

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**JAMES DONALD PRINCE,
Grievant,**

v.

Docket No. 2020-0552-MAPS

**DIVISION OF CORRECTIONS AND REHABILITATION/
BUREAU OF PRISONS AND JAILS/
SOUTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY,
Respondent.**

DECISION

Grievant, James Donald Prince, is employed by Respondent, Division of Corrections and Rehabilitation within the Bureau of Prisons and Jails at Southern Regional Jail and Correctional Facility. On November 4, 2019, Grievant filed this grievance against Respondent stating, "Mandatory working of security posts. The 'rule' being violated is 'Decision' provided via Grievance Docket No. 2018-0583-MAPS. Please reference Page 3 of attached 'Exhibit 1', #5. "Grievant is not required to control or supervise inmate, but occasionally helps when the facility is short-handed. Additionally, Grievant occasionally volunteers to work a security post when there are not enough officers available. Non-uniform staff may only work a security post in the regional jails voluntarily.'" For relief, Grievant seeks "[t]o be awarded the same hourly increment raise of \$1.00 per hour as correctional officers and/or the elimination of mandatory working of security posts."

Following the December 2, 2019 level one hearing, a level one decision was rendered on December 5, 2019, denying the grievance. Grievant appealed to level two on December 21, 2019. Following mediation, Grievant appealed to level three of the grievance process on August 20, 2020. On December 14, 2020, one week before the

scheduled level three hearing, Respondent, by counsel, filed *Respondent's Motion to Dismiss Grievance* for failure to state a claim on which relief can be granted and for *res judicata*. By email dated December 21, 2020, Grievance Board staff notified the parties that the hearing would go forward on the merits. A level three hearing was held on December 22, 2020, before the undersigned at the Grievance Board's Charleston, West Virginia office via video conference. Grievant appeared *pro se*¹. Respondent was represented by counsel, Briana J. Marino, Assistant Attorney General. The motion to dismiss was denied at the beginning of the hearing and the grievance proceeded on the merits. This matter became mature for decision on January 26, 2021, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Building Maintenance Supervisor 1. Grievant protests Respondent's mandatory assignment of additional duties not within Grievant's classification. Grievant has failed to prove he is entitled to the removal of the additional duties Respondent has assigned. Respondent is permitted to assign some duties that are not within an employee's classification. Grievant is not entitled to the removal of the duties as the duties are not his predominant duties and he is paid at a higher rate than the classification of the additional duties. 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:

¹ For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

Findings of Fact

1. Grievant is employed by Respondent as a Building Maintenance Supervisor
1. Prior to his hire as a Building Maintenance Supervisor 1, Grievant served as a correctional officer for many years.
2. The regular duties of a Building Maintenance Supervisor 1 do not include securing inmates.
3. Because of a chronic shortage of correctional officers (“uniform staff”), non-correctional officer employees (“non-uniform staff”) of Respondent sometimes “stand post” or perform the work of a correctional officer when there are insufficient correctional officers to ensure the safety of a facility.
4. On July 28, 2017, the State Personnel Board approved a \$1.00 per hour increase for the Correctional Officer classification series to address problems with recruitment and retention of personnel in those classifications.
5. On October 16, 2017, Grievant filed a grievance, docket number 2018-0583-MAPS, asserting he should be entitled to the same raise because he was required to work in the same secured areas of the facility as correctional officers.
6. At the time, Grievant only stood post on a voluntary basis.
7. Grievant’s grievance was denied on September 18, 2018 in *Prince v. Regional Jail and Correctional Facility Auth.*, Docket No. 2018-0583-MAPS (Sept. 18, 2018).
8. Beginning October 7, 2019, Respondent began to mandate non-uniform personnel, including Grievant, to stand post.
9. Grievant stands a security post approximately once each week.

10. If a non-uniformed employee makes less than a Correctional Officer 1, that employee receives Correctional Officer 1 pay for time spent performing correctional officer duties.

11. Grievant's pay as a Building Maintenance Supervisor 1 is greater than that of a Correctional Officer 1.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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.*

Although Grievant originally requested he receive a \$1.00 per hour raise and/or the removal of the requirement to work mandatory security posts, Grievant has amended his request for relief to only ask for the removal of the requirement to work mandatory security posts. As support, Grievant cites the Grievance Board decision denying his prior grievance in which he also requested the \$1.00 per hour raise paid to correctional officers, which discussed that his service in a security post was voluntary.

The Grievance Board has previously considered grievances from employees of Respondent requesting the removal of security post duties from non-uniformed staff² and

² There was some testimony at level three regarding uniforms now worn by non-correctional officer staff. The uniforms worn by non-correctional officer staff are different than those worn by correctional officers. Respondent's use of the term "uniform

have denied the claims determining that Respondent is permitted to assign employees some duties that are outside an employee's classification to meet Respondent's needs. *Crowder, et al. v. Div. of Corrections*, Docket No. 2018-0417-CONS (Oct. 4, 2018), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 18-AA-251 (Apr. 3, 2019). *Rexrode, et al. v. Div. of Corrections*, Docket No. 2018-0800-CONS (Oct. 12, 2018); *Korntop, et al. v. Div. of Corrections*, Docket No. 01-CORR-390 (Oct. 17, 2001).

