

Issue: Group III Written Notice with Termination (falsifying records); Hearing Date: 08/31/18;
Decision Issued: 09/12/18; Agency: DMV; AHO: John R. Hooe, III, Esq.; Case No.
11217; Outcome: No Relief - Agency Upheld.

**COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution**

**DIVISION OF HEARINGS
DECISION OF HEARING OFFICER**

In the matter of: Case No. 11217

Hearing Date: August 31, 2018
Decision Issued: September 12, 2018

PRELIMINARY MATTERS

Upon being appointed as the Hearing Officer in this matter, effective May 31, 2018, the Hearing Officer contacted the Grievant and the Agency Advocate. It was agreed that the grievance hearing was to be conducted on Friday, July 27, 2018. However, during a telephone conference between the Hearing Officer, the Grievant and the Agency Advocate conducted on July 20, 2018, the Hearing Officer granted the Grievant's request to postpone the hearing, for good cause shown, and over the objection of the Agency. By agreement of the parties, the hearing was rescheduled to be conducted on Friday, August 31, 2018 beginning at 10:00 a.m. at the Agency location. On July 26, 2018, the Agency notified the Grievant and the Hearing Officer that the location of the hearing was changed to the Department of Workers Compensation at 333 East Franklin Street, Richmond, VA. 23219.

Before the taking of evidence at the hearing, the Hearing Officer ruled that the Grievant's language contained in his email to the Agency Advocate (August 15, 2018) is a violation of the Grievance Procedure Manual 1.9 Code of Conduct and Civility

APPEARANCES

Agency Advocate
Six Agency Witnesses

The grievant did not appear.

ISSUES

1. Did the Grievant falsify records (time cards)?
2. If the Grievant falsified records as alleged, does such falsification constitute a Group III offense justifying the Grievant's termination as an employee?
3. Was Grievant's termination of employment an act of retaliation?

EXHIBITS

The Agency Exhibits admitted into evidence are contained in one notebook with the following contents:

1. Grievance
2. Group I Written Notice
3. Group II Written Notice
4. Group III Written Notice
5. Standards of Conduct – 1.60
6. Policy 1.25, Hours of Work
7. Policy 4.30, Leave Policy
8. Policy 4.10, Annual Leave
9. eTime
10. Policies/Procedures Acknowledgement/Employee Handbook
11. PMIS
12. Organization Chart
13. 3/19/2018 Memo
14. Time Tracker
15. User Activity Report/VA DMV
16. Images
17. Time Sheets
18. 12/07/2017 Memorandum
19. 12/14/2017 Email
20. 1/08/2018 Email
21. 1/22/2018 Email and Memo
22. 1/23/2018 Email
23. Emails
24. 2/21/2018 Assignment email
25. 2/21/2018 Complaint by grievant
26. Timeline
27. November 2017 and earlier emails

28. Emails
29. Emails
30. Emails
31. Emails
32. Emails
33. Emails
34. Emails
35. Emails
36. Emails
37. Emails
38. Reasonable accommodations/medical
39. Medical Form 4/4/18
40. Counseling memo 2/28/18
41. Request for Response 7/7/17

The Grievant did not appear at the hearing. The Grievant's witness list and group of unidentified and unnumbered documents were not introduced as evidence and were not otherwise considered by the Hearing Officer.

FINDINGS OF FACT

In that the Grievant did not appear at the Hearing, the Agency Advocate introduced the Agency's notebook of exhibits and proffered that the Agency's witnesses would testify that the representations in the exhibits are accurate.

The Grievant was terminated from his employment by Written Notice issued 4/10/2018 for falsification of agency records, i.e. time cards.

The Agency's evidence, particularly Agency Exhibits 15 and 16, clearly establish that the Grievant falsified agency records.

The Agency's evidence also established that mitigating circumstances were considered but they did not serve to reduce the termination action due to the number of falsified records and the accumulation of three (3) Written Notices (all issued on 4/10/2018).

Standards of Conduct, Policy 1.60 includes the act of falsification of records as an offense for which termination should normally result.

In that the Grievant did not appear, no evidence of retaliation was presented to the Hearing Officer.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et. seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Code § 2.2-3000 (A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints.....

To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

The Standards of Conduct, Policy 1.60 provides for termination of employment when an employee falsifies agency records.

In considering all of the evidence, it is the Hearing Officer's opinion that the Grievant did falsify records, that Policy 1.60 required the Grievant's termination from employment and that mitigating factors did not call for any lesser discipline.

DECISION

The Hearing Officer upholds the termination of Grievant's employment as being consistent with policy and procedure.

APPEAL RIGHTS

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

Please address your request to:

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

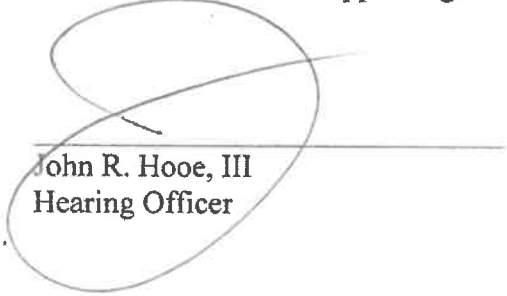
or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

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 EEDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EEDR Consultant].



John R. Hooe, III
Hearing Officer

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