EDWARD McCAULEY,

Grievant,

v. **Docket No. 98-CORR-088**

WEST VIRGINIA DIVISION OF CORRECTIONS/
PRUNTYTOWN CORRECTIONAL CENTER, and
DIVISION OF PERSONNEL (See footnote 1)

Respondents.

DECISION

Grievant, Edward McCauley, filed a grievance against Respondent, West Virginia Division of Corrections/Pruntytown Correctional Center, stating his salary should not have been reduced by 11% (See footnote 2) when he was demoted from a Correctional Officer(CO) IV to Correctional Officer(CO) II, effective April 1, 1998. While Grievant does not contest his actual demotion (See footnote 3) , he does contend that the pay decrease which accompanied his demotion was improper. He seeks to be returned to his prior salary and receive back pay and interest.

Grievant was denied relief at the lower levels of the grievance procedure. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia on June 24, 1998. Grievant served as his own representative. Respondent,Division of Corrections/Pruntytown Correctional Center, was represented by counsel, Leslie Kiser, who, due to travel problems, appeared by telephone. (See footnote 4) At the conclusion of the hearing, the parties waived the filing of post-hearing briefs and asked for the matter to be submitted for decision. The following findings of fact were derived from the evidence produced at Levels I-IV.

FINDINGS OF FACT

1. Grievant is currently employed by Respondent as a CO II.

2. Grievant was employed as a CO IV at Pruntytown Correctional Center from April 1, 1994 until April 1, 1998, when he was demoted to CO II.

3. Grievant has sixteen years of experience with Respondent. He was a CO I for approximately

twelve years before reclassification by Personnel in April 1994. After reclassification, he became a CO IV, Sergeant, without any change in salary.

4. In April 1996, he was granted a 5% salary increase for completing the Correctional Officer Apprenticeship Program (OAP). He has received “across the board” salary increases totaling $7,110.00 since 1993.

5. It is uncontested that Respondent had sufficient cause to take the disciplinary action implemented against Grievant.

DISCUSSION

The burden of proof, in cases dealing with disciplinary matters, rests with the employer to prove the charges by a preponderance of the evidence. Holland v. W.Va Dept. of Commerce, Docket No. 93-CLER-465 (June 13, 1994). In non-disciplinary matters, however, a grievant must prove all of the allegations constituting his grievance by a preponderance of the evidence. Crow v. W. Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989). While this grievance arises because of a demotion, the demotion itself and the reasons for the demotion are not in dispute, and do not serve as the grounds for the grievance. The grievance primarily involves an interpretation of statutory rules and regulations and their application and, therefore, is not a disciplinary matter per se. Hence, the burden of proof is on the grievant.

Grievant alleges his reduction in salary as a part of his demotion from CO IV to CO II was improper. Grievant contends his salary would have been, and therefore should remain, the same whether he is a CO IV, CO II or CO I. He bases his argument on the following facts: 1) he received no salary increase on April 1, 1994, when he was “promoted” from CO I to CO IV during the reclassification involving all Corrections employees; and 2) he received no subsequent pay increases except those which were given “across the board” to all Corrections employees, including his 5% pay raise for completing the OAP. See Livesay v. W.Va. Dept. of Corrections, Docket No. 96-CORR-459 (Nov. 4, 1997). Respondents contend that Grievant's change from CO I to CO IV was a “reclassification” and not a “promotion”, and that Grievant's primary duties and salary did not change during this time. They state that a reclassification is a defined personnel transaction distinct and separate from a promotion. The action taken on April 1,1994 involved the abolishment of all previous job classifications, with the implementation of a completely new job classification and pay plan involving every position within the Division of Corrections. Grievant's salary remained the same after

the reclassification since his prior salary fell within the range for the newly established CO IV position; therefore, he received no increase in salary as a result of the reclassification.

