THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

CHUCKIE HUFFMAN, II

Grievant,

v. Docket No. 06-DJS-055

DIVISION OF JUVENILE SERVICES/

DONALD R. KUHN JUVENILE DIAGNOSTIC

AND DETENTION CENTER,

Respondent.

D E C I S I O N

Grievant is employed as a Correctional Officer/Youth Specialist by the Division of Juvenile Services ("DJS") at the Donald R. Kuhn Juvenile Diagnostic and Detention Center ("DKJ"). He filed this grievance on December 5, 2005, because he was not allowed to wear facial hair at his facility, and Youth Specialists at other facilities within DJS were. He requested to be allowed to follow the same guidelines as these other facilities.

The grievance was denied at all lower levels. Grievant appealed to Level IV on February 8, 2006, and on May 23, 2006, a Level IV hearing was held. Grievant represented himself, and DJS was represented by Steve Compton, Esq. This case became mature for decision on May 30, 2006, as the parties elected not to submit proposed findings of fact and conclusions of law, but agreed to submit a post-hearing exhibit.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed as a Youth Specialist 2 at DKJ. Youth Specialist is the working title for the position, but the official Division of Personnel class specification for Grievant's classification is Correctional Officer.

2. The "Grooming and Appearance Standards for Uniform Personnel Policy" at the time Grievant filed this grievance stated it applied to " ALL Division of Juvenile Services Facilities," and uniformed personnel covered by this Policy were any "employee classified as a CO I, CO II, CO III, CO IV, CO V, CO VI, and CO VII." This Policy did not state that a Youth Specialist and a Correctional Officer were considered the same.

3. The "Grooming and Appearance Standards for Uniform Personnel Policy" did not allow beards unless approved by the director, and these exceptions must be based on documented medical necessity.

4. Superintendent Michael Hale at DKJ correctly interpreted this policy as applying to Youth Specialists, and the employees at DKJ were not allowed to grow facial hair. (See footnote 1) All employees at DKJ were treated the same.

5. Grievant found out the employees at other DJS facilities, such as the Gene Spadaro Juvenile Center and the Robert L. Shell Juvenile Center were allowed to grow beards.

6. The "Grooming and Appearance Standards for Uniform Personnel Policy" was meant to apply to all employees within the class specification of Correctional Officer. 7. At the Level III hearing on February 1, 2006, Grievant was informed a new policy would be issued shortly to clarify the matter.

8. Even after all facilities were told there was a new policy coming out and facial hair would not be allowed, some facilities decided to wait until they had the new written policy before they required their staff to shave.

9. By the time of the Level IV hearing, the new policy still had not been issued, but again Respondent indicated it would be issued very shortly. As Grievant did not wish to put his grievance in abeyance, the parties agreed this revised policy could be admitted after the hearing as Respondent's Exhibit Number 2.

10. The new policy was received by the undersigned Administrative Law Judge on May 30, 2006, and it again states it applies to, " ALL Division of Juvenile Services Facilities," and

defines uniformed personnel as "an employee classified as a CO I, CO II, CO III, CO IV, CO V, CO VI, and CO VII. This includes all Youth Specialists." This Policy was signed on May 26, 2006. Respondent. Exh. 2 at Level IV.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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).

It is unclear to the undersigned Administrative Law Judge why the original policy needed to be revised. The policy, as written, applied to Grievant; he was a Correctional Officer. Superintendent Hale was correct in his interpretation of the policy, and the incorrect interpretation of other superintendents would not entitle Grievant to wear facial hair. But that issue is in the past. The revised policy has corrected any possible lack of clarity. This clarification has taken some time, but the issue raised by Grievant has been answered by the revised policy. All employees, in all facilities, will be treated the same, and no Youth Specialist may grow a beard without medical documentation.

While it certainly would have been appropriate to place this grievance in abeyance until the new policy came out, it is understandable why Grievant did not want to do so. He had been told the policy would be issued shortly months ago, and he did not want to wait any longer for an answer to his grievance. As revealed by the testimony at Level IV, but for this grievance, it could have been several more months for the issuance of this specific policy. Director Cynthia Largent-Hill wanted to wait until all polices had been rewritten and send them out together. This desire to issue all new policies at one time is also understandable.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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 would accept 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).

2. As clarified by the new policy, Youth Specialists, as Correctional Officers, are not allowed to grow beards.

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.

JANIS I. REYNOLDS

SENIOR ADMINISTRATIVE LAW JUDGE

Date: June 30, 2006

Footnote: 1

The policy does allow mustaches, but the size of the mustache is regulated.