

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

NICHOLAS CHARLES TRIMBLE,

Grievant,

v.

Docket No. 2025-0103-DHS

**DEPARTMENT OF HOMELAND SECURITY/
CHARLESTON CORRECTIONAL CENTER AND JAIL,**

Respondent.

DECISION

Grievant, Charles Trimble, was employed as a Correctional Officer (CO) by Respondent, Department of Homeland Security (DHS) at the Charleston Correctional Center and Jail (CCCJ). On August 9, 2024, Respondent terminated Grievant from his employment after he brought a knife to work. On August 26, 2024, Grievant grieved his termination and implied retaliation and mitigation of punishment. As relief, Grievant requests reinstatement.

On September 13, 2024, the level one hearing examiner waived the matter for lack of jurisdiction. A level two mediation occurred on January 15, 2025. Grievant appealed to level three on January 24, 2025. After multiple continuances, a level three hearing was held before Administrative Law Judge Kimberly Bentley on October 28, 2025.¹ Grievant appeared and was self-represented. Respondent was represented by Katherine A. Campbell, Assistant Attorney General. This matter matured for decision on January 9, 2026. Only Respondent submitted proposed findings of fact and conclusions of law.

¹The matter was reassigned to the undersigned for administrative reasons.

Synopsis

Grievant was employed by Respondent as a Correctional Officer. Following multiple disciplinary incidents, Respondent terminated Grievant's employment after Grievant brought a knife to work. Respondent proved good cause for dismissal. Grievant did not prove retaliation or that mitigation was warranted. Accordingly, this 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 was employed by DHS as a CO at CCCJ when dismissed.
2. CCCJ is a minimum-security prison with many inmates on work release during the day.
3. In July 2021, Grievant completed the 6-week academy training covering policies and protocol to prepare Grievant for work as a CO.
4. Grievant knew through his academy training that he was not permitted to carry most weapons, including knives, into correctional facilities and jails.
5. In August 2024, Lt. Matthew Sorenson, Chief of Security at CCCJ, was informed that Grievant took a 6–8-inch hunting knife strapped to his backpack into CCCJ.
6. Lt. Sorenson viewed video footage to confirm the allegation and sent Grievant home until a decision could be made on how to respond.
7. On August 9, 2024, a predetermination conference was held with Grievant, Lt. Sorenson, and CCCJ Superintendent Pamela Balwin.

8. Grievant was informed that his dismissal was being considered and was asked to explain his transgression.

9. Grievant explained that other staff members brought knives to CCCJ all the time without repercussion and that until everyone was accountable saw no reason to stop.

10. Respondent decided to dismiss Grievant based on the totality of the circumstances including his response and prior discipline.

11. Grievant's prior discipline at CCCJ extended from March 2023 through June 2024, shortly before the final transgression, and included a written reprimand for leaving an inmate at his work release location for more than 3 hours after the inmate phoned CCCJ for a ride; a written reprimand for signing a master key from the key watch and entering the sergeant's office without authorization to obtain a cuff key from the desk; being counseled and sent home for sleeping on the job; being counseled for calling an inmate a "rat"; a written reprimand for not only slamming a door twice and breaking the inmate wall phone but also kicking fans in the female dorm until they broke and failing to secure kitchen knives after inmates were released from duty; and being counseled after illegally recording staff without their knowledge.

12. Grievant never grieved any of this prior discipline.

13. In conjunction with this discipline, Grievant was told that further discipline could result in dismissal.

14. On August 9, 2024, Grievant was provided with a letter of dismissal, citing his prior discipline set forth above, and stating in part:

Your response was that many other staff bring in knives all the time. You said that you use that knife to cut your fruit. You advised that someone else here has a pocket knife on him often but that you don't tell on co-workers, you have better

morals than that. You continued to say that “Until there is accountability for everyone, why should I stop.” After reviewing your response and having considered all the information made known to me, I have decided that your dismissal is warranted.

On 5 August 2024, it was reported that you ... had previously entered the facility with a large hunting knife attached to your backpack. On August 6, 2024, Lt. Sorensen viewed camera footage and verified these reports were true. Also, on August 6, 2024, when asked about the knife, you said to Lt. Matthew Sorensen that you forgot to remove it. He told you this wasn't true because this wasn't the first time you had brought the knife into the facility and multiple other staff members had seen you with the knife. ... You then went to West Virginia Division of Corrections Central Office and in an attempt to deceive WVDCR Staff, described the knife in question as a small pocket folding knife. Several Charleston Correctional Center staff observed a much larger knife ...

15. The dismissal letter went on to cite the following violated policies and laws:

- Policy Directive 129.00 “Code of Conduct and Progressive Discipline,” Section II, Paragraphs A, B and C & Section IV, Paragraphs F, Subparagraphs 1, 5, 12, 28, 34, 37, 41, and 48.
- Policy Directive 311.00 “Entrance Security – Contraband Interdiction,” Section XI, Paragraphs D and E.
- West Virginia Code § 61-5-8(c)(1),(d), & (h)(6).

16. The dismissal letter sets forth Policy Directive 129.00, Section II, Paragraphs A-C, as:

- II. The Division expects its employees to:
 - A. Conduct themselves in such 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, adversely affecting the confidence of the public in the integrity of the Division or the State of West Virginia.

17. The dismissal letter sets forth Policy Directive 129.00, Section IV, Paragraph F, Subparagraphs 1, 5, 12, 28, 34, 37, 41, & 48, as:

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 employee's performance, should be treated consistent with the provisions of this policy.

1. Failure to comply with Written Instruction ...

5. Instances of inadequate or unsatisfactory job performance.

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

28. Falsifying any information whether through intentional misstatement, exaggeration, omission or concealment of facts.

34. Possession or use of unauthorized lethal weapons including firearms, or explosives or less lethal control devices including "OC", or misuse of state issued lethal weapons or less lethal control devices.

37. Refusal to obey security-related instructions.

41. Breach of facility security or failure to report any breach or possible breach of facility security.

48. Failure to file a written report by the end of duty shift concerning any incident, violation of the law, rules and/or regulations, or information relative to the safety and security of the agency or any of its locations, its employees, persons under agency custody or supervision, or the public.

18. However, Respondent did not submit a complete copy of Policy Directive 129.00 into the record, as it is missing the evenly numbered pages. Therefore, Respondent's reliance on Policy Directive 129.00 will not be addressed.

19. Policy Directive 311.00 was properly submitted into the record.
20. Policy Directive 311.00, Section XI, Paragraphs D & E, states:

XI. Violations of this Policy Directive shall be cause to deny access to the buildings and grounds of a facility. The Superintendent/designee may limit, postpone, discontinue, or terminate the facility access/activities of any employee, volunteer, volunteer group, or private citizen who impedes the security or orderly operation of the facility.

D. Virginia Code §61-5-8 prohibits certain items from being carried onto the grounds of DCR facilities or into facilities without the express authority and permission of the Superintendent or designee. These items include ... weapon ... as defined by West Virginia Code Chapter 60A.

E. If any person transports onto the grounds of any DCR facility or delivers to any inmate/resident any item listed above, as excerpted from state law, then that person is subject to being detained for commission of a misdemeanor or felony as described in West Virginia Code §61-5-8. The West Virginia State Police shall be notified in such cases.

21. West Virginia Code §61-5-8(c)(1) & (h)(6) states, in relevant part:

(c)(1) If any person transports any ... weapon ...onto the grounds of any jail, state correctional facility ... in this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, the person is guilty of a felony

...

(h) As used in this Section: (6) "Weapon" means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. ...

22. DHS also adhered to DOP policies, including DOP's Workplace Security, which was properly entered into the record. This policy prevents employees from bringing to work "any firearm or dangerous/deadly weapon." The policy does relevantly state, "Folding pocket knives, folding knives carried in a sheath on the belt, and box cutters/razor blades with a blade not [m]ore than three and one-half inches in length are permitted in the workplace, when used for their intended purpose and not otherwise restricted by the

appointing authority.” However, the Workplace Security policy is a general policy applicable to all “State government workplaces” and less restrictive than the laws and policies only applicable to employees at state correctional facilities and jails. Grievant signed an acknowledgement of the Workplace Security policy.

Discussion

The grievant bears the burden of proof in a grievance that does not involve a disciplinary matter and must prove his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee by a preponderance of the evidence. 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 burden has not been met. *Id.*

Permanent state employees who are in the classified service can only be dismissed “for good cause, which means misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” *Syl. Pt. 1, Oakes v. W. Va. Dep’t of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm’n*, 149 W. Va. 461, 141 S.E.2d 364 (1965); *Sloan v. Dep’t of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). *See also* W. VA. CODE ST. R. § 143-1-12.2.a. (2016). “‘Good cause’ for dismissal will be found when an employee’s

conduct shows a gross disregard for professional responsibilities or the public safety.”
Drown v. W. Va. Civil Serv. Comm’n, 180 W. Va. 143, 145, 375 S.E.2d 775, 777 (1988)
(*per curiam*).

Following multiple disciplinary incidents, Respondent dismissed Grievant after he brought a knife to work. This violated West Virginia Code and DHS policy.

West Virginia Code §61-5-8(c)(1) & (h)(6) states, in relevant part:

(c)(1) If any person transports any ... weapon ...onto the grounds of any jail, state correctional facility ... in this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, the person is guilty of a felony ...

