

**TERESA BROWN,**

**Grievant,**

**v.**

**Docket No. 99-CORR-504**

**WEST VIRGINIA DIVISION OF CORRECTIONS/**

**MOUNT OLIVE CORRECTIONAL COMPLEX,**

**Respondent.**

### **DECISION**

Teresa Brown (Grievant) is employed by the West Virginia Division of Corrections (CORR), as a Correctional Officer (CO) II at the Mount Olive Correctional Complex (MOCC). She filed this grievance on October 15, 1999, alleging that CORR failed to notify her of an interview for a Corporal's position. Grievant seeks an opportunity to interview for the position, and otherwise to be made whole.

This grievance was denied at Level I, on October 15, 1999, by Associate Warden of Programs Teresa Waid; and at Level II, on October 25, 1999, by Warden's Designee Linda Coleman. A Level III hearing was held on November 15, 1999, before Hearing Evaluator Sylvia Haney. Grievant was represented at this hearing by Steven Berryman, and CORR was represented by Kathryn Lucas.

[\(See footnote 1\)](#) This grievance was denied at Level III, on November 18, 1999, by Commissioner Paul Kirby. A Level IV hearing was scheduled for January 18, 2000. This hearing was continued, on CORR's motion, for good cause shown, until March 30, 2000. CORR moved for a second continuance, which was denied, by an Order dated March 22, 2000, for failure to show good cause. The Level IV hearing was held on March 30, 2000, before the undersigned administrative law judge, at the Grievance Board's Beckley office. Grievant was represented at this hearing by Steven

Berryman, and CORR was represented by Hilda Williams. The parties were given until May 26, 2000, to submit proposed findings of fact and conclusions of law, Grievant did so, and this grievance became mature for decision on that date. The following Findings of Fact pertinent to the resolution of this matter have been determined based upon a preponderance of the credible evidence of record.

### **FINDINGS OF FACT**

1. Grievant is employed by CORR at MOCC as a CO II.
2. On a date not reflected in the record of this grievance, MOCC posted several Corporal's positions. Grievant applied for one of the positions.
3. CORR sent Grievant a letter, via first-class mail, on or about September 21, 1999, informing her of the interviews.
4. Other candidates for the Corporal positions were similarly informed of their interviews.
5. Interviews for the positions were conducted on September 29, 1999.
6. Grievant was on leave on September 29, 1999, and did not attend the interviews.

### **DISCUSSION**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant alleges that CORR failed to notify her of an interview for a Corporal's position. However, a preponderance of the credible evidence of record establishes that MOCC informed her of her interview.

Diane Martin, an Office Assistant at MOCC, credibly testified that she first put Grievant's notification in a pink envelope with MOCC's receptionist, but that when Grievant did not pick it up, she mailed it to her the next morning, September 21, 1999; that the notification was mailed first class and

was never returned to MOCC; that Grievant's interview file was then placed with those of the nine other candidates; that Grievant called MOCC on September 20, 1999, and was informed by Ms. Martin of the interview; and that she made a notation on Grievant's file that "[s]he called 9-20-99 about interview. Off sick. Mailed notice 9-21-99 DM." Teri Arthur, MOCC's Human Resources Manager, credibly testified that Grievant was notified of the interview by first-class mail; that Ms. Martin, whose job it is to inform candidates of their interviews, gets no complaints about her work and gets excellent evaluations; that Grievant has been hard to contact and has missed previous interviews; that, as a result of these events, MOCC now informs candidates of their interviews by certified mail; and that notations such as the one testified to by Ms. Martin are sometimes made on candidates' files.

Major Paul Parry, Chief Correctional Officer of MOCC, credibly testified that he sat on the interview board at issue in this grievance; that Grievant's folder was among the ten candidate folders that he was given for the interviews; that he did not recall Ms. Martin's notation on Grievant's file, but that he could have missed it; and that Grievant did not attend the interview.

The credible testimony of these three witnesses paints a plausible picture of a notice being sent from MOCC that, for whatever reason, might not have been received by Grievant. It is significant that nine other candidates apparently received notice of their interviews, and that Grievant's interview file was among the files given to Major Parry before the interviews. Grievant presented no credible evidence to show that her notice was not sent in the manner CORR claims. Accordingly, Grievant has failed to prove her grievance by a preponderance of the evidence.

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

### **CONCLUSIONS OF LAW**

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.19 (1996); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health

& Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

2. Grievant failed to prove, by a preponderance of the evidence, that CORR failed to notify her of an interview for a Corporal's position.

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. 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: June 9, 2000**

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[Footnote: 1](#)

*The transcript of this hearing contains numerous gaps or omissions.*