

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LESTER THOMPSON,

Grievant,

v.

Docket No. 2026-0417-DHS

**DIVISION OF HOMELAND SECURITY/
HUTTONSVILLE CORRECTIONAL CENTER AND JAIL,**

Respondent.

DECISION

Grievant, Lester Thompson, is employed by Respondent, Division of Homeland Security, as a Unit Manager, at Huttonsville Correctional Center and Jail. On January 14, 2026, Respondent suspended Grievant for 40 hours without pay for rule violations. On January 28, 2026, Grievant filed a grievance requesting reversal of the suspension.

Grievant filed directly to level three of the grievance process in accordance with West Virginia Code § 6C-2-4(a)(4). A level three hearing was held by videoconference before the undersigned on May 19, 2026. Grievant appeared in person and was represented by coworker Jeremiah Willey. Respondent was represented by Jeffrey Black, Assistant Attorney General. This matter matured for decision on June 29, 2026. Each party submitted proposed findings of fact and conclusions of law.

Synopsis

Grievant received a 40-hour disciplinary suspension after he pushed an inmate out of the way as they walked through a doorway from opposite directions. Respondent proved that Grievant used unnecessary force and failed to follow use of force protocol, thus proving the suspension was justified. Accordingly, the grievance is **DENIED**.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant, Lester Thompson, is employed by Respondent, Division of Homeland Security, as a Unit Manager, at Huttonsville Correctional Center and Jail.

2. Security camera footage from September 4, 2025, shows a line of inmates waiting in a hallway in front of a locked door with Inmate TB¹ at the front of a line. Grievant peeks through a window from the other side of a door. When the door unlocks, the inmate line moves forward and Inmate TB proceeds into the open doorway. Grievant simultaneously proceeds into the doorway from the other side and forcefully pushes Inmate TB out of his way even though Inmate TB is not aggressive or confrontational. Inmate TB tumbles back out of the doorway. Without breaking pace, Grievant continues through the doorway and down the hallway.

3. No written policy covers the right-of-way in this situation, but standard practice is that staff hold the door open to let an inmate through. (Superintendent Thomas Harlan's testimony).

4. Grievant did not give Inmate TB a stop command and did not detain him on the scene by placing him in the holding cell in the hallway or cuffing him.

5. Rather, Grievant left the scene and allowed Inmate TB to proceed to the library.

6. Only later did Grievant summon staff to go the library, where they cuffed Inmate TB and brought him to a holding cage. After reviewing the video, staff told Inmate TB to slow down next time and released him.

¹Initials are used to protect Inmate TB's identity.

7. Grievant did not complete a use of force report but prepared an incident report that made it appear that he did not use force, stating:

“... I ... was ... enroute to the restroom waiting on the Door to be unlocked by control. As I waited a group of inmates lined up on the other side of the door. When the door was unlocked I did open the door and attempted to proceed through the door. [Inmate TB] did obstruct and impede my normal free movement squaring his shoulders and walking straight at me. I did raise my hand and said excuse me and started through the door. [Inmate TB] did continue until he contracted my hand. When contact was made he pushed against me attempting to push and squeeze his way past me. I did stiffen my arm and moved him to the side and said you cannot do that! I had no choice except to continue to the restroom and allow [Inmate TB] to continue on his way. As soon as I was able I did report to the education department and CC Greene myself and CO Feaster escorted [Inmate TB] from the library. [Inmate TB] stated hey I am sorry I was in a hurry to get down here if you don't hurry down here and be one of the first 50 you cant do anything. I informed him I understood he was in a hurry but no inmate can block a door, interfere with staff movement or fail to move so staff can move freely.

8. Grievant later admitted that he did use force.

9. Based on Grievant's incident report, Inmate TB was charged with an internal violation of obstruction. On September 23, 2025, Inmate TB attended an internal magistrate hearing and pled no contest to a reduced charge. That same day, Inmate TB filed a complaint against Grievant regarding the incident, asked that video footage be preserved, and requested that Grievant be held accountable for his actions and staff trained on necessary use of force.

10. Because Inmate TB pled guilty to a class 3 rule violation for the incident, Superintendent Thomas Harlan let the rule violation stand but would have reversed it if Inmate TB had been found guilty of a class 1 rule violation. (Superintendent Harlan's testimony).

11. Because use of force can escalate into a dangerous situation involving other inmates and staff, it is crucial that it be necessary when used. (Superintendent Harlan's testimony).

12. Grievant's use of force was unnecessary, as Inmate TB was not aggressive or confrontational. Thus, Grievant should have instead held out his hand to keep the inmate from bumping into him rather than pushing the inmate. (Superintendent Harlan's testimony).

