

Issues: Group II Written Notice (unsatisfactory performance and failure to follow policy), and Group I Written Notice (unsatisfactory performance and failure to follow instructions); Hearing Date: 11/02/18; Decision Issued: 11/08/18; Agency: VDFP; AHO: John R. Hooe, III, Esq.; Case No. 11260; Outcome: Partial Relief.

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

**DIVISION OF HEARINGS
DECISION OF HEARING OFFICER**

In the matter of: Case No. 11260

Hearing Date: November 2, 2018
Decision Issued: November 8, 2018

PRELIMINARY MATTERS

Upon being appointed as the Hearing Officer in this matter, effective September 11, 2018, the Hearing Officer contacted the Grievant and the Agency Advocate. It was agreed that the grievance hearing was to be conducted on Friday, November 2, 2018 beginning at 10:00 a.m. at the Agency's facility.

Subsequent to the telephone conference, the Hearing Officer was advised that the Grievant would be represented.

APPEARANCES

Agency Advocate
Agency Witness 1
Agency Witness 2
Agency Witness 3

Grievant Advocate
Grievant
Grievant Witness 1
Grievant Witness 2
Grievant Witness3

ISSUES

1. Did the Grievant fail to follow state policy by paying a past due invoice using the

- Grievant's small purchase charge card (SPCC)?
2. Did the Grievant fail to follow state policy by failing to pay a Department of General Services invoice in a timely manner?
 3. If so, did either failure to follow policy constitute "unsatisfactory performance" under DHRM's Standards of Conduct Policy 1.60?
 4. Do either, or do the two in common, constitute a Group II offense?
 5. Did the Grievant fail to follow the Grievant's supervisor's instructions to keep and maintain a clean and organized work space?
 6. If so, does such failure constitute "unsatisfactory performance & failure to perform under DHRM's Standards of Conduct Policy 1.60?"
 7. If so, does such conduct constitute a Group I offense?

EXHIBITS

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

1. Grievance
2. Group II Written Notice
3. Group I Written Notice
4. Standards of Conduct
5. Code of Ethics
6. Policies & Procedures-Purchasing Charge Card
7. Policies & Procedures-Prompt Payment
8. Policies & Procedures-Slides 19-21
9. Job description & organizational chart
10. Canon situation
11. Canon situation
12. Log sheets/worksheets
13. Worksheets
14. VDC & TKS
15. VFMA/SFMO list of duties
16. Workplace cleanliness memo
17. Timesheets
18. Schedule adjustment memo
19. Inactive Written Notice
20. Timeline
21. Pictures
22. Pictures
23. Notes
24. Pictures
25. Pictures
26. Pictures

The Grievant exhibits admitted into evidence are contained in one notebook with the following contents:

1. Grievant's documents
2. Disciplinary notices
3. Medical documents
4. Invoice information
5. Performance evaluations/EWP
6. Pictures
7. Other communications
8. Timesheets

FINDINGS OF FACT

The evidence established that the Grievant was a long-term employee of the Agency having worked for the Agency for close to twenty years. The evidence indicated that the Grievant had an inactive Group I Written Notice for an offense which occurred on September 18, 2014 for unsatisfactory job performance (The Grievant having submitted twenty-two vouchers to the finance department for processing, nineteen of those vouchers failing to meet the required time frame).

Agency witness 1, testified that he was the Grievant's supervisor for two years, during which time he advised the Grievant that her workspace was extremely unclean and disorderly. Agency Exhibit 16 is a memorandum dated April 3, 2017 noting the unsatisfactory conditions and giving a deadline of April 13, 2017 for the Grievant's workspace to be cleaned and organized. The Grievant's supervisor testified that following the memo there was a marked improvement but then a quick decline to an unclean and disorganized state.

Agency Witness 3, the Deputy Executive Director also testified regarding complaints received regarding the Grievant's workspace and that a Workers' Compensation review pointed to the Grievant's workspace as a concern. Likewise, the witness was very concerned that sensitive documents were left on the Grievant's desk where the public could observe them.

