

Issue: Group II Written Notice (Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy); Hearing Date: August 1, 2001; Decision Date: August 4, 2001; Agency: Department of Corrections; AHO: Carl Wilson Schmidt, Esquire; Case Number: 5252

**DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION
DIVISION OF HEARINGS**

DECISION OF HEARING OFFICER

In the matter of Department of Corrections Case Number 5252

Hearing Date: August 1, 2001

Decision Issued: August 4, 2001

PROCEDURAL HISTORY

On April 2, 2001, Grievant was issued a Group II Written Notice of disciplinary action for:

Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy.

On May 4, 2001, Grievant timely filed a grievance to challenge the disciplinary action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On July 11, 2001, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On August 1, 2001, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Senior Warden
Associate Warden
Personnel Analyst
Institutional Manager

ISSUE

Whether Grievant should receive a Group II Written Notice of disciplinary action.

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. 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 Department of Corrections employs Grievant as a Corrections Institutional Rehabilitation Counselor. The chief objective of her position is:

Plans, implements, reviews, and coordinates case management treatment programs for adult offenders and sponsors at least three (3) rehabilitative programs in a major institution. Conducts counseling sessions, assesses individual program needs, evaluates inmate's progress, and maintains associated documentation.

(Agency Exhibit 7). Grievant's work tasks and duties include:

Maintains updated counseling file on each inmate detailing their complete institutional status and progress. Documents all information reality [sic] to individual counseling sessions, Institutional Classification Hearings, Parole Hearings, Special Review Committee Hearings and family contacts. Utilizing the documents in these files, composes appropriate correspondence on behalf of the inmate when necessary.

(Agency Exhibit 7).

The Agency's Facility houses inmates from the Federal Bureau of Prisons. Grievant is one of three counselors managing files for inmates. On January 30, 2001, an audit was conducted of the federal inmate files for the three counselors. One counselor was described as excellent at maintaining prisoner files and as a model for other counselors to follow. A second counselor was described as very good at maintaining files.

Grievant's files were deemed unacceptable by the auditor. Many of the files appeared to have been brought up-to-date recently. Grievant had updated her files within the last two

working dates before she left for extended sick leave in January 2001. Several files dating to June 2000 remained out-of-date. Approximately 44 files were not accounted for. Grievant had taken the files home with her in order to make sure they were complete. No one authorized her removal of the files.

CONCLUSIONS OF LAW

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “include types of behavior least severe in nature but which require correction in the interest of maintaining a productive and well-managed work force.” Department of Corrections Procedure Manual “(DOCPM)” § 5-10.15. Group II offenses “include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally warrant removal.” DOCPM § 5-10.16. Group III offenses “include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.” DOCPM § 5-10.17.

Failure to follow a supervisor’s instruction is a Group II offense under DOCPM § 5-10.16(B)(1). Grievant received a memorandum dated March 7, 2000 from the Associate Warden stating:

The files will be maintained in alphabetical order, housed in a file cabinet within their respective counselor’s offices. Preferably, the file cabinets should be equipped with lock bars and padlocks, in order to ensure that they are being kept in a secure environment.

By directing where files should be located and indicating a preference that the files be secured by bars and padlocks, the memorandum clearly indicates that it would be inappropriate for a counselor to remove the files from the facility and take them home. When Grievant took the files home, she acted contrary to the supervisor’s instructions and established written policy.

Grievant contends she was experiencing substantial personal stress and medical illness. These factors explain why Grievant was behind in her work and needed to take files home in order to work on them but they do not excuse her failure to follow policy.

Grievant’s objective of taking extra steps to make sure her work was up-to-date is commendable. Unfortunately, the method by which she attempted to finish her work was contrary to the institution’s policies.

DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Group II Written Notice of disciplinary action is **upheld**.

APPEAL RIGHTS

As Sections 7.1 through 7.3 of the Grievance Procedure Manual set forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review – This decision is subject to four types of administrative review, depending upon the nature of the alleged defect of the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.
2. **A challenge that the hearing decision is inconsistent with state or agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy.
3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure.
4. In grievances arising out of the Department of Mental Health, Mental Retardation and Substance Abuse Services which challenge allegations of patient abuse, **a challenge that a hearing decision is inconsistent with law** may be made to the Director of EDR. The party challenging the hearing decision must cite to the specific error of law in the hearing decision. The Director's authority is limited to ordering the hearing officer to revise the decision so that it is consistent with law.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **10 calendar** days of the **date of the original hearing decision**. (Note: the 10-day period, in which the appeal must occur, begins with the date of **issuance** of the decision, **not receipt** of the decision. However, the date the decision is rendered does not count as one of the 10 days; the day following the issuance of the decision is the first of the 10 days). A copy of each appeal must be provided to the other party.

Section 7/2(d) of the Grievance Procedure Manual provides that a hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 10 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or HRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

Carl Wilson Schmidt, Esq., Hearing Officer