

DENNIS BRACKMAN, et al.,

Grievants,

v.

Docket No. 99-CORR-374D2 [\(See footnote 1\)](#) *

WEST VIRGINIA DIVISION OF CORRECTIONS/

ANTHONY CORRECTIONAL CENTER,

Respondent.

FINAL DEFAULT ORDER

Dennis Brackman, Calvin Cox, Twylia Dorsey, Robin Kershner, Michael McQuain, and Rebekah R. Ward (Grievants) are employed by the West Virginia Division of Corrections (CORR), as Correctional Officers at the Anthony Correctional Center (ACC). They filed this grievance July 18, 1999, requesting that they be credited with annual and sick leave for the period of February 2, 1999, through May 31, 1999. Grievants claimed a default by CORR at Level I.

By letter dated September 13, 1999, Grievants appealed their default claim to Level IV. A Level IV default hearing was held on December 2, 1999, before the undersigned administrative law judge, at the Grievance Board's Beckley office. Grievants were represented by Jack Ferrell of the Communications Workers of America, and CORR was represented by Leslie Kiser Tyree, Esq. An Order Granting Default, Brackman et al. v. W. Va. Div. of Corrections/Anthony Correctional Center, Docket No. 99-CORR-347D, was issued by the undersigned administrative law judge on April 10, 2000.

As noted in that Order, CORR, within five days of the receipt of that written Order Granting Default, could have requested a Level IV hearing to present evidence that the remedy sought by the

Grievants was contrary to law or clearly wrong. W. Va. Code § 29- 6A-3(a)(2). CORR received the Order Granting Default in this grievance on April 11, 2000, as evidenced by a return receipt card signed by Susanna Hall and stamped April 11, 2000. CORR did not request such a hearing, See Hickman v. W. Va. Div. of Corrections/Mount Olive Correctional Complex, Docket No. 98-CORR-314D2 (May 19, 1999), and this second-stage default claim became mature for decision on April 19, 2000.

Accordingly, it is determined that Grievants have prevailed by default in this grievance. Because it has been presumed, in accordance with W. Va. Code § 29-6A- 3(a)(2), that Grievants prevailed on the merits of their grievance, this grievance is **GRANTED**, and Respondent CORR is Ordered to credit Grievants with annual and sick leave for the period of February 2, 1999, through May 31, 1999.

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. 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.

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ANDREW MAIER
ADMINISTRATIVE LAW JUDGE

Dated April 27, 2000

[Footnote: 1](#)

*A "2" has been added to the docket number to distinguish this decision from the "Order Granting Default," Brackman et al. v. W. Va. Div. of Corrections/Anthony Correctional Center, Docket No. 99-CORR-347D (Apr. 10, 2000), previously

issued in this matter.