

Issue: Group III Written Notice with Termination (falsifying records, processing an unauthorized payroll transaction which affected personal financial interests, misuse of payroll position for personal gain); Hearing Date: June 21, 2002; Decision Date: June 27, 2002; Agency: Department of Transportation; AHO: Carl Wilson Schmidt, Esquire; Case Number: 5459



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5459

Hearing Date: June 21, 2002
Decision Issued: June 27, 2002

PROCEDURAL HISTORY

On January 23, 2002, Grievant was issued a Group III Written Notice of disciplinary action with removal for:

1. *Falsifying records.*
2. *Processing an unauthorized payroll transaction which affected your personal financial interests.*
3. *Misuse of your payroll position for personal gain.*

On February 19, 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 29, 2002, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 21, 2002, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee

Legal Assistant Advocate
Payroll Manager
Assistant Fiscal Division Administrator

ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action with removal.

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 Virginia Department of Transportation employed Grievant as a Payroll Administrator until her removal effective January 23, 2002. She had worked for the Agency for approximately 19 years and received favorable evaluations. One of her duties was to process payroll for the Central Office staff including her own payroll. Because she processed payroll, she could determine whether monies were deducted from her paychecks. Grievant reported to the Payroll Manager. The Payroll Manager had instructed Grievant and other payroll administrators not to handle certain transactions involving their own payroll.

A local county assessed a tax lien on Grievant. On September 27, 2001, the county mailed a copy of the lien to the Payroll Manager at the Agency. Grievant received the letter and opened it. When she realized the lien was for her, she placed the letter in a drawer in her desk. She did not update the payroll system to implement a deduction from her paycheck to account for the tax lien.

After several days passed without any acknowledgement of the lien, the credit service¹ called the Payroll Manager and asked if the Agency had received the lien. She indicated the Agency had not received the lien and the credit service faxed a copy of the

¹ The county relies on an independent credit service to collect debts owed to county.

lien on October 10, 2001. On that same day, the Payroll Manger updated the payroll system to require deductions from Grievant's pay each payday. The Payroll Manager informed Grievant that the deduction had been established for her account.

Grievant is paid 24 times per year. Funds were withheld from Grievant's pay and checks drafted to the credit service to pay the lien. The first check dated October 16, 2001 was paid and mailed to the credit service.² After that date, Grievant began collecting the checks and putting them into a locked cabinet in her office. She held three checks dated November 1, 2001, November 16, 2001, and November 30, 2001. The checks should have been mailed to the credit service immediately after being prepared.

Grievant maintained a log regarding the payments withheld. She updated the log to show the first check being mailed to the county. She also updated the log to show the remaining three checks had been mailed even though Grievant put the checks in a locked cabinet.

Grievant had met with her attorney beginning in September 2001 to file Chapter 7 bankruptcy. She needed to collect numerous documents before filing. She finally assembled all of the necessary documents and went to her attorney's office on December 10, 2001 around lunchtime to sign the petition for bankruptcy. As she left her attorney's office, she asked for paperwork to support the bankruptcy. Her attorney's secretary gave her a copy of the list of creditors but not a copy of the bankruptcy petition. Grievant was informed that the petition would be filed with the bankruptcy court that day, December 10, 2001.

Grievant returned to her office with a copy of the list of creditors. She accessed the payroll system at 3:13 p.m. and turn off the payroll deduction effective December 10, 2001, the last day to finalize payroll. Had she waited until December 11, 2001, an additional payment would have been withheld from her paycheck. Unknown to Grievant, her bankruptcy petition was not filed until December 11, 2001.

On December 17, 2001, the Payroll Manager unlocked Grievant's cabinet and found the three checks. She asked Grievant why the checks had not been mailed. Grievant responded that the checks did not need to be mailed because she was holding them as she would a garnishment. The Payroll Manager mailed them to the credit service.

CONCLUSIONS OF LAW

² Grievant mailed the October 16, 2001 check because the Payroll Manager instructed her to do so. The check was sent to the county instead of the credit service. The county staff called to inform the Agency that the checks should be sent to the credit service. Grievant received the call and informed the Payroll Manager so that the address could be changed.

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).³ 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).

“Falsifying any records, including, but not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents” constitutes a Group III offense. P&PM § 1.60(V)(B)(3)(b). “Falsifying” is not defined by the P&PM, but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee in order for the falsification to rise to the level justifying termination. This interpretation is less rigorous but is consistent with the definition of “Falsify” found in Blacks Law Dictionary (6th Edition) as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. ***

The Hearing Officer’s interpretation is also consistent with the New Webster’s Dictionary and Thesaurus which defines “falsify” as:

to alter with intent to defraud, *to falsify accounts* || to misrepresent, *to falsify an issue* || to pervert, *to falsify the course of justice*.

DHRM Policy 1.60 lists several offenses such as falsifying records as Group III offenses. The listed offenses, however, are not all-inclusive. They are “intended as examples of unacceptable behavior for which specific disciplinary actions may be warranted.” “Accordingly, any offense which, in the judgment of agency heads, undermines the effectiveness of agencies’ activities may be considered unacceptable and treated in a manner consistent with the provisions of [P&PM § 1.60(V).]”

To determine whether the disciplinary action should be upheld, the Hearing Officer must examine each allegation separately and then consider them together.

Falsifying records. Grievant created a tax lien log and recorded the dates checks were mailed when she knew those checks had not been mailed. She intentionally created a record that did not reflect the true aspects of how the tax lien was being handled. Thus, she falsified state records.

³ The Department of Human Resource Management has issued its *Policies and Procedures Manual* (P&PM”) setting forth Standards of Conduct for State employees.

Grievant contends the Agency is retaliating against her and that the discipline was too harsh. The evidence was insufficient to support Grievant's contention.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal 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 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