

COMMONWEALTH OF VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

Case Number 11975

Hearing Date: 26 June 2023

Decision Issued: 29 June 2023

PROCEDURAL HISTORY

The agency issued a Group II Written Notice of disciplinary action to the Grievant on 31 March 2023.

On 6 April 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 2:00 p.m.

The Hearing was held 26 June 2023 at 2:00 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. The Grievant continues to be an employee of Virginia Tech.

██████████ L ██████████, an Assistant Director ██████████ stated that he and the Grievant were friends for some years prior to this incident. According to Mr. L ██████████, their relationship was social, not related to their jobs. Mr. L ██████████ was not the Grievant's supervisor nor did they work together. They did work in the same building from 2008 to 2010. Mr. L ██████████ was also friends with the Grievant's brother.

Sometime in or about 2017, there was an incident that soured the relationship between Mr. L ██████████, the Grievant and the Grievant's brother. This incident had nothing to do with Virginia Tech or the employment of either the Grievant or Mr. L ██████████. Due to this incident, Mr. L ██████████, via his personal Goggle email account, notified the Grievant to not contact him. In this email, Mr. L ██████████ told the Grievant that he was done with the Grievant and his brother. Mr. L ██████████ specifically told the Grievant to not contact him again under any circumstance.

Apparently there was no contact between the Grievant and Mr. L ██████████ until March 2023. In March 2023, the Grievant, using the Virginia Tech email system, email Mr. L ██████████ on his Virginia Tech email account, asking about the alleged incident of 2017. This contact upset Mr. L ██████████ significantly.

After he received the email, Mr. L ██████████ contacted Virginia Tech Human Resources about this email. The email questioned Mr. L ██████████ about his involvement in, or knowledge of, the 2017 incident.

██████████ S ██████████, the Director ██████████ at Virginia Tech and the Grievant's supervisor, became involved after Mr. L ██████████ contacted Human Resources. After investigating, Mr. S ██████████ issued a Group II Written Notice based upon Mr. L ██████████'s complaint to Human Resources. Mr. S ██████████ determined that the Grievant violated Policy 7000: Acceptable use of Information Systems. The violation was an email, using Virginia Tech email system, sent to Jeffrey L ██████████'s Virginia Tech email account after ██████████ L ██████████ told the Grievant that he was not to contact Mr. L ██████████.

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The email the Grievant sent to Mr. L [REDACTED] was not related to any work; it was a personal matter between the two.

[REDACTED] G [REDACTED], Chief of Staff [REDACTED] [REDACTED] stated that the Grievant had a prior incident of using the Virginia Tech email system to another employee after being informed that he was not to contact that person. This was a violation of Policy 7000 as well. This written notice was dismissed as there was some question about whether the contact was to the correct individual.

The Grievant presented no evidence, did not call any witnesses and did not present any defense. He did not present any evidence for mitigation.

CONCLUSIONS OF POLICY

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

Policy 7000 Acceptable Use and Administration of Computer and Communication Systems is the policy that the Grievant violated. He clearly used the Virginia Tech email system to send an email to [REDACTED] L [REDACTED]’s Virginia Tech email account after being notified to have no contact with [REDACTED] L [REDACTED].

This a clear violation of the University policy 7000.

The written notice was elevated to a Group II when it was determined that the Grievant previously used the Virginia Tech email system after being told to not contact a person named “M [REDACTED]”. While this violation of policy was eventually dismissed, the Grievant was fully aware that he could not use the email system to contact an individual after being prohibited from contacting that person.

DECISION

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

The Grievant clearly violated Policy 7000 when he contacted [REDACTED] L [REDACTED] after being prohibited from contacting him.

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 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

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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 29th 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.