RANDALL SHREVE,

Grievant,

v. **Docket No. 05-CORR-155**

DIVISION OF CORRECTIONS/
HUTTONSVILLE CORRECTIONAL
CENTER,

Respondent.

DECISION

Randall Shreve ("Grievant") initiated this proceeding on March 21, 2005, alleging that non-security staff at Huttonsville Correctional Center ("HCC") should be provided with uniforms, and also requesting rescission of the memorandum dated March 1, 2005, implementing a dress code at HCC. The grievance was denied at level one on March 25, 2005, and at level two on April 11, 2005. A level three hearing was conducted on April 26, 2005, and the grievance was denied on April 27, 2005. Grievant appealed to level four on May 9, 2005. A hearing was held in Elkins, West Virginia, on July 18, 2005, at which Grievant represented himself, and Respondent was represented by John Boothroyd, Assistant Attorney General. This matter became mature for consideration upon receipt of the parties' fact/law proposals on August 18, 2005.

The following material facts have been proven by a preponderance of the credible evidence of record.

Findings of Fact

1. Grievant is employed at HCC as a Unit Manager. His duties require supervision of a team of counselors and case managers who provide treatment, counselingand other services for inmates, which are directed toward assisting inmates with appropriate behavior and performance. The unit management team, including Grievant, are non-uniformed staff, and they are to act as role models

for the inmates.

2. At HCC, correctional officers are provided with uniforms. The purpose of this is to make them easily identifiable to inmates and other staff, and to give them the appropriate appearance of authority to inmates.

3. Unit management employees are not provided with uniforms, because it is not necessitated by their job duties. In fact, uniforms could be a detriment to the personal, one-on-one relationships that unit management staff must maintain with the inmates to whom they provide services.

4. Maintenance employees at HCC are also provided with uniforms, because many of their duties can result in soiling or damage to clothing.

5. In response to directives from DOC officials and the Governor's office, Warden William Haines issued a memorandum on March 1, 2005, discussing appropriate dress for non-uniformed personnel at HCC. The memorandum directed employees to maintain a "business casual attire," with the following items being prohibited:

Denim clothing of any kind

Shorts

Stretch Pants (or any tightly fitting pants of any kind)

Tank Tops (or any type of sleeveless shirt)

Halter Tops

Short Skirts (in excess of two inches above the knees)

Tee Shirts

Sweatshirts

Sandals (flip flops, backless shoes, sport sandals)

Spandex Clothing

Capri Pants

Any clothing made out of translucent material Hats are not to be worn inside the building

Tennis Shoes--Black athletic is acceptable.

6. The March 1, 2005, memo was implemented to serve as a dress code policy until DOC formally adopts a written policy.

7. Grievant has not been disciplined for violating the dress code memorandum.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., 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 preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

Grievant's first allegation is that, since other HCC employees are provided with uniforms, it is discriminatory for unit management to not be provided with them. He seeks to be provided with a uniform, or, in the alternative, to be given a clothing allowance. Discrimination is defined as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” W. Va. Code §§ 29-6A-2(d). In discussing discrimination claims under the grievance statutes, the Supreme Court of Appeals has noted that ““[t]he crux of such claims is that the complainant was treated differently than similarly situated employees[.]”” Bd. of Educ. v. White, 605 S.E.2d 814, 818 (W. Va. 2004). Obviously, the reasoning behind providing security officers and maintenance staff with uniforms is directly related to their job duties, which does not constitute discrimination. Security officers must be in uniform out of necessity, so that they are easily identifiable and can provide control over the inmates. Additionally, inmates must respect the authority of correctional officers and obey their every instruction, and a uniform similarly lends itself to this purpose. As to maintenance employees, their duties frequently involve work that may soil or damage clothing, so uniforms are an appropriate remedy for dealing with these issues.

Unit management staff are clearly not similarly situated to the two classes of employees to whom Grievant compares himself. Grievant and his subordinates have a direct, one-on-one relationship with inmates, and their purpose is to direct and assist inmates in learning appropriate behavior, both while incarcerated and upon their release. As Respondent has argued, the wearing of a uniform by these employees is not only unnecessary to assist them in performing their duties, but could serve as

an impediment to the somewhat personal and confidential relationship which the unit staff must foster with inmates in order to accomplish their goals. Grievant has not proven that HCC's failure to provide him with a uniform is discrimination.

The West Virginia Division of Personnel ("DOP") has adopted a policy entitled "Agency Dress Codes," the purpose of which is "to communicate basic principles regarding written standards of dress and to establish appropriate guidelines" for agencies adopting such policies. DOP's policy provides, in pertinent part:

> Generally, dress standards should address issues regarding clothing, . . . safety, public images, productivity, and be job-related. Written [dress codes] should be clear, unambiguous, consistently enforced, non-discriminatory (sex, race, or religion) and must be reasonably related to a legitimate business need such as interference with job performance, the disruption of the workplace, or workplace safety. Restrictions on dress and grooming that cannot be shown as having a direct effect on production, safety considerations, or relationships with the public, generally will not be upheld. . . . [The rationale for dress restrictions] should be based on the legitimate business necessity and obligation of maintaining a professional and safe working environment.

While Grievant contends that HCC's dress code was implemented improperly, he has not specifically explained the basis for this contention. Nevertheless, as discussed in previous Grievance Board decisions, the United States Supreme Court has ruled that dress codes should be judged pursuant to a rational basis analysis. In Burdette v. W. Va. Public Service Commission, Docket No. 93-PSC-132 (Nov. 16, 1993), it was stated that:

> Because the right to dress as one sees fit is not a fundamental right, any restrictions placed upon one's choice of dress are to be judged under a "rational basis" test to determine if the regulation can be branded as arbitrary. The Employer may defeat the challenge to its dress code by showing that it has a reasonable and rational basis for restricting Grievant's manner of dress in order to meet a legitimate end.

(citing Kelly v. Johnson, 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed. 2d 708 (1976)).

Under the circumstances presented here, Respondent has established a legitimate, rational justification for its dress code. Unit management employees are specifically charged with the responsibility of serving as role models for inmates, both through their actions and appearance. One of the roles of these employees is to assist inmates in gathering and developing skills and abilities which will serve them upon their release from incarceration. Dressing in a professional manner, and refraining from wearing the prohibited items listed by Warden Haines, certainly provides a positive

image for inmates as to appropriate behavior for responsible and respectful employees. For Grievant, a male unit manager, all the dress code mandates is that he wear a polo or button-up shirt with khaki or dress pants, which appears to be reasonable dress for someone in his position. (See footnote 1) Accordingly, Grievant has failed to prove that the dress code memorandum should be rescinded.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §§ 4.21 (2004); Howell v. W. Va. Dep't of Health & Human Res., 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. Discrimination is defined as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” W. Va. Code §§ 29-6A-2(d).

3. Grievant has failed to prove that it is discriminatory for Huttonsville Correctional Center to provide uniforms only to security and maintenance employees.

4. To withstand Constitutional scrutiny, an employer must show a rational basis between a legitimate business decision and the implementation of a dress code. Burdette v. W. Va. Public Service Commission, Docket No. 93-PSC-132 (Nov. 16, 1993); See also Jenkins v. W. Va. Dep't of Health & Human Res., Docket No. 00-HHR-334 (Apr. 13, 2001).

5. Respondent has shown a rational basis for the dress code implemented at Huttonsville Correctional Center, as it applies to Grievant, a male unit manager.

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.

Date: September 12, 2005

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

However, it should be noted that most of the prohibited items appear to be traditionally worn by women, and the issue of the dress code as applied specifically to females is not being addressed at this time.