



COMMONWEALTH of VIRGINIA
Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 11936

Hearing Date: April 26, 2023
Decision Issued: May 16, 2023

PROCEDURAL HISTORY

On November 16, 2022, Grievant was issued a Step 3 Performance Improvement Counseling Form with a 16 hour suspension and performance warning for failure to follow instructions. During the Step Process, the University reduced the discipline to a Step 2 Formal Improvement Counseling form.

On December 15, 2022, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On February 27, 2023, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On April 26, 2023, a hearing was held by remote conference.

APPEARANCES

Grievant
University Party Designee
University Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Formal Performance Improvement Counseling Form?
2. Whether the behavior constituted misconduct?
3. Whether the University's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary 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 disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. 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 Health System employs Grievant as a Supervisor Revenue Cycle. Grievant received favorable annual evaluations. No evidence of prior active disciplinary action was introduced during the hearing.

Grievant supervised employees involved in billing patients. Grievant oversaw contested balances for patient accounts.

The University has an automated patient billing process. When medical staff provide services to patients, bills are generated. University staff review the bills and the bills are sent to the patient and the patient's insurance company. In some cases, University staff do not wish to bill patients for medical services provided. For these cases, University risk management managers ask that a "hold" be placed on the account to stop the bill from going to a patient and the patient's insurance company.

When University managers wanted to place a hold on a bill, Grievant was responsible for implementing the hold. Upon receiving a request to place a hold on an

account, Grievant was expected to implement that hold within one business day and no later than three business days.

On October 25, 2022, the University's Risk Management Department sent Grievant a request to hold personal and insurance billing for Patient A.

Grievant did not place the account on hold until October 31, 2022. Because Grievant failed to timely place a hold on the account, an insurance provider sent Patient A a bill in the amount of \$839,516.¹ This meant Patient A believed the University intended to require payment for services rendered to Patient A. The University did not intend to collect payment from Patient A at that time.

During a predetermination meeting held on November 9, 2022, Grievant admitted the error was an oversight and she took full accountability for that error.

CONCLUSIONS OF POLICY

Policy 701 sets forth the Agency's Standards of Performance for its employees. Progressive performance improvement counseling steps include an informal counseling (Step One), formal written performance improvement counseling (Step Two), suspension and/or performance warning (Step Three) and ultimately termination (Step Four). Depending upon the employee's overall work record, serious misconduct issues may result in termination without prior progressive performance improvement counseling.

Serious misconduct includes, "failing to execute or perform responsibilities as reasonably expected." Step 2 offenses include serious misconduct. Grievant was expected to implement the hold she received on October 25, 2022 within one business day (October 26, 2022) and under the Standard Operating Procedure within three business days (October 28, 2022). Grievant did not implement the hold until October 31, 2022. Because she did not implement the hold on a timely basis, a bill was sent to Patient A and Patient A's insurance company. Doing so potentially undermined the University's relationship with the patient.

Grievant asserted that if the University had given her a Step 1 she would not have disputed the discipline. She argued these errors occur frequently. Although the University could have given Grievant a lower level of disciplinary action, its decision to issue a Step 2 Formal Performance Improvement Counseling was consistent with the University's Medical Center Employee Standards of Performance and Conduct.

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resource Management

¹ Grievant disputed the amount of the bill. Whether the bill was smaller does not affect the outcome of this case.

....”² Under the *Rules for Conducting Grievance Hearings*, “[a] hearing officer must give deference to the agency’s consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency’s discipline, the hearing officer shall state in the hearing decision the basis for mitigation.” A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Step 2 Formal Performance Improvement Counseling Form 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.

² Va. Code § 2.2-3005.

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.