An employer is permitted to assign some duties to employees that are outside of their classification specifications. *Hager v. Health & Human Res.*, Docket No. 95-HHR-241 (Sept. 29, 1995). "A class specification is a general description of the kinds of work characteristic of positions properly allocated to that class and does not prescribe the duties of any position. It does not limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position." W. VA. CODE ST. R. § 143-1-4.3a "Class specifications are descriptive and are not restrictive." W. VA. CODE ST. R. § 143-1-4.3b. "If an employer assigns 'out of class' duties on a frequent or long-term basis, the employee may be entitled to deletion of the responsibilities and compensation for the period in which they performed out of their classification, *if those duties were assigned to a higher paying classification.*" *Reed v. W. Va. Div. of Corrections*, Docket No. 97-CORR-127 (May 22, 1998); *Clifford v. Div. of Corrections*, Docket No. 02-CORR-124 (Aug. 29, 2002) (emphasis added). A grievant may be entitled to removal of the duties or reclassification of the position they occupy when the assignment of such duties becomes so extensive as to constitute the predominant duties of the position. *Barker v. Dep't of*

employees/staff" refers to correctional officers and "non-uniform employees/staff" refer to employees who are not correctional officers.

Health & Human Serv., Docket No. 2015-0422-DHHR (Aug. 22, 2016); *Hall v. Div. of Natural Res. and Div. of Personnel*, Docket No. 00-DNR-053 (Apr. 28, 2000).

While Grievant is required to spend a significant amount of time performing correctional officer duties, those duties are not predominant. Grievant is engaged in his duties as a Building Maintenance Supervisor 1 at least 70% of the time. Grievant's predominant duties remain those of a Building Maintenance Supervisor 1. As a Building Maintenance Supervisor 1 Grievant is paid more than a Correctional Officer 1 and is, therefore, not entitled to the removal of the duties for reason of pay.

Grievant argues that the language of his prior grievance decision entitles him to removal of the duties as they are no longer voluntary. Prince found it was "significant" that Grievant was performing correctional officer duties voluntarily outside of his regular work schedule. It was significant in that no percentage of his regular work schedule was spent performing correctional officer duties. The decision did not state, nor does it stand for the proposition, that an employer may only assign out-of-classification duties if an employee volunteers.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance 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. Respondent is permitted to assign non-correctional officer employees some correctional officer duties to meet Respondent's security needs. *Crowder, et al. v. Div. of Corrections*, Docket No. 2018-0417-CONS (Oct. 4, 2018), *aff'd*, Kanawha Cnty. Cir. Ct. Civil Action No. 18-AA-251 (Apr. 3, 2019). *Rexrode, et al. v. Div. of Corrections*, Docket No. 2018-0800-CONS (Oct. 12, 2018); *Korntop, et al. v. Div. of Corrections*, Docket No. 01-CORR-390 (Oct. 17, 2001).

3. An employer is permitted to assign some duties to employees that are outside of their classification specifications. *Hager v. Health & Human Res.*, Docket No. 95-HHR-241 (Sept. 29, 1995). "A class specification is a general description of the kinds of work characteristic of positions properly allocated to that class and does not prescribe the duties of any position. It does not limit the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position." W. VA. CODE ST. R. § 143-1-4.3a "Class specifications are descriptive and are not restrictive." W. VA. CODE ST. R. § 143-1-4.3b.

4. "If an employer assigns 'out of class' duties on a frequent or long-term basis, the employee may be entitled to deletion of the responsibilities and compensation for the period in which they performed out of their classification, if those duties were assigned to a higher paying classification." *Reed v. W. Va. Div. of Corrections*, Docket No. 97-CORR-127 (May 22, 1998); *Clifford v. Div. of Corrections*, Docket No. 02-CORR-124 (Aug. 29, 2002).

5. A grievant may be entitled to removal of the duties or reclassification of the

position they occupy when the assignment of such duties becomes so extensive as to constitute the predominant duties of the position. *Barker v. Dep't of Health & Human Serv.*, Docket No. 2015-0422-DHHR (Aug. 22, 2016); *Hall v. Div. of Natural Res. and Div. of Personnel*, Docket No. 00-DNR-053 (Apr. 28, 2000).

6. Grievant has failed to prove he is entitled to the removal of the additional duties Respondent has assigned as the duties are not his predominant duties and he is paid at a higher rate than the classification of the additional duties.

Accordingly, the 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 *also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: March 2, 2021

Billie Thacker Catlett
Chief Administrative Law Judge