

COMMONWEALTH OF VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

Case Number 11863

Hearing Date: PHC 19 August 2022

Decision Issued: 2 September 2022

PROCEDURAL HISTORY

The agency issued a Group III Written Notice of disciplinary action to the Grievant on 29 June 2022. The Agency terminated the Grievant with this Written Notice.

On 30 June 2022, the Grievant filed a timely grievance to challenge 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 3 August 2022. A Pre-hearing Conference was scheduled for 19 August 2022 at 2:00 p.m. Despite numerous attempts to contact Grievant by email, telephone calls and letters, the Grievant failed to attend the PHC.

On 21 August 2022,, counsel for the agency filed a notice with the Hearing Officer requesting that the Hearing Officer issue a Notice of Non-compliance and/or dismiss the grievance.

On 22 August 2022, the Hearing Officer served the Grievant by both email and USPS, requiring the Grievant to notify the Hearing Officer no later than noon on 29 August 2022 as to why this grievance should not be dismissed. The

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Grievant failed to respond to this service.

APPEARANCES

Counsel for the Agency at the PHC

ISSUES

1. Whether the actions of the Grievant were such that the Motion of Non-compliance should be granted?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that the Motion of Non-compliance and Dismissal be issued and the grievance dismissed.

FINDINGS OF FACTS

After a review of the evidence the Hearing Officer makes the following findings of fact:

The Grievant filed a request for a hearing before a Hearing Officer to determine whether the Agency's actions were warranted.

The Hearing Officer was duly appointed by the Office of Employment Dispute Resolution.

On 3 August 2022, the Hearing Officer notified the Grievant by both email and USPS of the appointment, requesting the Grievant notify the Hearing Officer of available dates for the PHC, of the right to counsel or an advocate for the hearing.

On 8 August 2022, the Hearing Officer telephoned the Grievant at the telephone number given. At 10:51 a.m. the Grievant and Hearing Officer spoke concerning available dates and Grievant's right to counsel or an advocate.

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Grievant told the Hearing Officer that she would consult her calendar and notify the Hearing Officer of available dates.

The telephone call with Grievant on 8 August 2022 was the last time Grievant had any contact with the Hearing Officer.

The Hearing Officer made many attempts to contact Grievant after the telephone conversation of 8 August 2022. The Grievant failed to respond to repeated emails; the Grievant never answered her telephone; Grievant did not set up a procedure therein the Hearing Officer could leave a telephone message for Grievant.

Counsel for the Agency attended the PHC. The Grievant did not, nor did the Grievant make any attempt to contact either the Hearing Officer or counsel for the Agency regarding the PHC.

After Grievant failed to appear for the PHC, Counsel for the Agency filed a Motion requesting the Hearing Officer file an Order of Non-compliance and dismiss the Grievance.

Since the Grievant failed to appear or provide any evidence, the facts of the termination, as presented by the Agency, cannot be disputed or confirmed.

DECISION

For the reasons stated hereinafter, the Agency's Motion for Non-compliance and Dismissal of the Grievance is hereby GRANTED.

The Grievant failed to appear for the PHC, despite many attempted by the Hearing Officer to contact her by email, telephone or USPS. For all practical purposes, the Grievant abandoned the Grievance by failing to appear at the PHC, by failing to respond to requests by the Hearing Officer to contact him regarding the PHC and the hearing.

The Group III Written Notice terminating the Grievant's employment is upheld.

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 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

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

[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 2nd day of September 2022.

/s/ Thomas E. Wray

Thomas E. Wray, Esq.
Hearing Officer