

Issue: Group I Written Notice (inadequate or unsatisfactory job performance); Hearing Date: January 11, 2002; Decision Date: March 8, 2002; Agency: University of Virginia; AHO: Carl Wilson Schmidt, Esquire; Case Number: 5355



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5355

Hearing Date: January 11, 2002
Decision Issued: March 8, 2002

PROCEDURAL HISTORY

On October 23, 2001, Grievant was issued a Group II Written Notice of disciplinary action for:

[Grievant] has failed to properly prepare and submit billing invoices for two and one-half months (August, September, and October to date). This dereliction of duty has caused a one million dollar cash flow short fall for [Computer Unit]. [Grievant] made no effort to notify [Computer Unit's] management of this failure, or offer any explanation for not completing this work.

On October 31, 2001, Grievant timely filed a grievance to challenge the disciplinary action. During the step process, the University reduced the Group II to a Group I. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On December 19, 2001, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On January 11, 2002, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant

Agency Party Designee
University Counsel
Accounts Receivable Manager
Assistant

ISSUE

Whether Grievant should receive a Group I 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 Computer Unit is a self-contained entity within the University's Bookstore. It generates its own revenue by reselling computer hardware and software to other University departments. Revenues are used to pay all operating costs and surplus revenues are transferred to the University.

Grievant is employed as the Business Manager of the Computer Unit. He reports directly to the Director and is the second highest paid employee in the unit. He works independently and is entrusted with significant responsibility. He is responsible for overseeing all aspects of accounting and accounts receivable. The most important aspect of his job is making sure accounts receivable are collected because without revenues, operating costs ultimately cannot be paid. Grievant supervises an Assistant. Grievant has been employed by the University for approximately seven years without any prior disciplinary action. He has earned an MBA and is a Certified Public Accountant.

The University has a Desktop Computer Initiative (DCI) where it leases computers from vendors to be used by various Departments. University Departments often require new computer hardware and software. When a Department wishes to obtain new computers, for example, the Department asks the Computer Unit to obtain those computers. The Computer Unit leases the computers from the manufacturer and pays the monthly lease payments directly to the manufacturer. In order to obtain the

funds to pay the manufacturer, the Computer Unit obtains funds from the Department. Since there are many University Departments and many goods and services to obtain through the Computer Unit, the Computer Unit utilizes an automated accounting system to track payments for goods and services.

Under the prior accounting system, transactions involving specific goods and services were tracked using six digit FAS codes. Using the proper FAS code enabled the Computer Unit's accounting system to identify which good or service went to a particular Department and to coordinate transfer of funds from the Department to the Computer Unit.

In July 2001, the University replaced its old computerized accounting system with a new Oracle system.¹ Oracle uses twenty-one digit PATO² account codes. Part of the Oracle account code depends on the unique numbers assigned to each Department. Departments with complex budgets may have multiple codes within the department. Grievant had to contact staff in each University Department in order to obtain the proper PATO code. Sometimes Department staff provided incorrect account numbers. When incorrect numbers were processed in the Oracle system, the system rejected the entries. Transactions involving rejected entries were not completed and were set aside for further research.

From July 2001 to October 2001, the Computer Unit experienced a dramatic decline in revenue. In July 2001, the Computer Unit had a cash balance of \$1,007,541.91.³ By September 2001, that cash balance had declined to negative \$525,810.25.⁴ On October 15, 2001, the cash balance was negative \$1,060,426.90.⁵ This shortfall was unusual because the Computer Unit typically had a monthly revenue surplus and ended up transferring profit to the University at the end of the fiscal year.

Grievant discovered the shortfall on October 15, 2001 and notified the Director the following day. The shortfall arose because Grievant had not obtained the proper PATO codes for DCI lease payments. Although Grievant was making sure a sizable number of transactions were being smoothly processed, he set aside the DCI lease payments and expected to later research the proper PATO code for the lease payments and then enter them into the system. Because the DCI lease payments involved such large dollar amounts, they caused a substantial dollar amount of transactions not being

¹ Grievant received training on the Oracle System.

² PATO stands for Project Award Task and Organization.

³ Agency Exhibit 3.

⁴ Agency Exhibit 5.

