**CAM STARR,**

**Grievant,**

**v.** **Docket No. 05-CORR-201**

**DIVISION OF CORRECTIONS/**
**HUTTONSVILLE CORRECTIONAL CENTER,**

**Respondent.**

## DECISION

Cam Starr ("Grievant") initiated this proceeding on May 4, 2005, alleging entitlement to mileage reimbursement when he is called in to work after regular working hours and on weekends. The grievance was denied at level one on May 13, 2005, and at level two on May 23, 2005. A level three hearing was held on June 2, 2005, and the grievance was denied in a decision dated June 7, 2005. Grievant appealed to level four on June 13, 2005. A hearing was held in Westover, West Virginia, on September 7, 2005. Grievant was represented Bill Iseli, Associate Warden of Operations, and Respondent was represented by John H. Boothroyd, Assistant Attorney General. This matter became mature for consideration on October 14, 2005, the deadline for the parties' final fact/law proposals.

The following material facts have been proven by a preponderance of the evidence.

## Findings of Fact

1. Grievant is employed at Huttonsville Correctional Center ("HCC") as Building Maintenance Supervisor. He normally works only during daytime hours, Monday through Friday. 2. Occasionally, an emergency situation will occur at night or on a weekend, which requires that a maintenance employee be called to the institution to perform repairs. These situations usually involve electrical failures, plumbing problems, appliance breakdowns, or any other kind of major equipment malfunction. The time spent on these jobs can vary from five minutes to several hours. (See footnote 1)

3. Grievant is not the only maintenance employee who is called when emergency repairs are needed. However, if he is called, Grievant does not refuse to come in to make repairs, because he feels it is his responsibility to do so.

4. Grievant lives approximately 15 miles from HCC.

5. If Grievant has already worked his normal hours on a weekday, but is called in to make repairs later the same night, he receives mileage reimbursement, due to the fact that he has already made his daily commute once that workday. However, if Grievant is called in on a weekend, he receives no mileage reimbursement.

## Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a reasonable person wouldaccept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

The issue presented in this case has previously been addressed by this Grievance Board on several occasions. As discussed in Stover v. Division of Corrections, Docket No. 04-CORR-259 (Sept. 24, 2004), the West Virginia Travel Rules provide that “normal daily commuting mileage” is to be excluded from mileage reimbursement for work-related travel. Stover also involved an employee who was called in to work on a normal day off, but the administrative law judge noted that the “daily commuting mileage” exception places “emphasis on the loci of the destinations rather than the . . . employee's work schedule.” Thus, it was determined in that case that, even when an employee must travel to the workplace on a normal day off, his or her normal daily commute is not reimbursable.

Grievant has attempted to distinguish his situation from that involved in Stover, supra, by arguing that he is not a correctional officer being called in to work a full eight-hour shift, and he may only have to be at the institution for a matter of minutes to perform repairs. However, the undersigned is unsure how this entitles Grievant to travel reimbursement for his normal daily commuting mileage. As noted

in Stover, supra, the grievant's job description included mandatory overtime as part of her normal work responsibilities. Similarly, the maintenance employees of any state correctional institution are also normally subject to emergency call-outs, which occur over and beyond normal working hours, because these institutions operate on a 24-hour, 7-day-a-week basis. It is not the duration of the work performed that is the issue, but the fact that an employee is not allowed to be paid for driving his normal distance to and from work on any given day. As explained in Frame v. Department of Health and Human Resources, Docket Nos. 00-HHR-240/330 (April 20, 2001), the State Travel Rules follow the Internal Revenue Service requirements, in that an employee who receives compensation for his normal daily commute is deemed to be receiving taxable income. Therefore, by excluding daily commuting mileage from travel reimbursement for employees, reporting and tax requirements imposed upon both the state and the employee can be avoided.

In the several cases which have discussed this reimbursement issue, there is no exception made for travel which occurs outside normal working hours. Simply put, “an agency is not required to compensate employees for commuting to and from their place of employment.” Stover, supra. See also Frame, supra; Gwinn v. Dep't of Health and Human Res., Docket No. 00-HHR-64 (May 22, 2000); Parker v. Div. of Corrections, Docket No. 96-CORR-28 (Dec. 2, 1996). Clearly, emergency call-outs on weekends are an expected portion of Grievant's normal job duties, so he is not entitled to reimbursement for his normal daily commute on these occasions. See Stover, supra.

The following conclusions of law support this decision.

## Conclusions of Law

1. Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., Docket No. 89- DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). 2. Compensable travel using a personal vehicle under the state travel rules does not include normal daily commuting mileage, which is travel between the employee's normal workplace and his home. See § 4.2.6.1 of the State Travel Rules. See also Frame v. Dep't of Health and Human Res., Docket Nos. 00-HHR-240/330 (April 20, 2001); Gwinn v. Dep't of Health and Human Res.,

Docket No. 00-HHR-64 (May 22, 2000); Parker v. Div. of Corrections, Docket No. 96-CORR-28 (Dec. 2, 1996).

3. Respondent is not required to reimburse Grievant for travel between his home and HCC when he is called to perform emergency repairs on weekends, which is part of his expected job duties. See Stover v. Div. of Corrections, Docket No. 04-CORR- 259 (Sept. 24, 2004).

Accordingly, this 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.

**Date: November 4, 2005**

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**DENISE M. SPATAFORE**

**Administrative Law Judge**

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*Footnote: 1*

*Apparently, Grievant is paid for working overtime on these occasions and has no dispute in that regard.*