THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

JEFFREY W. SICKLER, JR.,
Grievant,

v. **DOCKET NO. 2012-0904-MAPS**

DIVISION OF CORRECTIONS/PRUNTYTOWN
CORRECTIONAL CENTER,
Respondent.

DECISION

This grievance was filed at level three of the grievance procedure by Grievant, Jeffrey W. Sickler, Jr., on March 3, 2012, challenging a three-day suspension without pay imposed by his employer, Respondent, the Division of Corrections. The statement of grievance is quite lengthy, but basically contests the grounds for the suspension, and denies any violation of policy. The relief sought by Grievant is: "I would like this suspension removed from my file."

A level three hearing was held before the undersigned Administrative Law Judge on August 3, 2012, at the Grievance Board's Westover, West Virginia office. Grievant was represented by Cpl. Tom Rise, and Respondent was represented by Cynthia R. N. Gardner, Esquire, Assistant Attorney General. This matter became mature for decision on August 31, 2012, the deadline for submission of Proposed Findings of Fact and Conclusions of Law. Respondent submitted its proposals by that date, but Grievant declined to submit written argument.

Synopsis

Grievant was suspended for three days without pay for discussing an inmate housed at Pruntytown Correctional Center with two other inmates, and for discussing with the two inmates the subject of informants, or "rats," at the facility, which was a security breach and violation of policy. Respondent proved the charges against Grievant, that the discussion with the inmates was a violation of policy, and that Grievant had been made aware of the policy.

The following Findings of Fact are made based on the record developed at the level three hearing.

Findings of Fact

1. Grievant has been employed by the Division of Corrections ("Corrections" or "Respondent") for over two years, and is a Correctional Officer II at the Pruntytown Correctional Center ("PCC").

2. PCC houses male, medium security inmates.

3. By letter dated February 23, 2012, Grievant was advised by Warden Debra D. Minnix that he was being suspended for three days without pay for violation of Corrections' Policy Directive 129.00, Progressive Discipline, Section V-J, part 1. "Failure to comply with Policy Directives, Operational Procedures, or Post Orders;" part 5. "Instances of inadequate or unsatisfactory job performance;" and part 25. "Unauthorized dissemination of official information, which could breach the security of the institution/facility/center or disrupt its orderly operation;" and for violation of Corrections

Policy Directive 129-24, Staff and Inmate Interaction Guidelines, Section V-A, which states as follows:

> All correctional staff, regardless of job assignment, is [sic] responsible for providing proper care and supervision for the inmate population. In order to accomplish this, all correctional staff shall maintain a professional and business like manner, while interacting with the inmate population and/or parolees.

The specific reason for the suspension was described in the letter as follows:

> a grievance was received from Inmate DOC #22837 alleging you had a conversation with two other inmates on his housing unit regarding him. Specifically he alleged you discussed his recent rule violation and called him a "rat;" thereby placing him in jeopardy. An inquiry was conducted and you admitted having a conversation about Inmate DOC #22837 with Inmates DOC #51207 and DOC #50593. You denied calling Inmate DOC #22837 a "rat," but admitting telling both inmates there are several "rats" living on units 18 and 19 and that at one time you had an inmate telling you things.

4. On January 5, 2012, an inmate at PCC, Inmate Dennison, filed an Inmate Grievance alleging that Grievant had carried on a conversation with two other PCC inmates regarding why Grievant had written-up Inmate Dennison, with Grievant stating to the other two inmates that he had written-up Inmate Dennison for possession of a plastic knife because he knew Inmate Dennison "'had his hands into a lot of things,'" but he could "'never catch him so I got him on a plastic knife.'"[1] The Grievance also alleged that Grievant had told the two other inmates that Inmate Dennison was a "rat."[2]

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[1] On September 6, 2011, Grievant was searching the area where Inmate Dennison resides, and found a plastic knife in his dresser drawer. The plastic knife was considered to be contraband, and Grievant documented this finding in an incident report.

