels one, two, and three, and the matter advanced to level four on June 7, 1999. Because the position was subsequently filled, at level four Grievant amended her request for relief, and asked that she be promoted to the rank of COIII, or paid as a COIII. An evidentiary hearing was conducted in the Grievance Board's Wheeling office on August 23, 1999. Grievant was represented by Howard Shiflett, the Division of Corrections was represented by Charles Houdyschell, Jr., Esq., and the Division of Personnel was represented by Willard M. Farley, Assistant Director of the Staffing Services Section. All parties declined the opportunity to submit proposed findings of fact and conclusions of law, and the grievance became mature for decision on that date.

The facts of this matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant has been employed by Respondent at NCC since October 1, 1998, and has been classified as a COI throughout the period of her employment.

2. On March 23, 1999, Respondent released posting number CNCF99006 for the position of COIII.

3. The requirements listed on the posting were as follows:

Training: Graduation from a standard high school, or the equivalent, plus successful completion of a fundamental training course for correctional officer, police officer, military police officer, probation/parole officer, or related area and the Correctional Officer Apprenticeship Program.

(Or) graduation from a standard high school or the equivalent plus successful completion of a fundamental training course as described above and four years of full-time or equivalent part-time paid experience as a correctional officer, police officer, military police officer, probation/parole officer, or in criminal justice or related field.

Substitution: successfully completed study from an accredited college or university in corrections, criminal justice or related field with a minimum of two semester hours corrections, criminal justice, or related field. May substitute at the rate of thirty semester hours for each year of experience.

Experience: One year of full-time or equivalent part-time paid experience as a correctional officer, police officer, probation/parole officer, or related experience.

Substitution: successfully completed study from an accredited college or university in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

4. The criteria set forth in the previous finding of fact requires an applicant for the position of COIII to have completed a total of five years of combined training and experience. 5. Grievant holds an Associate Degree in Applied Science in Criminal Justice Technology, and in 1998 was awarded a Bachelor of Science Degree in Criminal Justice from West Liberty State College.

6. Grievant submitted an application for the COIII position; however, the Division of Personnel (Personnel) determined that she was ineligible for the COIII position due to an insufficient amount of work experience.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); W. Va. Code §29-6A- 6; Howell v. W. Va. Dept. of Health & Human Resources, Docket No.89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a

contested fact is more likely true than not. Hammer v. W. Va. Div. of Corrections, Docket No. 94-CORR-1084 (Nov. 30, 1995); Leichliter v. W. Va. Dept. of Health & Human Serv. Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden of proof. Hammer, supra.

Grievant simply asserts that she is qualified for the COIII position when her college credits are substituted for the experience requirement. Personnel argues that at the time of application, Grievant lacked two months of the necessary experience, even under the education substitution, to be eligible for a COIII position.

The Division of Personnel's interpretation of its job specification should be givengreat weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 324, 431 S.E.2d 681 (1993). At hearing, Mr. Farley testified that it is not the actual academic degree which is substituted for experience, but the number of hours the individual has accrued, with thirty hours equal to one year of credit. Applied in the present matter, Grievant had completed one hundred thirty-two hours of college-level work, which translated into four years and four months of substitute experience credit. This was added to her six months of actual work experience, for a total of four years and ten months. Five years of experience/training is required for the position of COIII.

Grievant opined that the information given on the posting was less than clear, but did not challenge Mr. Farley's explanation of how her experience credit was calculated. Therefore, Grievant has not shown that Personnel's interpretation of the CO III job specification calling for five years of training and experience is clearly erroneous. Although the qualifications are stated in an arguably ambiguous manner, Mr. Farley's explanation and interpretation is logical and reasonable, and there is no evidence that his interpretation has not been consistently applied. See Carovillano v. W. Va. Div. of Environmental Protection, Docket No. 93-EP-343 (Dec. 14, 1993).

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 her grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Educ. & State

Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); W. Va. Code §29-6A-6; Howell v. W. Va. Dept. of Health & Human Resources, Docket No.89- DHS-72 (Nov. 29, 1990).

2. The Division of Personnel's interpretation of its job specifications should be accorded great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).

3. The Division of Personnel's interpretation of its job specification for COIII requiring a total of five years of training and experience by an applicant is a reasonable and rational application of an arguably ambiguous requirement. See Carovillano v. W. Va. Div. of Environmental Protection, Docket No. 93-EP-343 (Dec. 14, 1993).

4. Grievant failed to prove that Personnel's interpretation of its job specification for COIII is clearly erroneous, or that Respondent acted improperly when it did not interview her for the position.

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 §29- 5A-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.

Date: October 12, 1999 _____

Sue Keller

Senior Administrative Law Judge