The evidence in this matter supports the contention that Grievant's move from a CO I to a CO IV in 1994 was a reclassification and not a promotion. While Grievant responds that other correctional officers received pay increases due to the reclassification, the evidence shows there were also other correctional officers who did not receive salary increases due to their reclassification. Respondent maintains those who received increases were below the salary range of their new classification, and those who did not, such as the Grievant, were already being paid within the salary range of their newly classified position. There is no evidence that Grievant should have received a salary increase due to the reclassification; therefore, his argument that he now should not have his salary decreased because he did not receive an increase during reclassification is without support. If Grievant truly believed he should have received a salary increase at the time of the reclassification, he should have addressed the matter then. The only true issue in this grievance is whether Respondent's actions in decreasing Grievant's salary as a part of his demotion were proper and within its purview.

It is clear the Respondent has the ability to demote Grievant. Rule 11.04, of the Administrative Rules and Regulations of the West Virginia Division of Personnel(DOP), entitled "Demotions," provides, in pertinent part, that “(a)n appointing authority may demote a permanent employee after presenting the employee with the
reasons for the demotion stated in writing, and allowing the employee a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his/her designee.” Grievant does not dispute Respondent's ability to demote him or the grounds for his demotion.

Section 3.27, of DOP's Administrative Rules and Regulations, Definitions, defines “demotion” as “a change in the status of an employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the pay range assigned to a classification.”

Division of Personnel Administrative Rules and Regulations, Rule 5.06, Pay on Demotion, provides:

> The pay of an employee who is demoted and whose current pay rate is above the maximum pay rate for the new classification shall be reduced to at least the maximum pay rate of the new classification. The employee's salary may remain the same if his/her pay is within the pay range of the new classification, or his/her pay may be

reduced to a lower pay rate in the newrange.

While Rule 5.06 clearly requires the salary of an employee being demoted to be reduced to at least the maximum rate of the lower salary range, it also gives the employer the discretion to reduce the employee's salary to a lower pay rate within the new range.

Respondent instituted a demotion without prejudice for Grievant on April 8, 1998. This action changed his classification from CO IV, pay grade 11, with a salary of $24,168.00, to CO II, pay grade 9, with a salary of $21,396.00. The salary range for pay grade 9 is $17,256.00 to $28,104.00. Grievant's salary, while not at the top of the spectrum, is easily within the salary range of pay grade 9.

While Grievant appears to have been a fairly exemplary employee prior to this incident which led to his demotion, often assuming responsibility for extra duties without compensation, there is not sufficient evidence to cause the undersigned to question the “fairness” of the amount of Grievant's salary decrease. This Grievance Board has held that "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. Dept. of Health and Human Resources/Welch Emergency Hosp.,Docket No. 96-HHR-183 (Oct. 3, 1996). See Parham v. Raleigh County Bd. of Educ., Docket No. 91-41-131 (Nov. 7, 1991).

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

CONCLUSIONS OF LAW

1. In non-disciplinary matters a grievant must prove all of the allegations constituting his grievance by a preponderance of the evidence. Crow v. W. Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989).

2. Division of Personnel Administrative Rules and Regulations, Rule 5.06, clearly requires the salary of an employee being demoted to be reduced to at least the maximum rate of the lower salary range, but also gives the employer the discretion to reduce the employee's salary to a lower pay rate

within the new range. Grievant did not establish a violation of this administrative regulation.

3. "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. Dept. of Health and Human Resources/Welch Emergency Hosp., Docket No. 96-HHR-183 (Oct. 3, 1996). See Parham v. Raleigh County Bd. of Educ., DocketNo. 91-41-131 (Nov. 7, 1991).

4. In this case, the record does not reveal that Respondent abused its discretion with reducing Grievant's salary.

Accordingly, this grievance is **DENIED.**

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7(1998). 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.

Dated: July 10, 1998

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RANDY K. MILLER

ADMINISTRATIVE LAW JUDGE

Footnote: 1

The West Virginia Division of Personnel (DOP) was made a party at Level IV.

Footnote: 2

Grievant's monthly salary was reduced from $2,014.00 to $1,783.00.

Footnote: 3

Grievant was also suspended for five days, which he does not contest as a part of this grievance.

Footnote: 4

DOP chose to not have a representative attend the hearing, but instead submitted a letter prior to the hearing from its Assistant Director, Lowell D. Basford, outlining its arguments in the case.