SUZANN PARKS,

Grievant,

v. **Docket No. 05-RJA-361**

REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY/SOUTH CENTRAL
REGIONAL JAIL,

Respondent.

DECISION

Grievant, Suzann Parks, is employed as a Correctional Officer 1 ("CO") at South Central Regional Jail. She filed a grievance on August 10, 2005, alleging discrimination because she was sent home after presenting documentation from her doctor stating she could not have direct contact with inmates or work over forty hours a week while she was pregnant. At the request of Respondent, Grievant used her sick and annual leave, and then was placed on a medical leave of absence. Her relief sought is to have her annual and sick time restored.

Grievant was denied at all lower levels. A Level IV hearing was held at the Grievance Board's office on February 22, 2006. (See footnote 1) Grievant appeared *pro se*, and Respondent was represented by Chad M. Cardinal, General Counsel for the Regional JailAuthority. This case became mature for decision on March 24, 2006, the deadline for filing proposed findings of fact and conclusions of law.

Issues and Arguments

Grievant argues that she was discriminated against because "three white pregnant women before me allowed [sic] to work. I was sent home." She argues she could have been placed in a light duty post that required no contact with inmates.

Respondent asserts that based on doctor's orders, she was unable to perform essential functions of the job. Respondent argues there was no alternative to allowing her to take her annual and sick leave and then placing her on medical leave pending release from her doctor because there is no

light duty post in the jail. Respondent also asserts, regardless of the post assigned, a CO would be required to respond to emergency calls and be placed in direct contact with inmates. Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Grievant is employed as a CO 1 at the South Central Regional Jail and has been a permanent employee since December 1, 2004.

2. On July 29, 2005, Grievant provided First Sergeant Jarrett with a note from her obstetrician stating that she was “restricted from the following duties due to pregnancy: patient is allowed to work no more than 40 hrs. a week 8 hrs. a day. Patient is also restricted from any physical contact with prisoners.” Respondent's Exhibit 1.

3. The job description for a CO 1 states that “an employee in this class performs basic security duties at a regional jail in direct contact with inmates.” Respondent's Exhibit2. It also states under the “Required Knowledge, Skills and Abilities” that the employee must be willing to work “various duty shifts, and to work overtime if necessary.”

4. Respondent does not offer a light duty post or any other post where a CO 1 would not be required to respond to emergency calls or be placed in direct contact with inmates.

5. In 1997, one pregnant female CO was allowed to work a control post.

Discussion

Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

“'Discrimination' means 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 order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

The Board of Education of the County of Tyler v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (Nov. 16, 2004).

The only evidence Grievant presented to support her claim that “three white pregnant women” were allowed to work while she was sent home was offered at Level II. At that level, Grievant indicated she had no proof that two of the three were allowed to work a control post during pregnancy. However, the third female employee admitted to being able to work a control post as a result of an agreement she worked out with her supervisor during her pregnancy in 1997, almost eight years prior to this incident.

Respondent differentiates Grievant's situation from that of the female who was allowed to work a control post in 1997, by explaining that female did not present doctor's orders preventing her from performing the essential functions of the job. Respondent also presented testimony that there were no light duty posts within the jail, and that even working a control post, a CO 1 still needed to be prepared to respond to emergency situations that arise.

Based on her physician's orders, Grievant was unable to work directly with inmates or work overtime. Unfortunately that prevented her from performing the essential functions of the job. For that reason, Grievant took sick and annual leave and then was placed on medical leave, pending a release from her doctor.

Grievant failed to meet her burden in this case. 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. Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

2. “'Discrimination' means 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. In order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

The Board of Education of the County of Tyler v. White, 216 W. Va. 242, 605 S.E.2d 814 (2004); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (Nov. 16, 2004).

4. Grievant failed to meet her burden in this case.

Accordingly this grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County, and 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: April 10, 2006

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

This case was originally assigned to ALJ Marteney, but due to administrative reasons was reassigned to the undersigned.