STEPHEN LYNN BAUGHMAN,

Grievant,

v. **Docket No. 05-RJA-420**

REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY/TYGART
VALLEY REGIONAL JAIL,

Respondent.

DECISION

Stephen Baughman ("Grievant") filed this grievance at level four on November 10, 2005, challenging the termination of his employment as a correctional officer at the Tygart Valley Regional Jail. On January 3, 2006, Respondent, through its counsel, Chad M. Cardinal, filed a "Motion to Dismiss" this grievance for failure to state a grievable claim. Grievant was given the opportunity to file a response to this motion, which was received by the undersigned on January 25, 2006. Based upon a review of the pertinent documents including, without limitation, the dismissal letter and the statement of grievance, and upon due consideration of the arguments presented by the parties, it is hereby found as follows:

Findings of Fact

1. Grievant was conditionally employed by the West Virginia Regional Jail and Correctional Facility Authority (RJA or Respondent) as a Correctional Officer 2 on September 1, 2005. As a former employee of the Taylor County Jail, which was closed when the Tygart Valley Regional Jail opened, he was given priority in hiring, subject to compliance with RJA employment policies. 2. All correctional officers employed by the RJA are classified-exempt pursuant to W. Va. Code § 31-20-27.

3. Pursuant to RJA policies and regulations, all jail facility personnel who have direct contact

with inmates are required to undergo psychological testing prior to their employment, and when a justifiable need exists during their employment, to determine their suitability for appointment and retention. 95 CSR 1, *et seq*.

4. On October 13, 2005, Grievant was administered the Reid Public Safety Report, a psychological test, and the reported result from that test was “Not Recommended.”

5. On November 3, 2005, Grievant was notified in writing by John L. King II, RJA's Chief of Operations, that he was being discharged from employment based upon the results of the psychological test.

6. In his response to Respondent's Motion to Dismiss, Grievant only stated “I will attempt to show cause for my dismissal is unwarranted.”

Discussion

In termination cases involving classified employees, the burden of proof is upon the employer to establish the charges relied upon by a preponderance of the evidence and to establish good cause for terminating an employee. W. Va. Code § 29-6A-6; Broughton v. W. Va. Div. of Highways, Docket No. 92-DOH-325 (Dec. 31, 1992). However, in cases involving the dismissal of classified-exempt, at-will employees, state "agencies do not have to meet this legal standard." Logan v. W. Va. Regional Jail & Correctional Auth., Docket No. 94-RJA-225 (Nov. 29, 1994). Indeed, an at-will employee is subject to disciplinary action for any reason which does not contravene some substantial public policy principle. See Harless v. First Nat'l Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978); Dufficy v. Div. of Military Affairs, Docket No. 93-DPS-370 (June 16, 1994). See also Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602 (1996). “Employees holding positions *statutorily exempt* from coverage under the classified service . . . are deemed 'at-will' employees for purposes of resolving the employer/employee relationship.” Roach v. Reg'l Jail Auth., 198 W. Va. 694, 699; 482 S.E.2d 679, 684 (1996) (Emphasis in original).

RJA has filed a motion to dismiss this grievance on the grounds that Grievant has failed to identify any substantial public policy violated by his discharge from employment as a Correctional Officer 2. The Supreme Court of Appeals of West Virginia has approved dismissing a grievance brought by a public, at-will employee where the employee “failed to assert that his dismissal contravened some substantial public policy.” Wilhelm, 198 W. Va. at 94; 479 S.E.2d at 604.

Grievant's statement that his dismissal was “unwarranted” does not amount to a specific public policy violation. Indeed, Grievant's at-will status denotes he could be fired for good reasons, bad reasons, or no reasons, provided he was not terminated for a reason that violated a substantial public policy. Williams v. Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993). See Wilhelm, supra; Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995); Harless, supra. RJA is thus correct that this grievance is subject to dismissal, pursuant to the Grievance Board's Procedural Rules, 156 C.S.R. 1 § 4.12 (2004), which provides that “[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” Grievant's failure to allege violation of a substantial public policy forecloses any possibility that he could obtain relief from the WestVirginia Education and State Employees Grievance Board. Accordingly, this grievance must be dismissed. See Permelia v. Regional Jail Auth., Docket No. 05-RJA-116 (Nov. 8, 2005).

Conclusions of Law

1. A classified-exempt employee is not covered under the civil service system and is an at-will employee. Roach v. Reg'l Jail Auth., 198 W. Va. 694; 482 S.E.2d 679 (1996).

2. An at-will employee may be dismissed for good reasons, bad reasons, or no reasons, unless the employer's motivation for the discharge is to contravene some substantial public policy principle. Harless v. First Nat'l Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978); Dufficy v. Div. of Military Affairs, Docket No. 93-DPS-370 (June 16, 1994). See also Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602 (1996).

3. The burden of proof is upon the at-will employee to demonstrate a violation of a substantial public policy. Washington v. Adjutant Gen. Office/Mountaineer Challenge Acad., Docket No. 05-ADJ-074 (Apr.21, 2005). See Logan v. W. Va. Regional Jail & Correctional Auth., Docket No. 94-RJA-225 (Nov. 29, 1994).

4. Grievant's failure to allege that his dismissal violated a substantial public policy forecloses any possibility of Grievant obtaining relief in this action. Wilhelm, 198 W. Va. at 97, 479 S.E.2d at 607; Permelia v. Regional Jail Auth., Docket No. 05-RJA-116 (Nov. 8, 2005).

Based upon the foregoing, the “Motion to Dismiss” is **GRANTED** and the above- styled action is **DISMISSED** for failure to state a claim.

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: February 6, 2006

_____

DENISE M. SPATAFORE

Administrative Law Judge