



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 11521

Hearing Date: July 24, 2020
Decision Issued: October 16, 2020

PROCEDURAL HISTORY

On March 10, 2020, Grievant was issued a Group III Written Notice of disciplinary action with removal for falsifying records, leaving the workplace without approval, and failure to follow instructions, perform assigned work or comply with policy. On March 10, 2020, Grievant was issued a Group II Written Notice of disciplinary action with removal for leaving the worksite for personal reasons without permission.

On March 12, 2020, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On May 18, 2020, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On July 24, 2020, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Party Designee
Agency Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?

2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of 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 its 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. Grievance 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 FACT

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

The Community Services Board employed Grievant as a Recovery Specialist until her removal. She began working for the Agency in August 2015. She received a written notice on May 23, 2019.

On Mondays, Grievant worked from 8:30 a.m. to 9 p.m. On Tuesdays, Grievant worked from 8:30 a.m. to 5 p.m. On Wednesdays, Grievant worked from 8:30 a.m. to 7:00 p.m. On Thursdays, Grievant worked from 8:30 a.m. until 4:00 p.m.

On Monday, February 3, 2020 at 3:52 p.m., Grievant wrote a progress note indicating she had transported an individual J.W. home from the IOP. Grievant wrote that, "Behavior during the ride was appropriate." The transportation had not occurred at the time Grievant wrote the note. Individual J.W. was taken home by a person other than Grievant.

On February 3, 2020, the Therapy Group ended by 6:30 p.m. It was supposed to continue until 8 p.m. Grievant was at the Clinic at 6:30 p.m. but left the Clinic at 7:08 p.m. Grievant did not notify her supervisor when she left early from work on February 3, 2020.

Grievant wrote that she worked 9.5 hours on February 3, 2020.

On February 10, 2020, the Therapy Group ended at approximately 6:50 p.m. Grievant left the Clinic at approximately 6:53 p.m. to transport individuals. Grievant returned to the Building at approximately 7:10 p.m. Grievant spoke with other people and then left at 7:30 p.m.

Grievant made a service recording for Individual D.P. and Individual J.W. in the medical record stating that she provided transportation to them from 8 p.m. to 9 p.m. This information was inaccurate. Grievant was gone from the facility by 7:30 p.m. and the transportation took 30 minutes, not 60 minutes.

On February 12, 2020, Grievant was in a Triage meeting. Grievant abruptly left. She said she had to leave and would not be back. Grievant did not have her supervisor's permission to leave. Grievant later informed another employee that she had to leave to address an immediate concern regarding her mother's health.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses are "less severe in nature." Group II offenses are "more severe." Group III offenses "include acts and behavior of such a serious nature that a first occurrence should normally warrant written notice and suspension for up to 30 days or removal (termination)"

Group III Written Notice

"Falsifying any records, such as, but not limited to: vouchers, reports, insurance claims, time records, leave records, or other official Board documents" is a Group III offense under the Agency's Standards of Conduct. On February 3, 2020, Grievant wrote a progress note at 3:52 p.m. describing how she had transported an individual and how that individual behaved during the trip. At that time, Grievant had not yet completed the trip and, thus, she knew that her statement was untrue at that time. The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice with removal for falsifying records.

Grievant argued that there were problems with "notes disappearing" in the electronic records system. When this problem occurred, it was often due to connectivity issues. This problem, however, did not affect Grievant's ability to record events after those events had happened.

Group II Written Notice

"Leaving the work site for personal reasons without permission during working hours" is a Group II offense. On February 12, 2020, Grievant left the facility prior to the

end of her shift. She did so for personal reasons. She did not disclose her reason for leaving to her supervisor or obtain her supervisor's permission. Grievant did not present evidence explaining how she was incapable of informing her supervisor of her need to leave due to a family emergency. The Agency has presented sufficient evidence to support the issuance of a Group II Written Notice.

Grievant asserted she had permission to leave the facility. Grievant's supervisor did not testify and, thus, no evidence was presented showing that this could have been true.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action is **upheld**. The Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action is **upheld**. The Agency's decision to remove Grievant from employment is **upheld**.

APPEAL RIGHTS

The parties should review the Agency's grievance procedure to determine their rights of appeal.

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer