

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**RANDALL BALDUCCI, et al.,
Grievants,**

v.

Docket No. 2016-1852-CONS

**DIVISION OF CORRECTIONS/HUTTONSVILLE
CORRECTIONAL CENTER,
Respondent.**

DECISION

Grievants filed this action against their employer, West Virginia Division of Corrections, on June 24, 2016. Their Statement of Grievance reads as follows:

Working 12 hour days and only receiving 12 hours of Annual Leave a month. Under Administrative Rule 14.3 - Annual Leave it states that 5 years, but less than 10 years will receive 1.50 days a month. This means I should be receiving 18 hours of annual leave a month. Rule 14.4 - Sick leave is computed on the basis of hours equal to 1.5 days. It is currently based on an 8 hour day instead of a 12 hours day.

Grievants seek to receive the appropriate annual and sick leave and hours owed.

This grievance was denied at Level One by the Deputy Commissioner based upon the recommendation of the Level One Evaluator on July 22, 2016. A Level Two mediation session was conducted on November 4, 2016. A Level Three evidentiary hearing was conducted before the undersigned on April 6, 2017, at the Randolph County Development Authority, Elkins, West Virginia. Grievants appeared *pro se*. Respondent appeared by its counsel, Cynthia Gardner, Assistant Attorney General. This matter became mature for consideration on the postmark date of May 8, 2017, for the parties' fact/law proposals.

Synopsis

Grievants are classified as Correctional Officers assigned to work regularly scheduled twelve-hour shifts. Grievants allege that they are entitled to have a “day” considered to be twelve hours for purposes of calculating annual and sick leave pursuant to the West Virginia Division of Personnel’s Administrative Rules. Record established that annual leave is awarded in increasing increments depending upon an employee’s length of service. Grievants’ argument regarding sick leave is also without merit. Full-time employees accrue 1.5 days per month of sick leave. Grievants have not proven by a preponderance of the evidence that Respondent violated, misapplied or misinterpreted the Division of Personnel’s Administrative Rules regarding the accrual of annual and sick leave.

The following Findings of Fact are based upon the record of this case.

Findings of Fact

1. Grievants are all employed with the West Virginia Division of Corrections at the Huttonsville Correctional Center.
2. Grievants are classified as Correctional Officers assigned to work regularly scheduled twelve hour shifts. Grievants generally rotate between work schedules of three twelve-hour shifts one week and four twelve-hour shifts the following week. This regular schedule of twelve-hour shifts does not include any voluntary and mandatory overtime worked by Grievants.
3. The rule in issue in this case is section 14.3 of the Administrative Legislative Rules of the West Virginia Division of Personnel. Under this rule the rate at which an

employee earns annual leave depends upon the employee's length of service. Four length-of-service categories are established, as set forth below:

Less than 5 years of qualifying service	1.25 days/month
5 years but less than 10 years of qualifying service	1.50 days/month
10 years but less than 15 years of qualifying service	1.75 days/month
15 years or more of qualifying service	2.00 days/month

4. The other rule in issue in this case is section 14.4 of the Administrative Legislative Rules of the West Virginia Division of Personnel. That rule provides sick leave is computed on the basis of hours equal to 1.5 days per month for full-time employees.

5. Rule 14.3 of the Administrative Legislative Rules of the West Virginia Division of Personnel provides . . . a "day" is based on the agency's established number of hours in the work day and shall not exceed eight (8) hours . . . the leave accrual may be calculated on a biweekly basis.

6. While employed at Huttonsville Correctional Center, Grievants have accrued annual and sick leave where one "day" of earned accrued leave is the equivalent of eight working hours.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The essential facts are not in dispute. Grievants assert that they are entitled to have a "day" considered to be twelve hours for purposes of calculating annual and sick leave accrual. The limited record of this case did not demonstrate that Respondent violated, misapplied or misinterpreted the Division of Personnel's Administrative Rule regarding the accrual of annual or sick leave. Grievants did not point to any statute, policy or written agreement regarding how long a "day" of annual or sick leave is to be calculated. The relevant authorities regarding the accrual of annual and sick leave would be the Division of Personnel's Administrative Rules and the practices of Respondent. Neither of these authorities support Grievants argument that a "day" for purposes of annual and sick leave accrual must be calculated based upon the length of one of their regularly scheduled twelve hour work shifts.

In *Brackman v. W. Va. Div. of Corrections*, Docket No. 03-CORR-166 (Oct. 8, 2003), the same argument was presented as raised in the instant matter. In the *Brackman* case, the Division of Personnel maintained that a "day," for the purposes of annual and sick leave accrual, was not based upon a particular amount of hours worked during either a day, a shift or a work week. The *Brackman* decision noted that there is no formula for calculating annual leave, it merely awards, in increasing increments, days off for employees of the State, depending upon their length of service and found there was no support or authority for Grievant's contention that annual leave is based upon hours worked per day. In 2016, the Division of Personnel's Administrative Rules clarified that the Respondent's practice of a day of annual or sick leave equating to eight hours of leave,

was well within the Division of Personnel's Administrative Rules. The language of that rule indicates that a "day" is based on the agency's established number of hours in the work day and cannot exceed eight hours. The Division of Personnel's 2016 Administrative Rules also clarified that a day of annual or sick leave in excess of eight hours, was not permitted.

The following Conclusions of Law supports the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. Section 14.3 of the Administrative Legislative Rules of the West Virginia Division of Personnel provides the rate at which an employee earns annual leave depends upon the employee's length of service. Four length-of-service categories are established, as set forth below:

Less than 5 years of qualifying service	1.25 days/month
5 years but less than 10 years of qualifying service	1.50 days/month
10 years but less than 15 years of qualifying service	1.75 days/month
15 years or more of qualifying service	2.00 days/month

3. Section 14.4 of the Administrative Legislative Rules of the West Virginia Division of Personnel provides sick leave is computed on the basis of hours equal to 1.5 days per month for full-time employees.

4. Rule 14.3 of the Administrative Legislative Rules of the West Virginia Division of Personnel provides . . . a “day” is based on the agency’s established number of hours in the work day and shall not exceed eight (8) hours . . . the leave accrual may be calculated on a biweekly basis.

5. Grievants have failed to prove by a preponderance of the evidence that the Huttonsville Correctional Center has violated any of the above Rules with regard to the accrual of annual and sick leave.

Accordingly, this grievance is **DENIED**.

Any party 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (2008).

Date: June 2, 2017

Ronald L. Reece
Administrative Law Judge