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Respondent contends that Grievant violated policy and law by intentionally bringing a knife to work. Respondent implies that the size of the knife mattered, alleging that it was a 6-8 inch hunting knife. Grievant does not dispute that he intentionally brought a knife to work but instead relies on two excuses: that many other employees brought knives to work and that the size of the knife matters. Grievant claims his knife was under three and a half inches, implying that any blade under three and a half inches was permissible.

However, none of the specialized rules or laws for correctional institutions and jails alludes to blade or knife size. Only the Workplace Security policy, which is more generally applicable to state employees, mentions size. Thus, in terms of Grievant's violation, knife size is a red herring. The dismissal letter seems to make an issue of the large size of the knife but is more alarmed by Grievant's cavalier reaction to questions about his transgression and his string of prior infractions. The letter highlights Grievant's response in quoting it verbatim as, "Until there is accountability for everyone, why should I stop."

Ultimately, the dismissal letter reveals that the size of the knife does not matter and that Grievant knew as much in summarizing the second part of his response as follows: "You advised that someone else here has a pocket knife on him often but that you don't tell on co-workers, you have better morals than that." A "pocket knife" and "hunting knife" are generic terms to differentiate between small and large knives. At the predetermination conference, Grievant did not question the impropriety of having even a pocket knife but instead homed in on his ongoing concern about being a "rat". This utmost concern is reflected through his disciplinary history and was a concern that superseded that of following the law. Being a "rat" should be the last concern for anyone in law enforcement and is antithetical to its purpose. Rather, the primary concern of someone in law

enforcement should be following and enforcing the law. Once that concern becomes secondary to being a “rat,” Respondent’s decision to dismiss and its implied determination of unfitness for duty is justified, regardless of the size of the secondary transgression. Grievant’s conduct showed a gross disregard for professional responsibilities and ultimately for public safety. Thus, Respondent proved good cause for dismissal.

Grievant challenges his prior discipline used to justify his dismissal for his final infraction. The problem is that Grievant never grieved any of his prior discipline. “If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Jones v. W. Va. Dept. of Health & Human Resources*, Docket No. 96-HHR-371 (Oct. 30, 1996); *See Stamper v. W. Va. Dept. of Health & Human Resources*, Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dept. of Admin.*, Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dept. of Health & Human Resources*, Docket No. 93-HHR-050 (Feb. 4, 1994).” *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997), *aff’d*, Monongalia Cnty. Cir. Ct. Docket No. 97-C-AP-96 (Dec. 7, 1999), appeal refused, W.Va. Sup Ct. App. Docket No. 001096 (July 6, 2000). Yet, even without prior discipline, Grievant’s dismissal would have been justified.

Grievant implies that his dismissal was motivated by retaliation. No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.” W. VA. CODE § 6C-2-3(h). Reprisal is defined as “the retaliation

of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE § 6C-2-2(o).

“In proving an allegation of retaliatory discharge, three phases of evidentiary investigation must be addressed. First, the employee claiming retaliation must establish a prima facie case.” *Freeman v. Fayette Cty. Bd. of Educ.*, 215 W. Va. 272, 277, 599 S.E.2d 695, 700 (2004). In syllabus point six of *Freeman*, the West Virginia Supreme Court of Appeals specifically applied the same elements required to prove a prima facie case under the West Virginia Human Rights Act to a claim arising from a public employee grievance stating,

[T]he burden is upon the complainant to prove by a preponderance of the evidence (1) that the complainant engaged in protected activity, (2) that complainant's employer was aware of the protected activities, (3) that complainant was subsequently discharged and (absent other evidence tending to establish a retaliatory motivation), (4) that complainant's discharge followed his or her protected activities within such period of time that the court can infer retaliatory motivation.

Id., Syl. Pt. 6, 215 W. Va. at 275, 599 S.E.2d at 698 (citing Syl. Pt. 4, *Frank's Shoe Store v. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986); Syl. Pt. 1, *Brammer v. Human Rights Comm'n*, 183 W. Va. 108, 394 S.E.2d 340 (1990); Syl. Pt. 10, *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995)). Grievant did not allege, let alone prove, that he engaged in a protected activity and thus failed to make a *prima facie* case of retaliation.