13. On November 7, 2025, an investigative report substantiated that Grievant engaged in unnecessary use of force and failed to follow use of force procedures.

14. Grievant did use unnecessary force and failed to follow proper use of force procedures, which should have included completing a use of force report and detaining Inmate TB at the scene without leaving.

15. On December 30, 2025, Respondent sent Grievant a notice of predetermination conference.

16. On January 5, 2026, Grievant attended a predetermination conference and was asked to respond to the allegations of unnecessary use of force and failure to follow proper use of force procedures, such as completing a use of force report and detaining Inmate TB at the scene.

17. Superintendent Harlan and several others involved in the process reviewed security footage of the incident to determine the appropriate discipline after considering Grievant's prior incident of unnecessary use of force in 2014 which had resulted in a 20-day suspension.

18. On January 14, 2026, Superintendent Harlan sent Grievant a disciplinary suspension letter, stating, in part:

The purpose of this letter is to advise you that we have concluded the investigation into the allegation that you committed staff misconduct by using an unnecessary amount of force that was not in compliance with your training and/or agency policy or practice. Based on the findings of the investigation, it is my decision to place you on a disciplinary suspension without pay for a period of forty (40) working hours

...

To understand the specific reason for your suspension, I recount the following.

- On September 4, 2025, ... you were involved in an unnecessary use of force with inmate TB.
- ... Per the camera surveillance, you were at the ... door waiting entrance to use the restroom, when the inmates were being released to the library.
- Inmate TB and you met at the same time to proceed through the door. You then place your left arm out on Inmate TB's chest and pushed him back, extending your arm and following through with a push.
- Inmate TB does not appear to be aggressive or confrontational in the video footage obtained of the incident.
- The incident report completed by you on September 04, 2025, was not reported as a use of force and the proper procedure for use of force incident was not followed.
- After an initial review of the incident by Administration, this case was referred for further investigation.
- Per Investigator I, Travis Winans the investigation was completed and concluded on November 7, 2025. ...

On January 05, 2026, Superintendent Thomas Harlan, and Associate Superintendent of Programs, Brian Shiflett, held a discussion with you regarding the nature of your unacceptable conduct. At that time, it was shared with you that suspension was being considered. Your response was I have a written response I will give you ... after this meeting. I feel I was in compliance of policy 307.00. I was in full uniform and he knew I was an employee I gave verbal directions to the inmate, and he offered no compliance with my directive. As I stepped forward, he stepped to the side to move past me, so I put my hand on his chest. He had no intention of heeding my

commands I reported it immediately to the Shift Commander and Major, if there was an issue with the use of force why did they wait so long to report it. I went to get additional help, and we went to retrieve him and take him to the Shift Commander. The inmate was charged with obstruction and he pleaded no contest. He stated he was in a hurry. I only did what the inmate required me to do by using the least amount of force I could. If I had tried to detain him alone it would have caused more force to be used and with all the other inmates there would not have been a safe environment. I do not carry handcuffs.

After reviewing your response and considering all the information made known to me, I have decided that your suspension is warranted. ...

Your previous disciplinary action is as follows:

05/05/2014 – Excessive Use of Force – 20-day suspension.

The State of West Virginia and its agencies have reason to expect their employees to observe a standard of conduct that will not reflect discredit on the abilities and integrity of their employees or create suspicion with reference to their employees' capability in discharging their duties and responsibilities. I believe the nature of your unacceptable performance is sufficient to cause me to conclude that you did not meet a reasonable standard of performance ...

19. The suspension letter cited the following policy violations:

Your actions are in violation of the West Virginia Division of Corrections and Rehabilitation Policies:

Policy Directive 129.00 "Code of Conduct and Progressive Discipline", Section II, Paragraphs A, B and C as follows:

II. The Division expects its employees to:

- A. Conduct themselves in a manner that their activities both on and off duty will not discredit either themselves, other employees, or the Division;
- B. Conduct themselves in a manner that creates and maintains respect for the Division and the State of West Virginia; and,
- C. Avoid any action which might result in, or create the appearance of, affecting adversely the confidence of the

public in the integrity of the Division of the State of West Virginia.

Policy Directive 129.00 "Code of Conduct and Progressive Discipline" Section IV, Paragraph F; subparagraphs 1, 4, 5, 6, 12, 13, 15, 24, 29, and 31.

IV. The basic principle underlying disciplinary procedures is that the Division must demonstrate cause for disciplining a classified employee.

F. The following list of violations is intended to be an illustrative but not all-inclusive code of conduct covering all employees regardless of their employment status with the Division. Accordingly, a violation or other misconduct, although not listed below, but found by management to undermine the effectiveness of the Division's activities or the employees' performance, should be treated consistently with the provisions of this policy.

