

DENZIL GUMP

v. Docket No. 95-CORR-543

WEST VIRGINIA DEPARTMENT OF CORRECTIONS

DECISION

The grievant, Denzil Gump, is employed by the West Virginia Department of Corrections (CORR) as a Correctional Officer I at the Mount Olive Correctional Center (MOCC). He filed a grievance at Level I August 7, 1995, alleging that he had been the subject of harassment by Lt. Steve Berryman. His supervisor, Lt. Joseph Wood, responded that he was without authority to address the matter.

At Level II, the hearing evaluator found that the grievant's charges were substantiated and granted his request for "a formal inquiry into charges of harassment by Lt. Berryman." The evaluator also directed CORR to remove the grievant from Lt. Berryman's supervision; [\(See footnote 1\)](#) reexamine a pending disciplinary action against the grievant to ensure that it was not the result of improper conduct on the lieutenant's part; permit the grievant to make complaints of retaliation and/or any further incidents of harassment directly to MOCC Deputy Warden Howard Painter; and monitor the grievant's employment generally to see that he was treated fairly. The evaluator denied the grievant's request that he be transferred to MOCC's Industries division.

Dissatisfied with the relief granted or believing that certain parts of it had not been implemented, the grievant appealed to Level III. Following a November 1, 1995 hearing, the Level III evaluator found that an investigation had commenced; Lt. Berryman was no longer in the grievant's chain of command; a line of communication had been established between the grievant and Deputy Warden Painter; and Mr. Painter was in the process of reviewing the pending disciplinary action. The evaluator denied the grievant's request for the Industries position.

The grievant appealed to Level IV December 7, 1995, asserting that he had "no reason to believe that the investigation was in progress." CORR subsequently moved that the appeal be dismissed on

the grounds that the grievant's concerns had been addressed and resolved at the lower levels. CORR denied that it had any legal responsibility to conduct an investigation but represented that one had been started. According to counsel, the inquiry was placed on hold when the grievant made appeal to Level IV. The grievant reiterated his doubts about the investigation and responded that he had been subjected to harassment since the Level III hearing.

During a May 2, 1996 hearing on the agency's motion, the grievant confirmed that Lt. Berryman no longer had a role in his supervision, and that he had been given direct access to Deputy Warden Painter's office. He further testified that he had not been the subject of any disciplinary action since the lower level proceedings [\(See footnote 2\)](#) but that he had been harassed by persons other than Lt. Berryman on three occasions.

The grievant also testified generally and rather vaguely that he believed Lt. Berryman had taken some action designed to deny him advancements in rank during his tenure at MOCC. He did not explain the basis for this belief and could not cite any particular instance in which he applied for and was denied a promotion. The grievant conceded that it is his personal preference to work in MOCC's Industries division and did not assert that Lt. Berryman had ever blocked any requests he may have made to obtain a position there.

Ultimately, the grievant represented that the only additional relief he was seeking was that the investigation be commenced; implicit in his testimony was that he should have some say in how it was to be conducted. Questioned on the specific purpose for the inquiry, the grievant indicated that it should be focused on whether he lost advancements due to Lt. Berryman's misconduct, and whether Lt. Berryman should be disciplined. For the reasons discussed below, the grievance must be denied.

Findings and Conclusions

W.Va. Code §29-6A-2 defines harassment as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." The grievant's testimony does not support that since he was removed from Lt. Berryman's command, any MOCC official has taken any action against him which would meet this definition. Indeed, the grievant's assertions and testimony regarding the post- Level III incidents of harassment appear contrived.

The clear import of the grievant's testimony and legal arguments is that CORR owes him more

than an end to the conduct of which he originally complained. His unpersuasive testimony regarding lost job opportunities and continued harassment reveals that the grievant pressed the complaint beyond Level II not to redress any recent or previous injuries to himself but to obtain some disciplinary action against Lt. Berryman. It is also clear that the grievant hoped to "rehash" his various disputes with the lieutenant and air a great many complaints about MOCC operations in general.

Relief which entails an adverse personnel action against another employee is extraordinary and generally unavailable from the Education and State Employees Grievance Board. Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996). Moreover, the grievant's request for an investigation and subsequent, "possible" personnel action is speculative and illusory in nature; such remedies are always unavailable. Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-152 (April 28, 1992). CORR may proceed to further investigate Lt. Berryman's conduct and take actions based thereon as it sees fit.

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: July 16, 1996

[Footnote: 1](#)

While the parties do not dispute that during the times pertinent herein, Lt. Berryman played some role in the grievant's supervision, the record is unclear on the lieutenant's precise place in the grievant's chain of command.

[Footnote: 2](#)

There was little further testimony on the pending disciplinary action discussed at the lower levels, and it is difficult to

discern whether it was ever determined that Lt. Berryman played any role in that action. It does appear that the grievant and Deputy Warden Painter have discussed the matter and that Mr. Painter is fully aware of the implications of leveling any charge which might be based on the lieutenant's ill will toward the grievant. In any event, while the grievant asserted that he had concerns about retaliation and appeared to be requesting some relief on that claim, he acknowledged that any disciplinary action was grievable when taken.