



COMMONWEALTH of VIRGINIA
Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 11779

Hearing Date: May 2, 2022

Decision Issued: May 9, 2022

PROCEDURAL HISTORY

On November 9, 2021, Grievant was removed from employment by administrative action for failure to become vaccinated against COVID-19.

On November 29, 2021, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On December 27, 2021, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 2, 2022, a hearing was held by remote conference. Grievant was advised of the hearing date and time but did not participate in the hearing.

APPEARANCES

University Party Designee
University Counsel
Witness

ISSUES

1. Whether Grievant engaged in the behavior described in the Administrative Action?

2. Whether there were mitigating circumstances justifying a reduction or removal of the administrative action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the University to show by a preponderance of the evidence that its administrative action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to administrative action and any evidence of mitigating circumstances related to action. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The University of Virginia Medical Center employed Grievant as a Staff Nurse at one of its locations.

The University created an electronic system called VaxTrax to allow employees to submit request for exemption to the University's vaccination policy. The University refers to its employees as team members.

On August 25, 2021, the Executive Vice President sent an email to staff informing them that it would "now require all team members without a religious or medical exemption to be vaccinated against COVID-19 by November 1, 2021."¹

The University assigned a group of employees the responsibility for determining whether a request for exemption met the requirements of its vaccination policy. These employees received training on the University's policies and applicable laws.

On September 9, 2021, Grievant submitted a request for religious exemption to the COVID-19 vaccination requirement. Grievant said:

I am of the Christian faith. I, as a believer, will respectfully decline the "shot" for covid 19. I believe in my God given immunity and that it supersedes any amount of protection [allegedly] offered by these "shots." I believe wholeheartedly in the Bible and its teachings. Therefore, in good conscience, I cannot take part in these injections. I have the Right to bodily

¹ University Exhibits p. 23.

autonomy and thus will not be violated by this gene therapy. *** Any further push of this mandate is and will be perceived as bullying, force, and coercion against my will. *** It saddens me that the monetary gain has foreshadowed the greater good of humanity.²

Grievant submitted a letter dated September 9, 2021 from her Pastor in support of her request.

On September 15, 2021, Grievant received an email:

Thank you for your request for a religious exemption under the OCH-002-Health Screening Policy. At this time your request is denied. To qualify for a religious exemption, you must briefly explain the religious principle, tenet or belief and how that religion's principles, tenets or beliefs conflict with or preclude you from receiving a vaccination. For information on becoming compliant with OCH-002, please visit Immunize UVA.

On September 23, 2021, Grievant resubmitted her request for a religious exemption. She indicated she was a Christian and cited religious writings. She asserted that it "would be sinful to put any substance in my body that I feel will cause harm." She also wrote:

The contents of these injections both known and unknown are materials that may cause damage. They most certainly caused damage to the aborted fetus that was used in creating this abomination. ***

Denying my request for exemption of my personal, sincerely held religious beliefs would be in violation of Title VII of the Civil Rights Act, 42 U.S. Code § 2000e-2 as it deprives "an individual of employment opportunities or otherwise adversely affect their status as an employee because of such individual's race, color, religion, sex or national origin." ***

The following was my first submission and still is my belief as well. ***

Grievant also presented the letter from her Pastor with her second submission.

The University denied Grievant's second request for exemption from the COVID-19 vaccination. Grievant was not vaccinated for COVID-19 on November 1, 2021. On November 2, 2021, the University suspended Grievant for five days with the hope that Grievant would change her mind and become vaccinated. Grievant did not become vaccinated. The University terminated Grievant by administrative action.

CONCLUSIONS OF POLICY

² University Exhibit p. 58.

Medical Center Policy 701, Employee Performance Standards and Conduct, provides:

Administrative Actions:

Without regard to the Progressive Counseling Process described in this policy, employees who fail to complete the following as directed shall be suspended without pay until the requirement is successfully completed and Medical Center management is provided with documentation thereof:

Failure to complete medical screenings, vaccinations and/or tests required in Health System Policy OCH-002 "Occupational Health Screening and Maintenance."

Failure to complete all assigned and/or required testing or training modules.

Failure to renew license, certification, registration, or other credential prior to the date of expiration as required by Medical Center Human Resources Policy No. 905 "Healthcare Provider Licensure and Certification."

Any employee failing to complete the above requirements within five (5) scheduled workdays following suspension shall be terminated.

Health System Policy OCH-002 governs Occupational Health Screening and Maintenance. This policy provides:

Tier 1. Team Members whose job-related activities require them to be present in Health System Facilities at any time in a given calendar year. ***

Team Members may apply for a medical or religious exemption from any requirement specified in this Policy including any additional requirements imposed by the Medical Center Hospital Epidemiologist from time to time. ***

The Team Member seeking an Exemption Request shall be provided with a written response to such request, and shall be afforded an opportunity to present additional information, if needed, in order to properly assess the request. ***

Team Members are responsible for ensuring their compliance with the requirements of this policy, and failure to comply may result in disciplinary action up to and including termination in accordance with applicable policies and procedures. ***

Tier 1: All current Tier 1 Team Members must have completed primary vaccination against COVID 19 by November 1, 2021. ***

REQUESTS FOR EXEMPTION BASED ON SINCERELY HELD RELIGIOUS BELIEF: Tier 1 and Tier 2 Team Member applications for exemption from required vaccination or booster based on a sincerely held religious belief require the submission to Employee Health/WorkMed via VaxTrax of an Exemption Request consistent with this Policy. ***

Tier 1 Team Members granted an exemption for any reason must undergo weekly testing, must mask in accordance with current guidelines, and must follow all other requirements established by the Hospital Epidemiologist.

The University required employees to become vaccinated for COVID-19 by November 1, 2021. Grievant did not become vaccinated. After being suspended for five days, Grievant did not indicate to the University that she had or intended to become vaccinated for COVID-19. The University has presented sufficient evidence to support its decision to remove Grievant from employment by administrative action.

To reverse the University's administrative action, Grievant may show that the University failed to comply with or unfairly applied its vaccination policy. Grievant may also show that despite the University's policy, the Grievant holds a sincerely held religious belief precluding her from being vaccinated with the COVID-19 vaccine.

In this case, Grievant did not attend the hearing. She did not submit any arguments or evidence to support her defenses. Grievant has not rebutted the University's assertion that it followed its policies and Grievant has not presented any evidence to show she holds a sincere religious belief precluding her from being vaccinated. Accordingly, the University's administrative action with removal must be upheld.

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including mitigation. No evidence was presented showing a basis for mitigation in this case.

DECISION

For the reasons stated herein, the University's removal of Grievant by administrative action is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.^[1]

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

^[1] Agencies must request and receive prior approval from EDR before filing a notice of appeal.