Failure to comply with Written Instructions (e.g., Policy Directives, Protocols, Commissioner's Instructions, Operational Procedures, or Post Orders.

4. Disrespectful conduct, bullying, intimidation, or the use of threatening, insulting, abusive, or obscene language to or about others.

5. Instances of inadequate or unsatisfactory job performance.

6. Disruptive behavior.

12. Failure or delay in following a supervisor's instructions, performing assigned work, or otherwise complying with applicable, established written instructions.

13. Careless workmanship or negligence resulting in spoilage or waste of materials or delay in work procedures.

15. Failure to observe precautions or personal safety, posted rules, institutional operational procedures, signs, written or oral safety instructions, or failure to use protective clothing and equipment.

24. Unprofessional treatment of persons contrary to Division written instructions, court order, or philosophy.

29. Acts of physical violence, fighting, hazing, or dangerous horseplay.

31. Using unnecessary or excessive force, or physical abuse of any person.

Policy Directive 307.00 Control/Restraints, Section I, Sub-paragraphs F and G.

I. Staff will use the least amount of force reasonably necessary when resolving situations involving confrontation or aggression by offenders, safeguarding offenders from themselves or a third party, and when the need to restore order exists. Unless circumstances dictate otherwise, all use of control tools and techniques, and use of restraints will conform to guidelines set forth in this document.

F. When behavior by an offender or group of offenders in an isolated area is observed which has or could become violent and/or confrontational, and there is no immediate and/or direct threat to persons, facility, or public safety, staff should immediately attempt to resolve the behavioral problem in a non-confrontational manner, through dialogue (efforts to temper).

G. Force which is used that is unnecessary/inappropriate may lead to disciplinary action.

20. Policy Directive 129.00 and Policy Directive 307.00 were submitted into the record and are accurately reflected in the suspension letter.

21. While not cited in the suspension letter, Superintendent Harlan determined that Section I, Sub-paragraph E, of Policy Directive 307.00, was also applicable. Sub-paragraph E states, "Staff shall only employ that level of control necessary to regain and maintain control of an individual, group or groups of individuals who are actively engaged in non-compliant, destructive, assaultive, or other inappropriate and/or illegal behavior." (Superintendent Harlan's testimony).

22. Policy Directive 307.00 also states, in relevant part:

Force: Appropriate controlled response to various levels of subject resistance by means of physical force directed toward another, either by direct physical contact or by use of Division approved control techniques and control tools up to and including firearms.

Non-Deadly Force: Force which normally causes neither death nor serious bodily harm.

[Section I: Sub-paragraph] N: In all situations where any force was used, individual written reports shall be submitted by everyone involved in any way, to include all witnesses by the end of their shift, unless serious injury prevents such.

[Section I: Sub-paragraph] O: The following procedures will be used to ensure appropriate follow-up in every use of force incident.

1. Staff involved will secure the subject(s) and scene.
5. Staff involved will remain at the scene (unless evacuated due to injury) until the arrival of the appropriate supervisor, unless circumstances at the scene are such that this might cause a more hazardous situation to develop. ...

[Section] II: Officer presence and verbal directives are control techniques that are considered non-physical force. Many difficult situations may be resolved by good communication skills, problem solving strategies, appropriate methods of approach and de-escalation techniques as well as recognition and proper response to early warning signs of problems among offenders. In those instances, wherein these and similar techniques fail or cannot be reasonably employed, non-deadly force may be used by staff under the following conditions:

- In self-defense.
- In defense of a third person.
- Enforcing institutional rules and regulations.
- To prevent the commission of a crime, to include escape.
- Protection of property.

Discussion

The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

Policy Directive 129.00 requires Respondent to have cause for disciplining a classified employee and mandates that staff “only employ that level of control necessary to regain and maintain control of an individual ... actively engaged in non-compliant, destructive, assaultive, or other inappropriate and/or illegal behavior.” One such behavior is “unnecessary or excessive force.”

Policy Directive 307.00 more thoroughly delineates proper use of force and proper use of force procedures, stating:

Staff will use the least amount of force reasonably necessary when resolving situations involving confrontation or aggression by offenders, safeguarding offenders from themselves or a third party, and when the need to restore order exists. ...

Staff shall only employ that level of control necessary to regain and maintain control of an individual, group or groups of individuals who are actively engaged in non-compliant, destructive, assaultive, or other inappropriate and/or illegal behavior.

