ANNETTA HICKMAN,

Grievant,

v. Docket No. 98-CORR-314D2*

WEST VIRGINIA DIVISION OF CORRECTIONS/
MOUNT OLIVE CORRECTIONAL COMPLEX,

Respondent.

FINAL DEFAULT ORDER

Annetta Hickman (Grievant) is employed by the West Virginia Division of Corrections (CORR), as a Correctional Officer II, at the Mount Olive Correctional Complex (MOCC). She filed this action on July 30, 1998, alleging that she was wrongly denied a pay increase. This grievance was denied at Level I, on August 13, 1998, by Immediate Supervisor Lieutenant Joseph Wood.

Grievant sent a letter to CORR, dated August 17, 1998, claiming that she had prevailed by default, inasmuch as CORR had failed to issue a written decision on her

*A "2" has been added to the docket number to distinguish this decision from the "Order Granting Default" previously issued in this matter.

grievance within six days of its receipt.

On or about August 20, 1998, Grievant appealed her claim of default to Level IV. This grievance became mature for decision at the conclusion of the telephonic status conference of April 7, 1999.

An Order Granting Default was issued by the undersigned administrative law judge on April 14, 1999. As noted in that Order, CORR, within five days of the receipt of thatwritten Order Granting Default, could have requested a Level IV hearing to present evidence that the remedy sought by Grievant was contrary to law or clearly wrong. W. Va. Code § 29-6A-3(a)(2). CORR did not request such a hearing.

Accordingly, it is determined that Grievant has prevailed by default in this grievance. Because it has been presumed, in accordance with W. Va. Code § 29-6A-3(a)(2), that Grievant prevailed on the merits of her grievance, this grievance is **GRANTED**, and Respondent CORR is Ordered to award Grievant the difference in pay between her previous rank of Correctional Officer I, and her current rank of Correctional Officer II, from March 26, 1998, until August 1, 1998, including interest.

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 May 19, 1999