DAVID PEACOCK and RANDY STEMPLE,

Grievants,

v. Docket No. 01-CORR-542

WEST VIRGINIA DIVISION OF CORRECTIONS/

DENMAR CORRECTIONAL CENTER and

DIVISION of PERSONNEL,

Respondent.

D E C I S I O N

Grievants, David Peacock and Randy Stemple, filed this grievance against their employer, the Division of Corrections ("CORR") on September 18, 2001. The Statement of Grievance alleges they were denied the right to be interviewed for Correctional Officer IV positions, because the Division of Personnel ("DOP") incorrectly deemed they did not meet the minimum qualifications for the positions. The relief sought was promotion to the rank of Correctional Officer IV and placement into the positions with appropriate pay increases.

This grievance was denied at all lower levels. Grievants appealed to Level IV on October 22, 2001, and the parties agreed to submit this case on the record developed below. This case became mature for decision on December 7, 2001, the date of the receipt of the lower level record. Grievants submitted a list of points they wished to be considered at Level IV, and Respondent elected not to submit proposed Findings of Fact and Conclusions of Law. (See footnote 1)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant Peacock is currently employed as a Correctional Officer III and has been employed by CORR since June 1997. He was promoted to a Correctional Officer III in March

2000, and he had worked approximately four years and two months for CORR at the time his qualifications were reviewed for the Correctional Officer IV position.

2. Grievant Stemple is currently employed as a Correctional Officer II and has been employed by CORR since May 1998. Prior to his employment with CORR, he was employed as a police officer with the Marlinton Police Department. He was promoted to a Correctional Officer II in January 2000, and he had worked approximately four years and five months in law enforcement at the time his qualifications were reviewed for the Correctional Officer IV position.

3. Grievants are high school graduates and have completed the Apprenticeship Program, during their time with CORR. Neither Grievant has an Associate Degree.

4. On August 1, 2001, CORR posted vacancies for Correctional Officer IV's, and identified the required minimum qualifications in the posting.

5. Grievants applied for the positions, and they were originally scheduled for interviews.

6. On September 5, 2001, before the interviews were conducted, CORR received notification from DOP that Grievants did not meet the minimum qualifications for the positions, as they had "an insufficient amount of work experience." Grt. Ex. No. 6, at Level III.

7. By letter dated September 10, 2001, CORR notified Grievants DOP had reviewed their files, and they did not meet the experience requirement for promotion to Correctional Officer IV. Resp. Ex. No. 1 & 1a, at Level III.

8. CORR's Policy 132.02 Section B on "Correctional Officer Promotion" states "[a]ll applicants must meet the minimum qualifications established by the Division of Personnel for any vacancy."

9. Attachment 1 to CORR Policy 132.02 identifies the number of years of experience required for promotion to Correctional Officer IV as five with the completion of the Apprenticeship Program, and nine without completion of this Program.

Issues and Arguments

Grievants made two arguments. One, DOP was incorrect in its interpretation of the minimum qualifications section of the Correctional Officer IV classification specification. Two, DOP had in the past interpreted the minimum qualifications section differently for the

Correctional Officer III classification, and the current interpretation was inconsistent with that prior interpretation. Grievants want to count their approximately four years of experience twice: to meet both the training and experience requirement.

Respondent CORR asserts there were no violations of any rules and regulations, and it followed, as required, DOP's decision that Grievants did not meet the minimum qualifications for the positions as stated in the classification specification. DOP's response to the inconsistency issue was it could not speak to what had happened before, and was only addressing the issue raised by the grievance, the minimum qualifications for theCorrectional Officer IV classification. (See footnote 2) DOP and CORR maintained Grievants were not minimally qualified for the positions, as they did not possess enough experience to meet both the training and experience requirements. Years of experience could not be counted twice.

The key issue in this grievance is how DOP's classification specifications should be interpreted. Grievant disagrees with DOP's interpretation of its of the minimum qualifications for the Correctional Officer IV classification. DOP and CORR aver the requirements are clearly stated within the classification specification and CORR's Policy 132.02.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96-23- 174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

The minimum qualifications listed on the classification specification for Correctional Officer IV are as follows:

Training: [ONE] An Associate Degree in criminal justice or a related field from an accredited college or university.

Substitution:

Full-time or equivalent part-time paid experience as a correctional officer may be substituted for the required college training on a year-for-year basis.

AND

[TWO] Graduation from a standard high school or the equivalent, plus successful completion of a fundamental training course for correctional officer, police officer, military police officer, probation/parole officer, or related area AND the Correctional Officer Apprenticeship Program.

OR

Graduation from a standard high school or the equivalent plus successful completion of a fundamental training course as described above AND four years of full-time or equivalent part-time paid experience as a correctional officer, police officer, military police officer, probation/parole officer, or in criminal justice or related field.

Substitution:

Successfully completed study from an accredited college or university in corrections, criminal justice or related field with a minimum of two semester hours in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

Experience:

Three years of full-time or equivalent part-time paid experience as a correctional officer, police officer, probation/parole officer or related experience.

Substitution:

Successfully completed study from an accredited college or university in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

As explained by Lynn Schillings, DOP Senior Personnel Specialist at Level III, Grievants are covered under TWO, as they do not have an Associate Degree, but do possess a high school diploma. Ms. Schillings presented DOP's interpretation of the classification specification. To meet just the training requirement for a Correctional Officer IV, Grievants must have completed the Apprenticeship program and possess twoadditional years of

experience. Grievants meet the minimum qualifications for the training requirement for the Correctional Officer IV classification.

To meet the just the experience requirement, Grievants must possess an additional three years of experience, for a total of five years of experience to meet all minimum qualifications: two for the training aspect and three more for the experience aspect. This interpretation is supported by the classification specification and CORR Policy 132.02, as discussed in Finding of Fact 9.

It must be noted that when the plain language of a policy or regulation does not compel a different result, deference must be extended to the agency in interpreting its own rules and regulations. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). Where the language in a policy or regulation is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable deference to the agency's interpretation of its own policy. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA- 420 (May 7, 1998). See generally W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993). Thus, DOP's interpretation of its classification specification is entitled to deference by this Grievance Board, unless it is contrary to the plain meaning of the language, or is inherently unreasonable. Dyer, supra. Since DOP's interpretation is not contrary to the plain meaning of the language contained in the class specification, it is entitled to deference.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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); Howell v. W. Va. Dep't of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. See also Holly v. Logan County Bd. of Educ., Docket No. 96- 23-174 (Apr. 30, 1997);

Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. When the plain language of a policy does not compel a different result, deference must be extended to the agency in interpreting its own rules and regulations. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). Where the language in a rule or regulation is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable deference to the agency's interpretation of its own regulations or classification specifications. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA- 420 (May 7, 1998). See generally W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT- 978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993).

3. DOP's interpretation of its classification specification for the Correctional Officer IV classification is reasonable, entitled to deference, and supported by CORR's Policy 132.02.

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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: January 15, 2002

Footnote: 1

Grievants represented themselves, Respondent CORR was represented by Warden Mark Williamson, and

Respondent DOP was represented by Lynn Schillings, Senior Personnel Specialist.

Footnote: 2

The undersigned Administrative Law Judge will not address this allegation as the evidence on this issue of inconsistency was very limited, based on hearsay, and only discussed as it related to the Correctional Officer III classification specification. The question before the undersigned is whether DOP correctly interpreted the minimum qualifications for the Correctional Officer IV classification specification.