

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 30, 2008

502003

In the Matter of ROBERT
DAVIS,

Appellant,

v

MEMORANDUM AND ORDER

JOHN W. BURGE, as
Superintendent of Elmira
Correctional Facility,
Respondent.

Calendar Date: September 8, 2008

Before: Mercure, J.P., Spain, Carpinello, Malone Jr. and
Stein, JJ.

Robert Davis, Elmira, appellant pro se.

Andrew M. Cuomo, Attorney General, Albany (Marcus J.
Mastracco of counsel), for respondent.

Spain, J.

Appeal from a judgment of the Supreme Court (Tait, J.),
entered October 3, 2006 in Chemung County, which dismissed
petitioner's application, in a proceeding pursuant to CPLR
article 78, to review a determination of the Central Office
Review Committee denying petitioner's grievance and a
determination of respondent finding petitioner guilty of
violating a prison disciplinary rule.

Petitioner, a prison inmate, commenced this CPLR article 78
proceeding challenging (1) a determination of the Central Office
Review Committee which denied his grievance alleging that he had

been verbally harassed by a correction officer and (2) a tier II disciplinary determination of respondent which found him guilty of being out of place after he was observed in the G block area instead of the hospital area where he was assigned to work. Supreme Court dismissed the petition and this appeal ensued.

We affirm. The record reveals that a complete investigation was conducted of the allegations set forth in petitioner's grievance, including interviewing witnesses, and it was determined that petitioner's claims were unsubstantiated. Under these circumstances, we cannot conclude that the denial of his grievance was arbitrary and capricious, irrational, or otherwise affected by an error of law (see Matter of Dallio v Goord, 15 AD3d 803, 804 [2005], lv denied 5 NY3d 709 [2005]; Matter of Harty v Goord, 3 AD3d 701, 702 [2004]). As for petitioner's assertion that the misbehavior report was issued in retaliation for his filing of the grievance, that claim is unpreserved for our review by virtue of petitioner's failure to raise it at his disciplinary hearing or on administrative appeal (see Matter of James v Goord, 38 AD3d 1074, 1074 [2007]). Courts reviewing administrative determinations have no authority to review claims raised for the first time in a special proceeding (see Matter of Khan v New York State Dept. of Health, 96 NY2d 879, 880 [2007]; Matter of World Buddhist Ch'An Jing Ctr., Inc. v Schoeberl, 45 AD3d 947, 951 [2007]).

Petitioner's remaining contentions have been considered and found to be unavailing.

Mercure, J.P., Carpinello, Malone Jr. and Stein, JJ.,
concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large loop at the end of the last name.

Michael J. Novack
Clerk of the Court