RONALD BEATTY,

Grievant,

v.

DOCKET NO. 98-RJA-345

REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY/SOUTH CENTRAL REGIONAL JAIL,

Respondent.

D E C I S I O N

Grievant, Ronald Beatty, filed this grievance on August 12, 1998, protesting his dismissal from the Regional Jail and Correctional Facility Authority/South Central Regional Jail ("Respondent"), effective August 7, 1998. The grievance was denied at levels one and two, and a level three hearing was conducted on August 21, 1998. The grievance was again denied by James O. Strother, Grievance Evaluator, by decision dated August 28, 1998. Grievant appealed to level four on September 4, 1998, and a hearing was conducted in the Grievance Board's Charleston, West Virginia, office on November 2, 1998, at which time this case became mature for decision. Grievant appeared pro se, and Respondent was represented by Chad M. Cardinal, Esq., Assistant Attorney General.

SUMMARY OF EVIDENCE

Level Three Respondent's Exhibits

Ex. 1 -

Investigation report prepared by Sgt. R. E. Rogers, dated July 22, 1998.

Ex. 2 -

July 14, 1998 letter of suspension from John L. King, III, to Ronald E. Beatty.Ex. 3 - Transcript of tape recorded interview of Ronald E. Beatty by First Sgt. Henry R. Robinson, Jr., dated August 6, 1998.

Ex. 4 -

August 7, 1998 letter of dismissal from Jimmy B. Plear, Chief of Operations, to Ronald E. Beatty.

Ex. 5 -

Copy of Grievance Form filed by Ronald E. Beatty, dated September 12, 1998 (but should be August 12, 1998).

Ex. 6 -

August 12, 1998 level one response from Sgt. Charles Carter to Ronald E. Beatty.

Ex. 7 -

Undated letter from Ronald E. Beatty to John L. King, III, appealing to level two.

Ex. 8 -

August 13, 1998 level two response from John L. King, III, to Ronald E. Beatty.

Ex. 9 -

August 14, 1998 notice from Jimmy B. Plear, Chief of Operations, to Ronald E. Beatty regarding level three grievance hearing.

Testimony

Grievant testified in his own behalf. Respondent presented the testimony of John L. King, III.

FINDINGS OF FACT

The material facts in this grievance are not in dispute. Grievant, a Correctional Officer at the South Central Regional Jail, engaged in sexual intercourse with a female inmate on July 8, 1998, a violation of the Regional Jail's Code of Conduct for employees. Grievant does not deny this conduct.

DISCUSSION

Grievant's position of Correctional Officer is classified exempt thus making him an “at-will” employee of Respondent. W. Va. Code §§ 31-20-5, 31-20-27. Roach v. Regional Jail Auth., Docket No. 92-RJA-107 (Oct. 8, 1993); Thompson v. Regional Jail Auth., Docket No. 94-RJA-139 (July 22, 1994); Logan v. Regional Jail Auth., Docket No. 94-RJA-225 (Nov. 29, 1995). See also Roach v. Regional Jail Auth., 198 W. Va. 694, 482 S.E.2d 679 (1996). As an at-will employee, Grievant can be terminated for good reason, no reason, or bad reason, provided that he is not terminated for a reason that violates a substantial public policy. Williams v. Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993); Roach, supra; Harless v. First Nat'l Bank in Fairmont, 162 W. Va. 116, 246 S.E.2d 270 (1978); Bowe v. Charleston Area Medical Center, 189 W. Va. 145, 428 S.E.2d 773 (1993).

Grievant does not dispute that he engaged in the conduct with which he was charged. Rather, Grievant claims that he has been discriminated against because others engaging in similar conduct have not been dismissed. W. Va. Code § 29-6A-2(d) defines “discrimination” as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” In order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

(a)

that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b)

that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular; and

(c)

that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996); Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996). Once the

grievant establishes a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for theemployment decision. Smith, supra; see Tex. Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Grievant has failed to establish a prima facie case of discrimination. He has failed to identify any other Correctional Officer who has engaged in sexual conduct with an inmate who has not been dismissed from his or her position.

CONCLUSIONS OF LAW

1. Grievant's position of Correctional Officer is classified exempt, thus making him an “at-will” employee of Respondent. W. Va. Code §§ 31-20-5, 31-20-27; Logan v. Regional Jail Auth., Docket No. 94-RJA-225 (Nov. 29, 1995); Thompson v. Regional Jail Auth., Docket No. 94-RJA-139 (July 22, 1994); Roach v. Regional Jail Auth., Docket No. 92-RJA-107 (Oct. 8, 1993). See also, Roach v. Regional Jail Auth., 198 W. Va. 694, 482 S.E.2d 679 (1996).

2. As an at-will employee, Grievant can be terminated for good reason, no reason, or bad reason, provided that he is not terminated for a reason that violates a substantial public policy. Roach, supra; Williams v. Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993); Bowe v. Charleston Area Medical Center, 189 W. Va. 145, 428 S.E.2d 773 (1993); Harless v. First Nat'l Bank in Fairmont, 162 W. Va. 116, 246 S.E.2d 270 (1978).

3. W. Va. Code § 29-6A-2(d) defines “discrimination” as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.”

4. In order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show: (a)

that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b)

that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular; and

(c)

that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s) and were not agreed to by the grievant in writing.

Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996); Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996).

5. Grievant has failed to establish a prima facie case of discrimination, and therefore, has failed to establish a violation of a substantial public policy. See Wilhelm v. W. Va. Lottery Comm'n, 198 W. Va./ 92, 479 S.E.2d 602 (1996).

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 to 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: December 3, 1998