⁵ Grievant Exhibit L.

entered into the Oracle system.⁶ Without the DCI lease payments being entered into the system, the Computer Unit did not timely collect funds from other University Departments.

Once the shortfall was verified, the Director asked the Grievant's Assistant to make the necessary contacts in order to obtain the PATO codes. The Assistant focused his attention on the task and obtained the necessary codes within two days. The Assistant contacted the DCI Manager who in turn emailed University Departments asking them for their PATO codes. By the end of October 2001, cash was returned to a positive balance of \$66,310.13.⁷

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." P&PM § 1.60(V)(B).⁸ 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." P&PM § 1.60(V)(B)(2). Group III offenses "include acts and behavior of such a serious nature that a first occurrence should normally warrant removal." P&PM § 1.60(V)(B)(3).

"Inadequate or unsatisfactory work performance" is a Group I offense. In order to prove inadequate or unsatisfactory work performance, the University must establish that Grievant was responsible for performing certain duties and that he failed to perform those duties. This is not a difficult standard to meet.⁹

Grievant was responsible for overseeing the accounts receivable collections and the Computer Unit's accounting records. Grievant failed to anticipate that some PATO codes may represent larger transactions than did other codes. By ignoring 92 lease transactions, he ignored transactions having large dollar values thereby causing an approximately one million-dollar revenue shortfall in the Computer Unit's accounts. The effect of this shortfall was to disrupt the Computer Unit's normal business operations. Grievant's Assistant had to be diverted from other duties in order to assist with

⁶ When the Oracle system rejected an account code, only the rejected code was identified. The dollar amount of the transaction underlying the code was not reported. Thus, Grievant did not realize that the account codes being rejected were of large dollar amounts.

⁷ Agency Exhibit 6.

⁸ The Department of Human Resource Management has issued its *Policies and Procedures Manual* (P&PM") setting forth Standards of Conduct for State employees.

⁹ The University's decision to reduce the Group II to a Group I was appropriate. It is unlikely the University could have withstood a challenge to its issuance of a Group II.

collecting the necessary PATO codes.¹⁰ A general sense of panic followed among Computer Unit and Bookstore managers because Grievant did not bring the growing revenue shortfall to the attention of the Director sooner.¹¹ University Department budgets reflected unnecessarily inflated available fund balances. Grievant admits it was a mistake to delay addressing the 92 lease codes. Because Grievant was entrusted with sole oversight responsibility for accounts receivable processing, he was responsible for any accounts receivable shortfall resulting from failing to obtain PATO codes.

Grievant contends he was working hard throughout this change in computer systems. The Hearing Officer agrees that Grievant was working hard, however, he made a mistake.

Grievant contends his actions did not cause injury to the University. The Hearing Officer agrees¹², however that does not excuse his failure to adequately perform his duty. It is not necessary for the University to show it suffered adverse financial consequences¹³ in order to prove Grievant's performance was inadequate.

Grievant argues that he was forced to deliver computers to students for two weeks when school began and this reduced his available time to processing accounts receivable. The Director responds that Grievant participated voluntarily and if Grievant had informed him of the PATO problems, he would have helped Grievant prioritize his duties. The Hearing Officer finds that Grievant's delivery duties are insufficient to excuse the accounting shortfall.

Grievant contends that the disciplinary action may have resulted as retaliation against him. No evidence was presented to support this allegation.

DECISION

¹⁰ Since Grievant supervised the Assistant, Grievant could have better directed the work of the Assistant by earlier instructing the Assistant to research the PATO codes.

¹¹ Grievant states, "I probably could have done a better job of keeping my supervisor up to date on my progress but the 'made no effort to notify' or 'offer any explanation for not completing work' is untrue.

¹² The evidence showed that Grievant is hard working, talented, and experienced. Because of his obvious skills, the University entrusted him with full oversight of the implementation of the new computer software accounting system. Even a top performer can make a mistake as Grievant has done in this case.

¹³ The Hearing Officer rejects the University's argument that the Computer Unit lost interest revenue from the shortfall. Although the money was not in the Computer Unit's accounts earning interest, it was in the University Department's accounts earning interest for the University. All vendor invoices were paid in a timely manner and no shipments were delayed.

For the reasons stated herein, the Agency's issuance to the Grievant of a Group I 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 three 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.

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.

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 DHRM, 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