[2] In prison lingo, a "rat" is an informant, an inmate who reports on other inmates to correctional staff. When a prisoner is labeled as a "rat," that inmate is at risk of harm from other inmates.

5. Warden Minnix directed Tammy Alberico, an Investigator for Corrections, to interview Grievant regarding the allegations in the Inmate Grievance. Ms. Alberico interviewed Grievant, recording the interview.

6. During the interview with Investigator Alberico, Grievant admitted that, at the beginning of January 2012, while assigned to Unit 18-19 at PCC, he had a conversation with PCC Inmates Stepp and Kurgle related to Grievant writing-up Inmate Dennison for possession of a plastic kitchen knife. The two inmates thought Grievant had it out for Inmate Dennison, and they asked Grievant why he did not like Inmate Dennison. Grievant admitted that he responded to them that he had a feeling Inmate Dennison was "running stuff" on unit 19. During the same 15 to 20 minute conversation with these two inmates, Grievant admitted that he had said something to the effect that he "only had one guy ever tell me anything and he is not here at this institution."

7. Grievant denied during the interview with Investigator Alberico that he had said that Inmate Dennison was a "rat," and he was not charged with referring to Inmate Dennison as a "rat."

8. Prior to assuming their duties, Correctional Officers undergo training on policies and proper procedures for dealing with inmates, and they also receive training each year during which Corrections' policies and staff expectations are emphasized. Grievant was aware of the requirements of Corrections' Policy Directives 129.00 and 129-24.

9. Correctional Officers are not to discuss any inmate with other inmates at PCC, and any discussion between inmates and Correctional Officers regarding any other inmate at a facility is considered to be a breach of security.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id*.

Grievant did not present any argument or evidence in support of his claims that the suspension was not warranted, other than the statement in the statement of grievance that he did not believe that he had violated any rules. When Grievant's representative questioned the witnesses regarding whether there was any evidence that he had actually referred to Inmate Dennison as a "rat," Warden Minnix made clear that this was not one of the charges against Grievant. Warden Minnix stated that the suspension was based on Grievant's admissions during the investigative interview that he had discussed one inmate with two other inmates, and also engaged in a general discussion with them about "rats" at the facility. Warden Minnix testified that Correctional Officers are not to discuss an inmate's actions or anything that occurred related to an inmate with other inmates. She believed that Grievant's entire conversation with the two inmates was inappropriate, and that Grievant's actions were a security breach. She stated that the correct response to the two inmates would have been to not respond, and to document that the two inmates were

fishing for information in an incident report. Grievant did not testify at the level three hearing, as was his right, nor did he object to the admission of the transcript of Investigator Alberico's interview with him or to admission of the recording of the interview.

Corrections' Policy Directive 129-24, Staff and Inmate Interaction Guidelines, Section V-A, cited in the suspension letter, lists a number of more specific actions which are not to be engaged in by staff. In particular, A-1 states as follows:

> Correctional staff shall not become over-familiar with inmates or parolees by discussing their personal life, the personal life of another correctional staff member *nor another inmate/parolee, with any inmate/parolee*, to include their families and/or acquaintances.

(Emphasis added.) It should have been quite clear to Grievant that he was not to discuss his views of Inmate Dennison or the incident involving the confiscation of the plastic knife with other inmates, and that he should not be engaged in any type of discussion with inmates about informants. Grievant failed to "maintain a professional and business like manner, while interacting with the inmate population," in violation of Policy Directive 129-24, creating a security breach. Respondent proved the charges against Grievant.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Respondent proved that Grievant engaged in an inappropriate discussion with inmates creating a security breach, that Grievant was aware that Respondent's

policies prohibited such a discussion, and that Grievant violated Respondent's Policy Directive.

Accordingly, this grievance is **DENIED.**

Any party or the Division of Personnel may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. 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. 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Acting Deputy Chief
Administrative Law Judge

Date: October 15, 2012