Grievant implies mitigation of his punishment is warranted in alleging that everyone else brings knives into CCCJ. “[A]n allegation that a particular disciplinary measure is

disproportionate to the offense proven, or otherwise arbitrary and capricious, is an affirmative defense and the grievant bears the burden of demonstrating that the penalty was 'clearly excessive or reflects an abuse of agency discretion or an inherent disproportion between the offense and the personnel action.' *Martin v. W. Va. Fire Comm'n*, Docket No. 89-SFC-145 (Aug. 8, 1989)." *Conner v. Barbour County Bd. of Educ.*, Docket No. 94-01-394 (Jan. 31, 1995), aff'd, Kanawha Cnty. Cir. Ct. Docket No 95-AA-66 (May 1, 1996), appeal refused, W.Va. Sup. Ct. App. (Nov. 19, 1996). "Mitigation of the punishment imposed by an employer is extraordinary relief, and is granted only when there is a showing that a particular disciplinary measure is so clearly disproportionate to the employee's offense that it indicates an abuse of discretion. Considerable deference is afforded the employer's assessment of the seriousness of the employee's conduct and the prospects for rehabilitation." *Overbee v. Dep't of Health and Human Resources/Welch Emergency Hosp.*, Docket No. 96-HHR-183 (Oct. 3, 1996); *Olsen v. Kanawha County Bd. of Educ.*, Docket No. 02-20-380 (May 30, 2003), aff'd, Kanawha Cnty. Cir. Ct. Docket No. 03-AA-94 (Jan. 30, 2004), appeal refused, W.Va. Sup. Ct. App. Docket No. 041105 (Sept. 30, 2004).

"When considering whether to mitigate the punishment, factors to be considered include the employee's work history and personnel evaluations; whether the penalty is clearly disproportionate to the offense proven; the penalties employed by the employer against other employees guilty of similar offenses; and the clarity with which the employee was advised of prohibitions against the conduct involved." *Phillips v. Summers County Bd. of Educ.*, Docket No. 93-45-105 (Mar. 31, 1994); *Cooper v. Raleigh County Bd. of Educ.*, Docket No. 2014-0028-RalED (Apr. 30, 2014), aff'd, Kanawha Cnty. Cir. Ct. Docket No. 14-AA-54 (Jan. 16, 2015).

Grievant's allegation regarding other employees having knives and not being punished is meaningless outside of the context of Respondent's knowledge. In other words, there would be no way to gage the significance of others not being punished for the same conduct as Grievant without showing that Respondent knew others were carrying knives and the identity of the individuals. Grievant not only failed to show that Respondent knew the identity of any other transgressor but failed to cooperate with Respondent's efforts to uncover their identity. This alone is sufficient to foil mitigation. In light of numerous other infractions over Grievant's short time with Respondent, mitigation is clearly unwarranted. Thus, this grievance is **DENIED**.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The grievant bears the burden of proof in a grievance that does not involve a disciplinary matter and must prove his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee by a preponderance of the evidence. 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 burden has not been met. *Id.*

2. Permanent state employees who are in the classified service can only be dismissed "for good cause, which means misconduct of a substantial nature directly

affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.” Syl. Pt. 1, *Oakes v. W. Va. Dep’t of Finance and Admin.*, 164 W. Va. 384, 264 S.E.2d 151 (1980); *Guine v. Civil Serv. Comm’n*, 149 W. Va. 461, 141 S.E.2d 364 (1965); *Sloan v. Dep’t of Health & Human Res.*, 215 W. Va. 657, 600 S.E.2d 554 (2004) (*per curiam*). See also W. VA. CODE ST. R. § 143-1-12.2.a. (2016). “‘Good cause’ for dismissal will be found when an employee’s conduct shows a gross disregard for professional responsibilities or the public safety.” *Drown v. W. Va. Civil Serv. Comm’n*, 180 W. Va. 143, 145, 375 S.E.2d 775, 777 (1988) (*per curiam*).

3. “No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.” W. VA. CODE §6C-2-3(h). Reprisal is defined as “the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” W. VA. CODE §6C-2-2(o).

4. “In proving an allegation of retaliatory discharge, three phases of evidentiary investigation must be addressed. First, the employee claiming retaliation must establish a prima facie case.” *Freeman v. Fayette Cty. Bd. of Educ.*, 215 W. Va. 272, 277, 599 S.E.2d 695, 700 (2004). In syllabus point six of *Freeman*, the West Virginia Supreme Court of Appeals specifically applied the same elements required to prove a prima facie case under the West Virginia Human Rights Act to a claim arising from a public employee grievance stating,

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Id., Syl. Pt. 6, 215 W. Va. at 275, 599 S.E.2d at 698 (citing Syl. Pt. 4, *Frank's Shoe Store v. Human Rights Comm'n*, 179 W. Va. 53, 365 S.E.2d 251 (1986); Syl. Pt. 1, *Brammer v. Human Rights Comm'n*, 183 W. Va. 108, 394 S.E.2d 340 (1990); Syl. Pt. 10, *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995)).

5. Respondent proved by a preponderance of the evidence good cause to terminate Grievant's employment.

6. Grievant did not prove retaliation or that mitigation was warranted by a preponderance of the evidence.

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: February 13, 2026

Joshua S. Fraenkel
Administrative Law Judge