When behavior by an offender or group of offenders in an isolated area is observed which has or could become violent and/or confrontational, and there is no immediate and/or direct threat to persons, facility, or public safety, staff should immediately attempt to resolve the behavioral problem in a non-confrontational manner, through dialogue (efforts to temper).

Force which is used that is unnecessary/inappropriate may lead to disciplinary action. ...

In all situations where any force was used, individual written reports shall be submitted by everyone involved in any way, to include all witnesses by the end of their shift, unless serious injury prevents such.

The following procedures will be used to ensure appropriate follow-up in every use of force incident. ...

Staff involved will secure the subject(s) and scene. ...

Staff involved will remain at the scene (unless evacuated due to injury) until the arrival of the appropriate supervisor, unless

circumstances at the scene are such that this might cause a more hazardous situation to develop. ...

Officer presence and verbal directives are control techniques that are considered non-physical force. Many difficult situations may be resolved by good communication skills, problem solving strategies, appropriate methods of approach and de-escalation techniques as well as recognition and proper response to early warning signs of problems among offenders. In those instances, wherein these and similar techniques fail or cannot be reasonably employed, non-deadly force may be used by staff under the following conditions:

- In self-defense.
- In defense of a third person.
- Enforcing institutional rules and regulations.
- To prevent the commission of a crime, to include escape.
- Protection of property.

Respondent suspended Grievant without pay for 40 hours for unnecessary use of force and failure to follow proper use of force procedures, such as not properly reporting use of force or immediately detaining Inmate TB.

Grievant prepared an incident report wherein he infers he did not use force. Grievant now agrees he used force but implies it was justified. Grievant did not offer a valid reason for his use of force. Any suggestion that Grievant was enforcing a right-of-way for staff is not supported by the record. It is true that Inmate TB was charged internally with obstruction, but this was based solely on Grievant's incident report and did not consider video evidence. Superintendent Harlan testified that after viewing the video he would have reversed the obstruction charge had it not been reduced to a lesser charge, indicating it was without merit. Grievant also attempts to discredit the process and infers that the charges are invalid, arguing that only after Inmate TB was charged did Inmate TB complain about unnecessary use of force. Grievant did not show this timeline violated any rule or

statute of limitations. The only evidence presented at the hearing in support of unnecessary use of force was unassailable video evidence. Thus, Grievant's credibility is irrelevant.

The video of the incident shows that Inmate TB was not aggressive or confrontational, and that he simply attempted to walk through the doorway at the same time as Grievant. Grievant was not justified in his use of force, as he was not acting in defense of himself or others and was not enforcing any rule or policy, preventing a crime, or protecting property. Thus, Respondent proved that Grievant's use of force was unnecessary.

As for post use of force procedures, Grievant was required to secure both the scene of the incident and Inmate TB, remain at the scene until the appropriate supervisor arrived (unless injured or circumstances at the scene were unsafe), and submit a report on his use of force. Grievant argues that he could not detain Inmate TB at the scene because it was unsafe, that he did not have any means of detaining him, and that he could not remain at the scene due to his medical condition that entailed frequent use of the restroom. In suspending Grievant, Respondent was aware of his medical condition and could have taken it into account. As nothing in the policy required that Respondent do so, the undersigned cannot second guess Respondent's judgment. Further, Respondent determined that Grievant could have placed Inmate TB in the nearby holding cage and that there was no indication that Inmate TB posed an immediate danger to Grievant. The evidence shows that Inmate TB was not aggressive or confrontational. There is no evidence that Grievant even made a cursory attempt to detain Inmate TB through a verbal command. Ironically, Grievant's lack of urgency and failure to follow the normal use of force protocol supports the contention that use of force was unnecessary.

The evidence also supports Respondent's contention that Grievant failed to properly report his use of force in writing. In his incident report, Grievant downplayed his actions as being short of use of force, writing, "I did raise my hand and said excuse me and started through the door. [Inmate TB] did continue until he contacted my hand. When contact was made he pushed against me attempting to push and squeeze his way past me. I did stiffen my arm and moved him to the side and said you cannot do that!" Thus, Respondent showed that it was more likely than not that Grievant failed to follow proper use of force procedures and did use unnecessary force. Respondent also considered Grievant's prior discipline for unnecessary use of force, thus proving that it had cause to suspend Grievant. Accordingly, this grievance is DENIED.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer to prove by a preponderance of the evidence that the disciplinary action taken was justified. W. VA. CODE ST. R. § 156-1-3 (2018). "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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

2. Respondent proved by a preponderance of the evidence that Grievant was suspended for cause and that the suspension was justified.

Accordingly, this grievance is **DENIED**.

The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

Date: July 30, 2026

Joshua S. Fraenkel
Administrative Law Judge