The Agency's evidence included photographs of the Grievant's workspace to show what the Supervisor considered to be unclean and disorganized. However, the evidence established that the Supervisor never told the Grievant of specific actions which were required to meet the Supervisor's unwritten standards. In fact, Grievant witnesses 2 and 3. testified that their workspaces looked worse than the Grievant's and no action was taken against them. Their testimony was un rebutted by the Agency.

In addition, the evidence established that the Grievant had an unusually heavy workload and that no additional staff was brought in to help the Grievant when her medical leave began in June, 2017. The evidence indicated that it was only when the Grievant's co-worker also experienced medical issues that a contract worker was brought in to assist due to the fact that

Grievant witness 1 was already helping cover the Grievant's duties.

As to the Group II Written Notice Agency Witness 2 established that the SPCC (small purchase charge card) issued to the Grievant had expressed restrictions known to the Grievant and that the state has a requirement of 100% compliance with "prompt payment". Under no circumstance could the Grievant, without prior approval, use the SPCC to pay a past due vendor invoice. The evidence established that the Grievant paid a past due invoice with the SPCC without prior approval.

In addition, the Agency showed that the Grievant issued a purchase order on October 5, 2017, with product being received on October 11, 2017. The evidence indicated the Agency policy is that invoices are to be paid within thirty days and that it is the responsibility of the purchase agent (in this case the Grievant) to track the order, confirm receipt of the item ordered and make timely payment on the invoice.

The Agency evidence indicated that a memo dated January 11, 2018 was directed to the Grievant indicating that it had been discovered that the October item was received but that the invoice remained unpaid, showing outstanding 31-60 days. Despite the memo, the invoice remained unpaid from January 11, 2018 to March 28, 2018. Agency Exhibit 14 page 1 is the memo dated March 28, 2018 which the Grievant finally sent to the accountant regarding the unpaid invoice.

Agency Exhibit 23 is the Notice of Due Process dated April 11, 2018 which set out four areas of concern, namely:

1. Using small purchase charge card to pay past due invoice.
2. Failure to pay invoices in a timely manner.
3. Failure to maintain workspace organization.
4. Altering work schedule without prior authorization.

The hand written notes on Agency Exhibit 23, combined with the testimony of the Agency Witnesses indicate that the Agency did mitigate by combining what could have been two Group II Written Notices into a single Group II Written Notice and electing not to impose any penalty beyond placing the Written Notices in the Grievant's employee file.

The three witnesses testifying on behalf of the Grievant, co-workers 1, 2 and 3 all indicated that the Grievant has a very strong work ethic, that the Grievant never had any problem finding anything at the Grievant's workspace despite the disorganized appearance, that the invoice process is as much to blame as the Grievant and that the Grievant had a work load that it would take more than two people to do.

The Grievant's testimony made clear Grievant's belief that the supervisor, Agency witness 1, did not hit it off with the Grievant and despite the Grievant's experience asked other people questions rather than the Grievant. The Grievant continues to believe that the Grievant's desk was organized despite the unorganized appearance represented in the photographs. The

Grievant pointed out that after the requirement in April 2017, the Grievant organized the workspace, there were no other complaints made to the Grievant about the Grievant's workspace until Grievant received the Due Process Memo on April 11, 2018. The Grievant testified that the condition of the workspace as represented in the photos of April 2018 are the same as the condition in April 2017.

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 that a Group I offense is a level of offense that generally has a relatively minor impact on Agency business operations but still require management intervention and that a Group II generally includes acts of misconduct of a more serious nature that significantly impact Agency operations.

In considering all of the evidence, it is the Hearing Officer's opinion that the Grievant's misuse of the SPCC and the failure to follow proper procedures in paying invoices each constitute a Group II offense.

It is also the Hearing Officer's opinion that considering all of the evidence, the Grievant should not receive a Written Notice regarding the condition of the Grievant's workspace.

Finally, the evidence is clear that the Agency mitigated by giving the Grievant a single Group II Written Notice rather than two Group II Written Notices. The Agency further mitigated by not imposing any penalty beyond placing the Written Notices in the Grievant's employee file.

DECISION

The Hearing Officer upholds the Group II Written Notice. The Hearing Officer orders that the Group I Written Notice be removed from the Grievant's employee file.

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.