JOHN SHANNON,

Grievant,

v. DOCKET NO. 97-CORR-540

WEST VIRGINIA DIVISION OF CORRECTIONS/

PRUNTYTOWN CORRECTIONAL CENTER,

Respondent.

DECISION

John Shannon, Grievant, filed this grievance against his employer, the West Virginia Division of Corrections/Pruntytown Correctional Center, Respondent, on May 4, 1997. Grievant, a Correctional Officer II, alleges:

> I am protesting the procedure in which my write-ups on [three] (3) individual Inmates were handled. The write- ups on inmates. Garland Harless and Mark Stidham were dropped on Inmates say-so alone. The write-up on Robert Larie for "Disobeying a direct order" for his insolence and attitude was dropped to a warning without notifying me.

As relief, he requests "[t]hat these said write-ups be re- instated on the same merit they were written on and charge as such."

Grievant was denied relief at the lower levels of the grievance procedure. At Level IV, an evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on January 21, 1998, and the case became mature for decision at that time because the parties did not elect to submit proposed findings of fact and conclusions of law.

The following findings of fact were derived from the record, and proved by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is a Correctional Officer (CO) II for Respondent at Pruntytown Correctional Center (PCC). He has been employed by Respondent for the last eight years.

2. Grievant wrote an Incident Report on Inmate Garland Harless concerning an incident which

occurred on April 12, 1997. At the time of the incident, Grievant was supervising church services in PCC's auditorium, and Inmate Harless was talking, almost continuously, through the service. Grievant thought Inmate Harless should have been charged with Creating a Disturbance.

3. Grievant wrote a second Incident Report on Inmate Harless concerning an incident which occurred on April 14, 1997. At the time of the second incident, Grievant was supervising inmates eating breakfast in PCC's dining hall, and Inmate Harless, desiring to discuss the April 12, 1997 incident, approached Grievant. Grievant had to tell Inmate Harless to leave the dining hall several times, and thought the Inmate should have been charged with Disobeying an Order.

4. Grievant gave both Incident Reports to Shift Commander James Reed.

5. It is the Shift Commander's duty to read Incident Reports, and determine the appropriate action, if any, which should be taken against an inmate.

6. Shift Commander Reed did not charge Inmate Harless witha violation concerning either incident. Shift Commander Reed “dropped” any charges which may have resulted from the incident reports.

DISCUSSION

Grievant was the only witness to testify, and Respondent did not call any witnesses or offer any documentary evidence. However, even assuming Grievant's testimony was correct in every detail, the undersigned could still not grant this grievance. Grievant has failed to allege or show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement.

The Grievance Board has previously ruled that it “is without authority, statutory or otherwise, to order that disciplinary action be taken against an employee, or to impose criminal penalties. See Daugherty v. Bd. of Directors, Docket No. 93-BOD- 295 (Apr. 27, 1994); Dagett v. Wood County Bd. of Educ., Docket No. 91-54-497 (May 14, 1992).” Rice v. W. Va. Dept. of Transp., Docket No. 96-DOH-288 (Apr. 30, 1997). That holding can be extended to this grievance where Grievant is seeking to have charges reinstated so that inmates may be disciplined. Moreover, this grievance should not be granted merely because Grievant has different ideas on how the Pruntytown Correctional Center should be managed. See Phillips v. W. Va. Div. of Corrections, Docket No. 96-CORR-112 (June 19, 1996).

Although Grievant's grievance statement refers to a Mark Stidham and Robert Larie, Grievant did

not present any evidenceconcerning those individuals. In summary, Grievant failed to allege or prove any grounds upon which relief may be granted.

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 nondisciplinary matters the grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Unrue v. W. Va. Div. of Highways, Docket No. 95-DOH- 287 (Jan. 22, 1996).

2. Grievant has failed to allege or show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation or written agreement.

3. Grievant failed to prove by a preponderance of the evidence that he was entitled to any relief.

Accordingly, the grievance is **DENIED**.

Any party 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.

Dated: January 30, 1998. _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE