RONALD E. FAWCETT,

Grievant,

v. **Docket No. 99-DNR-059**

DIVISION OF NATURAL RESOURCES,

Respondent.

DECISION

Ronald E. Fawcett (Grievant), employed by the Division of Natural Resources (DNR) as a Park Superintendent I, challenges DNR's decision to revoke his status as a Special Conservation Officer. This grievance was filed at level one on January 14, 1998. A consolidated level one and two meeting was held on March 4, 1998, followed by a written decision, denying the grievance. (See footnote 1) Grievant appealed to level three, where a hearing was conducted on June 11, 1998, before Jack McClung, Esquire. The grievance was subsequently denied in a level three decision dated October 7, 1998. Grievant appealed to level four on February 9, 1999. A level four hearing was initially scheduled for April 28, 1999, but the parties decided to submit this matter for consideration based upon the record developed below. This grievance became mature for consideration on May 10, 1999, upon receipt of the parties' written proposals. (See footnote 2)

The following findings of fact are made from a preponderance of the testimonial and documentary evidence submitted at the lower levels.

Findings of Fact

1. Grievant is employed by DNR as a Park Superintendent I. He is presently the superintendent for Valley State Park in Marion and Taylor Counties, where he has been assigned since January 1, 1995.

2. Grievant was previously assigned as a park superintendent at Pleasant Creek Wildlife Management Area (Pleasant Creek) from 1983 through 1994. While at Pleasant Creek, Grievant

shared the superintendent responsibilities with another individual, and Grievant's chief responsibilities were in the campground area.

3. While assigned to Pleasant Creek, Grievant had law enforcement duties, and received certification as a Special Conservation Officer (SCO). SCOs receive training in law enforcement at the West Virginia State Police Academy, where they also are trained in the use of firearms.

4. As a result of a series of incidents and complaints regarding Grievant's law enforcement activities at Pleasant Creek, Colonel Richard Hall, Chief of DNR Law Enforcement, revoked Grievant's SCO status on December 20, 1994. Grievant suffered no demotion or loss of salary as a result.

5. When Grievant was reassigned to Valley State Park, he remained a Superintendent I, and was given responsibility for the management of the entire park.

6. The classification specification for Park Superintendent I (10/16/93) provides, in pertinent part:

Nature of Work

> An employee in this class is responsible for the management, operation, maintenance, and protection of moderately developed state-owned park, forest areas providing services and facilities to the public which may emphasize recreation; camping; lodging; dining; natural historic, or scenic response preservation and interpretation or assisting in the management of more complex operations. . . .
>
> May have “off-facility” responsibilities or special assignments that take them from their principal area of assignment including . . . law enforcement duties. Employee is guided by statements of policy and outlined assignments from supervisory personnel but is required to exercise considerable discretionary judgement and initiative in planning and directing facility programs in the areas of building maintenance, equipment maintenance, grounds maintenance, housekeeping, sanitation, public relations, law enforcement, ...

* * * *

Minimum Qualifications

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> SPECIAL REQUIREMENT: Must be licensed or eligible to operate a motor vehicle in West Virginia. Must be fit enough to discharge duties including law enforcement. Must be able to successfully complete required special conservation officer training and

> pistol qualification requirements as established by Law Enforcement Section, Division of Natural Resources.

Discussion

In a non-disciplinary matter, a grievant must prove the allegations in his complaint by a preponderance of the evidence. Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). Grievant contends that his job description requires SCO certification and that he is unable to fulfill his required responsibilities without it, specifically regarding the authority to carry a firearm. (See footnote 3)

Respondent contends that it acted within its statutory authority when it revokedGrievant's SCO status. It argues that the following statute specifically authorizes the action taken, which states in pertinent part: (See footnote 4)

> The chief conservation officer, acting under supervision of the director, is . . . authorized to select and appoint as special conservation officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief conservation officer, **when such action is considered necessary because of law-enforcement needs.** . . . The jurisdiction of the person appointed as a special conservation officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.
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> * * * *
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> The chief conservation officer, with the approval of the director, **has the power and authority to revoke any appointment of . . . a special conservation officer at any time.**

W. Va. Code § 20-7-1 (1996) (Emphasis added.)

As DNR has noted, the statute does not place any restrictions or specifications upon the chief conservation officer's authority to revoke SCO status. In addition, SCO status is not a requirement for park superintendents, but it is within the authority of the chief conservation officer to decide whether or not the law enforcement needs of an area justify it. The evidence submitted at level three

demonstrates that, while Grievant was assigned to Pleasant Creek, there was a more urgent need for him to have law enforcement authority, because Pleasant Creek has a hunting area. Conversely, Valley State Park is a state facility where hunting is prohibited, so the need for law enforcement is notimperative.

In addition, Grievant has misinterpreted the classification specification for Park Superintendent I. He contends that, because the ability to complete SCO training is listed as a “Minimum Qualification” in the specification, he is required to be an SCO to perform his job duties. However, the specification does not state that SCO status is required in order for an individual to be classified as a Park Superintendent I. It merely states that an employee in this classification “must be able” to complete the training, presumably if it is deemed to be required. If SCO status were a requirement of the position, the classification specification would state so. It appears that the specification contemplates that some Park Superintendents will be required to perform law enforcement duties, and in such cases, the employee must meet the minimum qualifications of being fit enough to discharge law enforcement duties and be able to complete the SCO training.

Grievant has also argued that, even at Valley State Park, he cannot offer complete protection to the park and its patrons without law enforcement authority. He contends that, if a visitor carrying a firearm poses a danger to other park patrons, he can offer no protection to those patrons unless he is also carrying a firearm, along with having the authority to arrest and apprehend the individual. However, in a state park where hunting is prohibited, it would seem that such instances would occur infrequently. Also, as noted by DNR, Grievant can call nearby law enforcement authorities for assistance when such incidents occur. In addition, conservation officers are on call 24 hours a day and are specifically available for law enforcement needs in state parks. Grievant has not proven by a preponderance of the evidence that he is unable to perform his required job dutieswithout SCO status.

Grievant has failed to establish that DNR's action in revoking his SCO status was beyond its discretionary authority, nor has he proven any abuse of the broad discretion granted by W. Va. Code § 20-7-1.

Consistent with the foregoing findings and discussion, the following conclusions of law are reached.

Conclusions of Law

1. In a non-disciplinary matter, a grievant must prove the allegations in his complaint by a preponderance of the evidence. Wargo v. W. Va. Dept. of Health & Human Resources, Docket Nos. 92-HHR-441/445/446 (Mar. 23, 1994); Payne v. W. Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

2. Pursuant to the provisions of W. Va. Code § 20-7-1, the chief conservation officer for DNR has the authority to appoint special conservation officers and to revoke those appointments at any time.

3. The classification specification for Park Superintendent I does not require that all individuals holding this class title must be certified as special conservation officers.

4. Grievant has failed to establish by a preponderance of the evidence that DNR acted beyond its broad discretionary authority or abused its discretion in revoking his status as a special conservation officer.

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, and 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. 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: June 2, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The decision is undated and does not reflect who authored it.

Footnote: 2

Grievant was represented by John S. Kaull, Esquire, and DNR was represented by Senior Assistant Attorney General

Daynus Jividen.

Footnote: 3

Grievant had argued discrimination at level three, but made no mention of it at level four; therefore, it is presumed that Grievant has withdrawn that argument.

Footnote: 4

Respondent had raised the issue of timeliness at level three. However, that issue was not addressed in the level three decision, and Respondent did not discuss it in its level four submission. Accordingly, it is presumed that this argument has been abandoned.