

[REDACTED] # [REDACTED]

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE WILLIAM SOMERVILLE,
 * AN ADMINISTRATIVE LAW JUDGE
 * OF THE MARYLAND OFFICE
 * OF ADMINISTRATIVE HEARINGS
 * OAH No.: DPSC-IGO-002V-18-31424
 * IGO No.: 2017-0300

* * * * *

DECISION

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STATEMENT OF THE CASE

On February 27, 2017, the Grievant filed a grievance complaint¹ with the Inmate Grievance Office (IGO),² which the IGO summarized as follows:

In essence, the Grievant complains that on December 15, 2016, [Correctional Officer] C.O. [REDACTED] [sic] planted a knife in the Grievant's locker then forged the Grievant's signature to a document which stated that the Grievant owned the knife.

On October 17, 2018, I held a hearing via videoconference. Md. Code Ann., Corr. Servs. § 10-207(c)(2) (2017); Md. Code Ann., State Gov't § 10-211 (2014); COMAR 28.02.01.20C. I was located at the Office of Administrative Hearings (OAH), and the parties were at various

¹ A grievance complaint is "the complaint of any individual in the custody of the Commissioner [of the Division of Correction] or confined to the Patuxent Institution against any officials or employees of the Division or the Patuxent Institution arising from the circumstances of custody or confinement." Code of Maryland Regulations (COMAR) 12.07.01.01B(8).

² The IGO is part of the Department of Public Safety and Correctional Services. Md. Code Ann., Corr. Servs. § 2-201(12) (Supp. 2018). The IGO receives complaints from inmates and refers those not found "wholly lacking in merit" to the Office of Administrative Hearings (OAH) for hearings. *Id.* § 10-207(c)(1) (2017).

facilities of the Division of Correction (DOC). The Grievant represented himself. [REDACTED]

[REDACTED] IGO Coordinator, represented the DOC.

The contested case provisions of the Administrative Procedure Act, the IGO's agency regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 12.07.01; COMAR 28.02.01.

ISSUES

Was the decision of a C.O. of the DOC on December 15, 2016 to do that which the Grievant describes as "planting" a knife in his locker and forging an inculpatory statement, arbitrary and capricious, or inconsistent with the law?

If so, what requested remedy is available to the Grievant?

SUMMARY OF THE EVIDENCE

Exhibits

The IGO case file contained the following documents:³

- Complaint, 2-27-2017
- Re-submitted complaint, 3-24-2017
- Note to Grievant, 4-14-2017
- Memorandum, 5-24-2017
- Certificate of Record, 6-14-2017
- Remand Order from Court, 9-26-2017⁴
- Prehearing Order, 9-4-2018
- Notice of Hearing, 9-7-2018
- Supplemental Request, 9-27-2018

³ No party offered these documents into evidence. I merely list them as part of the case record for clerical purposes.

⁴ The matter had been dismissed without a hearing and the Court remanded.

- Supplemental Prehearing Order, 10-3-2018
- Transmittal, undated
- Notice, undated

I admitted into evidence the following exhibits offered by the Grievant:

Gr Ex. 1 – Continuation sheet, 12-12-2017

Gr Ex. 2 – Offender’s Statement, 12-15-2016

Gr Ex. 3 – Comment document, 12-20-2016

Gr Ex. 4 – Recommendation document, 12-16-2016

Gr Ex. 5 – Md. Tort Claims Act receipt, 9-12-2017

No other exhibits were offered into evidence.

Testimony

The Grievant testified and presented the following witnesses: Lt. [REDACTED] and C.O. [REDACTED]

The DOC presented no witnesses.

FINDINGS OF FACT

Upon considering demeanor evidence, testimony, and other evidence, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Grievant was an inmate in the custody of the DOC.

2. At all times relevant, there was hostility between the Grievant and C.O. [REDACTED]

3. On December 15, 2016, at about 11:30 a.m., C.O. [REDACTED] and C.O. [REDACTED] conducted a cell-search of the Grievant’s cell in Housing unit [REDACTED] at [REDACTED]

[REDACTED] During the search, when C.O. [REDACTED] held a home-made knife in his hand and said to the Grievant, “I got this out of your locker” the Grievant became upset and disruptive.

(Testimony; Gr Ex. 1, pp. 2 and 3.) He was escorted from the area to a holding cell one floor below his tier.

4. The C.O.s continued to conduct the cell-search. At 11:45 a.m., C.O. [REDACTED] had the Grievant's cell mate complete a document. The Grievant's cell mate wrote on the document that the weapon was the Grievant's weapon. (Gr Ex. 1, pp. 3 and 8.) When the C.O.s completed the cell-search, and completed packing up the Grievant's personal property, they took the Grievant to a room to complete an inventory list of the Grievant's items. The Grievant and C.O. [REDACTED] exchanged words and C.O. [REDACTED] decided to escort the Grievant to Housing unit [REDACTED].

5. On December 15, 2016, the Grievant wrote and signed a statement alleging that C.O. [REDACTED] "planted a knife on me." (Gr Ex. 2.)

6. At some undisclosed point later, Lt. [REDACTED] obtained a written statement document from Lt. [REDACTED] of Housing unit [REDACTED]. The document, purported to be written by the Grievant and witnessed by C.O. [REDACTED], said, "Knife found in locker was mines" and the names were transposed on the signature line; it was signed, "[REDACTED]" (Gr Ex. 1, p. 9.)

7. Several internal investigations were initiated.

8. At some point thereafter, the Grievant was issued a Notice of Inmate Rule Violation for possessing a weapon.

9. On January 5, 2017, the Grievant filed an Administrative Remedy Procedure complaint alleging that the knife was "planted" and the admission document was forged. He asks for \$1,000.00 per day during the unspecified time when he was placed in segregation because of the knife.

10. On October 16, 2017, during an interview with investigators, the Grievant's cell mate stated that what he wrote on his statement was "the weapon that was found was my cell partner's." (Gr Ex. 1, p. 8.)

DISCUSSION

In an inmate grievance concerning an institutional administrative decision, the Grievant bears the burden of proving, by a preponderance of the evidence,⁵ that the DOC's action was arbitrary and capricious, or inconsistent with the law. COMAR 12.07.01.08A(1), C(1). An Administrative Law Judge may determine that an administrative decision is arbitrary and capricious, or inconsistent with the law, if:

- (a) The decision maker or makers did not follow applicable laws, regulations, policy or procedures;
- (b) The applicable laws, regulations, policy or procedures were intended to provide the grievant a procedural benefit; and
- (c) The failure to follow applicable laws, regulations, policy or procedures prejudiced the grievant.

COMAR 12.07.01.08C(2).

The Grievant argues that C.O. [REDACTED] intentionally placed the knife into the Grievant's cell so that the Grievant would suffer adjustment consequences. He also argues that the document that was purported to be an admission was bogus. He offers no rule or policy that he alleges was violated. In closing argument, the Grievant suggested an award of \$200,000.00.

The DOC argues that the Grievant has not met his burdens and that its evidence that C.O. [REDACTED] did not "plant" a knife or forge a statement was credible.

In the instant case, I cannot determine that the C.O.s "planted" a knife in the Grievant's cell, in violation of applicable laws, regulations, policy or procedure. Nor can I determine that DOC staff failed to follow applicable laws, regulations, policy or procedure when someone wrote, and presented, a statement that purported to be an admission by the Grievant.

