THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

RONALD CREASY,

Grievant,

v. **Docket No. 07-RJA-035**

Janis I. Reynolds

Senior Administrative Law Judge

REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY/

SOUTH CENTRAL REGIONAL JAIL,

Respondent.

DISMISSAL ORDER

Ronald Creasy, Grievant, employed by the Regional Jail and Correctional Facility Authority ("RJCFA") as a Correctional Officer II at the South Central Regional Jail filed an expedited grievance at Level IV, as is permitted by W. Va. Code § 29-6A-4, seeking reinstatement following notification of the termination of his employment. A pre-hearing conference was held on March 30, 2007, and that time RJCFA counsel Chad Cardinal indicated he would be filing a "Motion To Dismiss" the grievance. At that time, the parties agreed to have another pre-hearing conference on the Motion to Dismiss on April 20. 2007. The Dismissal Motion was received by the Grievance Board on April 3, 2007. On April 9, 2007, Grievant's representative Jack Ferrell, from CWA, Local 2055, responded stating, "on behalf of the grievant, Ronald Creasy, "I object to Mr. Cardinal's Motion and would respectfully request a Level IV Hearing be scheduled."

The telephonic motion hearing was held, as scheduled, on April 20, 2007, but neither Grievant nor his representative made an appearance, nor did either one call at any time to explain this absence. During the second pre-hearing conference, Mr. Cardinal requested the Motion be ruled on, and the grievance be dismissed.

Synopsis

Grievant was an at-will employee at the time of his dismissal by Respondent for incorrect handling of an inmate's money order. As an at-will employee, who did not allege his dismissal violated a substantial public policy, Grievant is precluded from using the grievance procedure to challenge his termination.

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

Findings of Fact

1. Grievant was employed by the RJCFA as a Correctional Officer 2 at the South Cental Regional Jail.

2. By letter dated January 23, 2007, RJCFA Chief of Operations John L. King, II, notified Grievant his employment was terminated effective immediately. The reasons given for the action were numerous violations of Policies and Procedures, relating the handling of an inmate's money order, including the falsification of a document, and providing false information about the incident.

3. Employees of the RJCFA are classified exempt, or “at-will,” and may be terminated for any reason which does not contravene a substantial public policy.

4. Grievant did not allege a violation of any substantial public policy.

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. 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 & Corr, 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. See Harless v. First Nat'l Bank, 169 W. Va. 673, 246 S.E.2d 270 (1978); Dufficy v. Div. of Military Affairs, Docket No. 93-DPS-370 (June 16, 1994). See also Wilhelm v. Dep't of Tax and Revenue/Lottery Comm'n, Docket No. 94-L-038 (Sept. 30, 1994), aff'd sub nom. Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602 (1996).

Grievant did not dispute he was a classified-exempt employee, thereby serving in an at-will employment status. See Roach v. Reg'l Jail Auth., 198 W. Va. 694, 482 S.E.2d 679 (1996); Ramos v.

Reg'l Jail & Corr. Facility Auth., Docket No. 98-RJA-363 (Jan. 29, 1999); Parker v. W. Va. Health Care Cost Review Auth., Docket No. 91-HHR-400 (June 30, 1992). 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. The burden of proof is on an at-will employee to establish a violation of substantial public policy. If this burden is not met, the reasons for the termination are not at issue, and the termination stands. Wilhelm, supra.

As to what constitutes a substantial public policy, Courts have recognized that these interests are implicated in such actions as: submitting a claim for back wages under the Veterans Reemployment Rights Act (Mace v. Charleston Area Med. Ctr. Found., 188 W.Va. 57, 422 S.E.2d 624 (1992)); refusing to conceal alleged environmental violations committed by the employer (Bell v. Ashland Petroleum, Inc., 812 F. Supp. 639 (S.D. W. Va. 1993)); filing a workers' compensation claim (Powell v. Wyoming Cable Co., 184 W. Va. 700, 403 S.E.2d 717 (1991)); Shanholtz v. Monongahela Power Co., 165 W. Va. 305, 270 S.E.2d 178 (1980)); and attempting to enforce warranty rights granted under the West Virginia Consumer Protection and Credit Act (Reed v. Sears, Roebuck & Co., 188 W. Va. 747, 426 S.E.2d 539 (1992)). See Roberts v. Adkins, 191 W. Va. 215, 444 S.E.2d 725 (1994).

In the present matter, Grievant did not allege a violation of a substantial public policy. If an at-will grievant cannot demonstrate this type of violation, the reasons for his termination are not at issue, and the termination stands. Wilhelm, supra. In this case, the lack of a viable complaint due to Grievant's failure to identify a substantial public policy violation. Additionally, the failure to participate in the phone conference on the Motion to Dismiss, establishes Grievant has failed to pursue a claim regarding the termination of his employment.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. As an at-will employee, Grievant can be terminated for good reason, no reason, or bad reason, provided that he is not terminated for a reason that violates a substantial public policy. Williams v. Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993). See Harless v. First Nat'l Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978); Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995). 2. In cases involving the dismissal of classified-exempt, at-will employees, state

agencies do not have the burden of proof to establish reasons for the termination and do not have to establish good cause for discharging an employee. Logan v. W. Va. Reg'l Jail & Corr. Auth., Docket No. 94-RJA-225 (Nov. 29, 1994).

3. The burden of proof is on an at-will employee to establish a violation of substantial public policy. If this burden is not met, the reasons for the termination are not at issue, and the termination stands. Wilhelm v. Dep't of Tax and Revenue/Lottery Comm'n, Docket No. 94-L-038 (Sept. 30, 1994), aff'd sub nom. Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602 (1996).

4. Grievant has failed to allege a violation of a substantial public policy, or to present any viable complaint regarding the termination of his employment.

Accordingly, the Motion To Dismiss is **GRANTED,** and the grievance is Ordered DISMISSED and stricken from the docket of the West Virginia Public Employees Grievance Board.

This Dismissal Order is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the decision. This decision is not automatically stayed pending the outcome of the appeal. W. Va. Code § 6C-2-5(c). Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named.

Janis I. Reynolds

Senior Administrative Law Judge

Dated: April 30, 2007