

COMMONWEALTH OF VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

Case Number 11970

Hearing Date: 26 June 2023

Decision Issued: 30 June 2023

PROCEDURAL HISTORY

The agency issued a Group II Written Notice of disciplinary action to the Grievant on 8 February 2023.

The Grievant filed a timely grievance challenging the Agency's action. The Grievant was dissatisfied with the outcome of the Third Resolution Step and requested a hearing. The Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer on 9 May 2023. A Pre-hearing Conference was held on 7 June 2023 at 3:00 p.m. The Grievant and counsel for the Virginia Tech were present. The Hearing was scheduled for 26 June 2023 at 10:00 a.m.

The Hearing was held 26 June 2023 beginning at 10:00 p.m.

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APPEARANCES

Grievant
Counsel for Agency
Witnesses

ISSUES

1. Whether the Grievant engaged in the behavior as described in the Written Notice?
2. Whether this behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law and policy?
4. Whether there were any mitigating circumstances justifying a reduction or removal or 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 Agency to show by a preponderance of the evidence that the 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. Grievant 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 FACTS

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

At the time of the alleged violation, the Grievant was employed at Virginia

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Tech as an Administrative Assistant in the College [REDACTED]. The Grievant resigned from her position at Virginia Tech on 8 March 2023.

Dr. [REDACTED] T [REDACTED], the Department Head of the College [REDACTED] was the Grievant's supervisor. The Grievant was an Administrative Assistant with fiscal responsibility and as such was the fiscal technician for the department. This position called for oversight of travel receipts, work requests, reviewing hours of student workers. In addition, she was responsible to help with visiting faculty, especially international faculty.

The Grievant's work required attention to detail in dealing with finances, both university funds and foundation funds.

Sometime beginning in October 2022, Dr. T [REDACTED] began receiving a number of emails from the Grievant. These email referenced the Grievant coming into work late and/or medical issues. The Grievant had a child who was having medical issues which were demanding special attention. Some of the special attention required the Grievant to drive her daughter to school and pick her up after school.

Dr. T [REDACTED] also stated that the Grievant was making fiscal errors, resulting in faculty having to repay the University or the student workers not getting their hours reported correctly. After the Grievant resigned, Dr. T [REDACTED] stated that three checks were found in the Grievant's desk that should have been deposited.

Between when Dr. T [REDACTED] assumed her position as Department Head and when the Written Notice was filed, Dr. T [REDACTED] stated she spoke with Human Resources approximately 15 times about the Grievant's performance.

These fiscal errors were sometimes significant. There were errors in other reports needing to be corrected.

Grievant applied for and was granted FMLA beginning 30 January 2023.

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Any late arrival or absences from that date cannot be counted against the Grievant for the Written Notice.

However, most of the late arrivals, early departures and absences occurred prior to FMLA approval.

The Grievant admitted to some of the late arrivals and early departure; this was due to her daughter's illness and subsequent necessity to take the daughter to school. The Grievant stated that she emailed Dr. T [REDACTED] whenever she was going to be late or was leaving early.

The Grievant also indicated that some of the fiscal errors were caused by circumstances outside her control, i.e. wrong information from fiscal department.

Due to the cumulation of the late arrivals, early departures, absences and general performance issues, Dr. T [REDACTED] issued a Group II Written Notice.

CONCLUSIONS OF POLICY

A Group II offense include "acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action."

There is no doubt that the Grievant had problems with attendance: she came late to work on a number of occasions, left early on other days. Even more importantly, the Grievant's work performance was not satisfactory. Her duties in the fiscal part of her job became worrisome to the University and seemed to deteriorate rather than improve.

The Group II Written Notice was justified. The University has met the burden of a preponderance of the evidence.

DECISION

For the reasons stated hereinafter, the Agency's issuance of a Group II Written Notice is hereby upheld.

The Grievant's tardiness, absences along with the problems with fiscal responsibility justify the Group II Written Notice.

APPEAL RIGHTS

The Grievant may request an administrative review by EDR within **15 calendar** days from the date this decision was issued. The request must be in writing and must be **received** by EDR with 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 Street, 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 to 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 newly

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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 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]

ENTERED this 30th day of June 2023.

/s/ Thomas E. Wray

Thomas E. Wray, Esq.
Hearing Officer

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¹Agencies must request and receive prior approval from EDR before filing a Notice of Appeal.