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ROBIN HAMMER

v.

DOCKET NO. 89-CORR-195

W.VA. DEPARTMENT OF CORRECTIONS

DECISION

The grievant, Robin Hammer, is employed by the W.Va. Department of Corrections (Department) as a Correctional Officer I at the Huttonsville Correctional Center. Mr. Hammer filed a level one grievance on February 9, 1989 in which he alleged that he had been given a lower rating on his 1988 evaluation in reprisal for having filed a previous grievance. He requests that appropriate disciplinary action be taken against his evaluator for insubordination and that he be given a fair evaluation of his job performance. The matter was denied at levels one through three and was appealed to level four on May 2, 1989. An evidentiary hearing was conducted on June 5 at which time both parties declined to file proposed findings of fact and conclusions of law.

The Civil Service rating form lists twelve areas for evaluation by both the employee and his supervisor. The grievant's annual evaluation for 1988 was completed by James A. Gragg, Correctional Officer II and dated January 15, 1989. The grievant was evaluated in only nine of the twelve

areas with Officer Gragg assigning him a total of 64 points or a "Very Good" which is second only to "Exceptional". The grievant assigned himself 74 points which was also in the "Very Good" category. The only comment concerning areas which needed improvement was that the grievant "...[s]hould work improving his attitude towards his fellow employees and job assignments."

The grievant argues that Officer Gragg was acting in collusion with Captain Norris Weese in giving the grievant an evaluation rating lower than he had previously received in reprisal for a prior grievance the grievant had filed against Captain Weese.

Officer Gragg denies that he acted in collusion with Captain Weese and testified that he had completed the rating based upon his own judgment. Officer Gragg had rated the grievant lower in three categories than the grievant had rated himself. In the area of "Judgment" the grievant rated himself at eight, Officer Gragg rated the grievant at six based upon an incident in which the grievant had improperly locked down a dormitory for failure to pass inspection.¹ In the areas of "Attitude" and "Human Relations" the

¹There appears to have been some change of policy concerning lockdowns of which the grievant was not aware probably due to his failure to talk to his co-employees, according to Officer Gragg. The grievant admits that he "did not initiate speech" with any employees involved in the prior grievance or those who were hostile to him, a total of approximately six individuals, and that he has not spoken with an Officer Kinney since April.

grievant rated himself at eight while Officer Gragg rated him at four based upon the grievant's difficulty in getting along with other employees.

Captain Weese corroborated Officer Gragg's testimony and stated that he did not direct the grievant to be evaluated in any manner or even discuss the grievant's evaluation with Officer Gragg.

Warden William Duncil testified that his review of the situation indicated that the proper procedures had been followed in the evaluation of the grievant and that there was no evidence of collusion against the grievant by the supervisors.²

The Department denies the charge of reprisal and asserts that this action was an abuse of the grievance process brought by the grievant who has not acted in good faith but is using the procedure to harass others. It requests that all costs be assessed to the grievant.

While the grievant may not have exercised the best judgment in the filing of this matter, which would generally be considered trivial, this examiner does not perceive his

²The grievant attempted to show that Officer Gragg had been influenced by Captain Weese and/or possibly other individuals who may have divulged the contents of certain documents regarding the grievant; specifically a series of letters filed in the companion case (Hammer v. Department of Corrections, Docket No. 89-CORR-95) as Department's Exhibit 4. Officer Gragg denied having ever seen these letters, however.

actions to be taken in bad faith. Accordingly, an award of costs shall not be made at this time.

As to the primary charge of reprisal, a review of the grievant's prior evaluations beginning in July - December 1985 show that he was rated at 5.3 (Good) ; January - June 1986 his rating was 8.0 (Very Good); July - December 1986 he was rated at 8.2 (Very Good) and 1987 he was rated 8.0 (Very Good). Although his 1988 rating of 7.1 was slightly lower than those for 1986 and 1987 he has remained in the "Very Good" category. The lower ratings in the areas of "Attitude" and "Human Relations" are justified by the grievant's behavior as described by himself and others and there has been no showing of collusion or other proof that the evaluation rating was adjusted to punish the grievant for having pursued another grievance. Indeed, if reprisal had been the intent, one would have expected the evaluation to have been significantly lower than it was.

In addition to the foregoing narration it is appropriate to make the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant is employed by the W.Va. Department of Corrections as a Correctional Officer I at the Huttonsville Correctional Center.

2. The grievant's annual evaluation for 1988 was completed by Correctional Officer II James Gragg who

assigned the grievant 64 out of 90 points for a rating of "Very Good", the second highest category.

3. The grievant assigned himself 74 points which also placed him in the "Very Good" category.

4. The grievant was rated somewhat lower in 1988 than he had been in 1987 and 1986, specifically in the categories of "Judgment", "Attitude" and "Human Relations".

5. Officer Gragg provided an explanation of the lower ratings as primarily the result of the grievant's failure to work harmoniously with his co-workers.

6. The grievant admits that he no longer communicates with those employees who are hostile to him, approximately six individuals.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Reed v. Department of Corrections, Docket No. CORR-88-028 (Jan. 31, 1989; Payne v. Department of Energy, Docket No. ENGY-88-0150 (Nov. 2, 1988).

2. The grievant has failed to show that he was rated lower on his 1988 evaluation as an act of reprisal taken by Officer Gragg in retaliation for the grievant having filed a prior grievance against Captain Weese.

Accordingly, the grievance is DENIED.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Randolph County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §29-6A-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED

July 26, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER