SANDRA J. SCHULTZ,

Grievant,

v. **Docket No. 00-CORR-349**

DIVISION OF CORRECTIONS,

Respondent.

D E C I S I O N

Grievant, Sandra J. Schultz, employed by the Division of Corrections (Respondent) as a Correctional Officer I at St. Mary's Correctional Center (SMCC), filed a level one grievance on September 18, 2000, after she became ill and was hospitalized for complications associated with hypoglycemia. Grievant asserts that had she been given a break at the time it was requested, the situation could have been averted. For relief, Grievant requests that Respondent compensate her for all medical costs not covered by her insurance, and reinstatement of all sick leave she was required to use. Following denials at all lower levels, the grievance was advanced to level four on November 6, 2000. An evidentiary hearing was conducted at the Grievance Board's Morgantown office on January 11, 2001, at which time Grievant appeared pro se, and Respondent was represented by Leslie K. Tyree, Esq. Both parties waived the opportunity to file proposed findings of fact and conclusions of law, and the matter became mature for decision at the close of the hearing.

The following findings of fact are derived from the record in its entirety, including numerous exhibits and the testimony of Grievant and Tony LeMasters, Deputy Warden at SMCC, made part of the record at level four.

Findings of Fact

1. Grievant has been employed as a Correctional Officer I assigned to St. Mary's Correctional Center at all times pertinent to this grievance.

2. On Friday, September 8, 2000, while on duty Grievant began having difficulty focusing and felt dizzy. At approximately 1:20 p.m., she requested a break of Unit Manager Mark Wegman.

3. When speaking with Mr. Wegman, Grievant expressed her need for a break, but did not state that she was ill. Mr. Wegman indicated that he would send relief, but was involved in admitting inmates, and apparently forgot Grievant's request.

4. Grievant responded to a call from another employee, Sandy Grimes, at approximately 1:50 p.m. During this conversation, Grievant revealed that she was not feeling well and had requested a break. Ms. Grimes advised Grievant that Joyce Hardman was in her office and to try calling her to obtain relief.

5. At approximately 1:58 p.m. Grievant was relieved to take a break, and during the next hour her condition continued to deteriorate to the point she was taken to St. Joseph's Hospital, where she was admitted and remained two days.

6. Grievant was required to use fifty-six hours of sick leave, and incurred medical costs of $1,026.05, as a result of this incident.

Discussion

In a non-disciplinary grievance, the grievant bears the burden of proving the charges in her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Crouser v. W. Va.Dept. of Tax & Revenue, Docket No. 00-T&R-239 (Sept. 21, 2000); W. Va. Code § 29-6A-6.

At level four, Grievant initially claimed that Respondent, in general, did not provide breaks as required, but determined that she would limit her complaint to the incident of September 8, 2000. Grievant does not allege a violation of any rule, regulation, policy, or law, but asserts that Mr. Wegman should have been aware of her situation and promptly relieved her. In response to Respondent's claim that relief would have been provided immediately had she advised anyone that she was ill, Grievant asserts that she has a right to privacy, and that to require her to reveal her condition to the thirty-two inmates she was supervising would “deny [her] valuable rights and freedoms”, and place her “in false light in front of the inmate population and staff.” (See footnote 1)

Deputy Warden LeMasters testified that breaks are provided, and that Grievant had a break at 9:00 a.m., and a lunch break from 10:45 to 11:15 a.m. on September 8, 2000, prior to being relieved at 1:58 p.m. He confirmed that, at times, an employee may have to wait for a break until a staff member is available, but if an employee reports she is ill, relief will be provided within a few minutes. He explained that the employee is not required to specify the exact nature of her illness, but it is her responsibility to advise her supervisor of her condition as she was not only placing her own well

being at issue , but was potentially creating a security issue. Mr. LeMasters noted that Grievant was replaced within eight minutes after advising Sandy Grimes that she was not feeling well. While Grievant's reluctance to state her physical condition in close proximity to the inmates is understandable, it simply would have been the correct procedure to follow in order to secure quick relief. Grievant's expectation that Mr. Wegman knew, or should have known, that she was in physical distress is unrealistic. Even though he had discussed her hypoglycemia with her in the past, the Unit Manager had no reason to be aware that was why Grievant needed a break at that specific time. By Grievant's own admission, it was a busy time at SMCC on September 8, as a number of new inmates were being admitted. Further, she stated at level four that she had only been recently diagnosed with hypoglycemia, and did not realize what was happening herself when she first called for a break. Her testimony at level four was that she thought she was getting a sinus headache, and only understood what was happening later. Had Grievant simply stated that she was ill when she initially spoke with Mr. Wegman, without giving any specific details, she would have been relieved much earlier. Continuing to stay on duty while her condition was deteriorating only caused Grievant additional discomfort, and could well have created a security risk had the inmates chosen to take advantage of the situation.

Grievant's illness was very unfortunate; however, she has simply failed to prove that Respondent violated any rule, regulation, policy, or law. Absent a finding of any wrongdoing on Respondent's part, no relief may be awarded.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In a non-disciplinary grievance, the grievant bears the burden of proving the charges in her grievance by a preponderance of the evidence. Procedural Rules of theW. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Crouser v. W. Va. Dept. of Tax & Revenue, Docket No. 00-T&R-239 (Sept. 21, 2000); W. Va. Code § 29-6A-6.

2. Grievant failed to prove that Respondent acted in violation of any rule, regulation, policy, or statute, or knowingly engaged in any action, policy or practice constituting a substantial detriment to, or interference with, her effective job performance, health or safety on September 8, 2000.

Accordingly, the 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 EmployeesGrievance 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: January 30, 2001 _____

Sue Keller

Senior Administrative Law Judge

Footnote: 1

Grievant submitted 5 U.S.C. §552a, in support of her claimed right to privacy; however, that section deals with records maintained on individuals, and is not applicable in this instance.