With regard to the knife, the evidence is, at best, in equipoise whether the C.O. "planted" the knife in the Grievant's cell. The Grievant testified that he did not possess the knife because,

⁵ A trier of fact can properly accept all, some, or none of the evidence offered. *Sifrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341-43 (2004).

for one reason, he had not had a knife possession adjustment charge for twelve years. That testimony is not very persuasive. The Grievant's cell mate did not see anyone plant the knife and he was "watching the whole time." (Gr. Ex. 1, p. 8.) In addition, there was an extensive investigation, the results of which were reduced to writing, and entered into evidence. (Gr. Ex. 1.) The C.O.s maintained, consistently, that the knife was found in the Grievant's locker and not placed there by them. (Testimony; Gr. Ex. 1.) The Grievant has not shown that the C.O.s planted the knife in his locker at the time of the search. (Finding of Fact 3.) The Grievant offered no specific law, regulation, policy, or procedure that he contends was violated. Thus, there is no showing of DOC action, COMAR 12.07.01.08C(1), or a failure to follow specific rules on the DOC's part. COMAR 12.07.01.08C(2)(a).

With regard to the bogus inculpatory inmate statement (Finding of Fact 6), the Grievant has shown that the document was not his statement. He credibly denied writing it. It was not signed with his correct name. Testimony from Lt. [REDACTED], among other evidence, showed that it was not the Grievant's handwriting. The Grievant, however, has not shown that DOC staff produced the untrustworthy document. Although in testimony Lt. [REDACTED] did not recall exactly how, when, and where he received the document, an investigation report shows that previously he said that he received it from a "Lt. [REDACTED] from Housing Unit [REDACTED]" (Gr. Ex 1, p. 9). Lt. [REDACTED] also suggested that the Grievant's cell mate was unhappy with the Grievant at the time of the search. (Gr. Ex. 1, p. 9.) The Grievant's cell mate suggested that he wrote a statement that the weapon was his cell partner's. (Gr. Ex. 1, p. 8.) On the basis of the evidence before me, I cannot determine, by a preponderance of the evidence, that the bogus inculpatory statement was the product of DOC action. Thus, there is no showing of DOC action, COMAR 12.07.01.08C(1), or a failure to follow rules on the DOC's part. COMAR 12.07.01.08C(2)(a).

The Grievant has not shown that the DOC violated a law or policy. COMAR 12.07.01.08C(2)(a). The Grievant has not shown that the DOC violated a rule that was intended to provide a procedural benefit. COMAR 12.07.01.08C(2)(b). The Grievant has not shown that any action of the DOC was an abuse of discretion, was arbitrary or capricious, or violated a law. COMAR 12.07.01.08C(1). The Grievant has not demonstrated that he is entitled to any relief.⁶

CONCLUSION OF LAW

I conclude, as a matter of law, that the Grievant has not shown by a preponderance of the evidence that on December 15, 2016, at about 11:30 a.m., C.O.s “planted” a knife in his locker or produced a fake admission statement, either of which might have constituted an action that was arbitrary and capricious, or inconsistent with the law. COMAR 12.07.01.08A(1), C(1).

ORDER

Having concluded that the grievance is without merit, I **ORDER** that it is **DENIED** and **DISMISSED**.

January 8, 2019
Date Decision Issued

Signature Appears
on Original

William J.D. Somerville III
Administrative Law Judge

WS/kdp
#177464

⁶ Not having shown a basis on which to issue a remedy, I need not address the Grievant’s unsupported damage amounts. See *Roebuck v. Stuart*, 76 Md. App. 298, 314 (1988) (need proof with reasonable certainty). Moreover, he has shown no basis for the \$200,000.00 award in conjunction with his request for \$1,000.00 per day during an undisclosed amount of time.

REVIEW RIGHTS

You are entitled to file a petition for judicial review with the circuit court for the county in which the institution you are confined is located within thirty (30) days of the mailing of the decision. Md. Code Ann., Corr. Servs. § 10-210(b) (2017); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. This decision may only be reversed or modified on appeal if any substantial right may have been prejudiced because a finding, conclusion, or decision of the final decision maker: (1) is unconstitutional; (2) exceeds the statutory authority or jurisdiction of the final decision maker; (3) results from an unlawful procedure; (4) is affected by any other error of law; (5) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or (6) is arbitrary or capricious. Md. Code Ann., State Gov't § 10-222(h)(3) (Supp. 2018). Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken. Md. Code Ann., State Gov't § 10-222(f)(1) (Supp. 2018). The Office of Administrative Hearings is not a party to any review process.

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