

Issue: Group II Written Notice (failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable written policy); Hearing Date: June 6, 2002; Decision Date: June 18, 2002; Agency: Department of Corrections; AHO: Carl Wilson Schmidt, Esquire; Case Number: 5449



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5449**

Hearing Date: June 6, 2002  
Decision Issued: June 18, 2002

**PROCEDURAL HISTORY**

On February 28, 2002, 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 written policy.*

On March 22, 2002, 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 May 20, 2002, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 7, 2002, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Agency Representative  
Personnel Assistant  
Accountant  
Business 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 Fiscal Technician. The purpose of her position is to "Process inmate accounting documents for receipts, transfers, payroll, withdrawals, medical co-payments and accountability reports." No evidence was presented of any prior disciplinary action against Grievant.

Inmates are not permitted to hold money they have earned or that has been given to them. Their funds are held in trust by the Agency. All deposits and withdrawals from inmate accounts are closely tracked. Any shortages or discrepancies in inmate funds become the obligation of the Agency.

Someone wishing to give money to an inmate must make the gift by mailing a money order to the Facility. Staff in the mailroom open all letters and remove money orders. They record on a mail log the receipt of all money orders. The mail log shows the inmate's name and the amount of the money order to be deposited and credited to his account. Mailroom staff take the mail log and the money orders to the business office where Grievant and several other staff work. Two people in the business office are supposed to separately verify the money order totals. Each person is supposed to take all of the money orders and add the dollar amount of the money orders to determine the total. That total is then compared to the total dollar amount shown on the mail log. If the total on the mail log matches the total of the money orders, then the inmate funds are considered properly verified.

On January 30, 2002, the mailroom staff received a \$10 money order for a particular inmate, but incorrectly recorded the \$10 as \$100. Because of this mistake, the mail log showed the Agency received \$90 more than it actually received. When the

mail log and money orders were taken and given to Grievant, she took the mail log and added up the amounts shown on the mail log. This action was of little value since the mail log was prepared using a spreadsheet that automatically totaled the sums listed on the log. Grievant did not look at each money order and add them. If she had totaled the money orders and compared them to the mail log total, she would have discovered the error in the mail log. Because Grievant did not total the money orders, an inmate had \$100 credited to his account when only \$10 should have been credited. The \$90 became a liability of the Facility. The inmate spent part of the extra money deposited. Only if an amount equaling the spent money was later deposited into the inmate's account, would the money be recovered by the Facility.

Mr. D also worked in the business office and he was given the task of being the second person to verify the money orders collected. He was too busy to complete the verification that day so he relied on Grievant's calculation. After an investigation, Agency staff recommended disciplinary action be taken against both Grievant and Mr. D. Mr. D left the Agency on February 22, 2002 for medical reasons and on May 1, 2002 retired as disabled. Because he never returned to the Facility, the Agency did not issued a Group II Written Notice to Mr. D.

Grievant reports to the Accountant. In September 2001, the Accountant had explained to Grievant how to total the money orders and compare that total with the total shown on the mail log.

## **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 instructions, perform assigned work, or otherwise comply with established written policy" is a Group II offense. DOCPM § 5-10.16(B)(1). Grievant was instructed to verify the money order deposits, yet she failed to do so. Because she was dealing with inmate funds held in a fiduciary capacity, her oversight was of great significance to the Agency's operations. The Group II Written Notice must be upheld.

Grievant contends she was not properly trained to perform the verification. Although verifying money orders may not have been Grievant's daily responsibility, it was within the scope of her expected duties and a task properly assigned to her on

January 30, 2002. She was told how to perform the task in September 2001.<sup>1</sup> If she did not remember how to perform the task in January 2002, she should have asked for assistance from the Accountant or someone else more familiar with the process. To some extent, it is self-evidence that totaling the funds listed in the mail log while ignoring the actual money orders themselves, will not enable one to account properly for inmate funds.

Grievant contends the disciplinary action should be reversed because she was the only one disciplined whereas Mr. D was equally at fault.<sup>2</sup> This argument is untenable. The Agency initiated disciplinary action against Mr. D and if he had not left the Agency before the Agency had the opportunity to issue the disciplinary action, he would have received the same discipline Grievant received.<sup>3</sup> There is no reason for the Hearing Officer to believe Grievant was singled out for disciplinary action.

## 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 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

---

<sup>1</sup> Grievant also had attended inmate trust and pay training which would have covered verification of inmate funds. She also had access to the inmate trust manual which could have helped explain the process to her.

<sup>2</sup> She also argues that the mailroom employee who entered an incorrect amount on the mail log should have been disciplined. The evidence, however, showed that the mailroom employee was performing a clerical function without the same degree of significance or importance of Grievant's function. Grievant was supposed to verify the money orders primarily to make sure mailroom staff had not made mistakes in their entries in the mail log.

<sup>3</sup> Mr. D left the Facility on February 22, 2002 and Grievant's disciplinary action was issued on February 28, 2002. Had Mr. D been at work on or after February 28, 2002, he would have received a Group II Written Notice.

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 Resource 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