

Issue: Two Group II Written Notices (one with termination) and Counseling Memorandum (failure to follow supervisor's instructions); Hearing Date: 10/25/02; Decision Date: 11/08/02; Agency: DSS; AHO: Carl Wilson Schmidt, Esq.; Case No.: 5543/5544/5545



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5543 / 5544 / 5545**

Hearing Date: October 25, 2002  
Decision Issued: November 8, 2002

**PROCEDURAL HISTORY**

On April 26, 2002, Grievant was issued a Group II Written Notice of disciplinary action for failure to follow supervisor's instructions. On June 7, 2002, the Agency issued Grievant a counseling memorandum. On July 8, 2002,<sup>1</sup> Grievant was issued a Group II Written Notice of disciplinary action with removal effective July 12, 2002 for failure to follow supervisor's instructions.

Grievant timely filed grievances to challenge the disciplinary actions and the counseling memorandum. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On October 3, 2002, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer.<sup>2</sup> On October 25, 2002, a hearing was held at the Agency's regional office.

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<sup>1</sup> The Written Notice originally stated June 26, 2002 as its date of issuance. See Grievant Exhibit 1.

<sup>2</sup> The Agency mistakenly permitted two of three grievances to be qualified for a hearing. Three grievances were consolidated and assigned to the Hearing Officer by the Director of the Department of Employment Dispute Resolution. In a letter dated October 10, 2002, the Hearing Officer overruled the Agency's motion to dismiss two of the grievances based on the Hearing Officer's lack of authority to grant the request.

## **APPEARANCES**

Grievant  
Agency Party Designee  
Legal Assistant Advocate  
Fiscal Technician Senior  
Fiscal Director  
Accounting Manager A

## **ISSUE**

Whether Grievant should receive two Group II Written Notices of disciplinary action with removal for failure to follow supervisor's instructions.

## **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against the Grievant were 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 Social Services employed Grievant as an Accountant Senior until her removal effective July 12, 2002. The purpose of her position<sup>3</sup> was:

To administer the Chart of Accounts in Oracle, CARS and SSCARS financial systems. To ensure accuracy and classification of all account coding. Preparation of weekly, monthly and annual financial reports and analysis of those report findings. Facilitate Manager's reporting as needed. Requires the application of generally accepted accounting principles (GAAP) throughout all processes.

On October 11, 2000, Grievant was issued a Group I Written Notice because she, "Walked out of meeting refusing to meet and discuss unit concerns and issues with supervisor and manager."<sup>4</sup>

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<sup>3</sup> Grievant Exhibit 6. Agency Exhibit 1.

<sup>4</sup> Agency Exhibit 11.

Group II Written Notice – April 26, 2002

The Agency maintains a complicated and extensive accounting system designed to facilitate, monitor, and collect information about how the Agency funds various programs and functions. The Agency uses database software from Oracle to maintain a Chart of Accounts to account for its programs and flow of funds. One way to determine how funds are being spent is to assign expenditures to specific cost or object codes. As funds are spent, object codes are used to track expenditures. The Agency can expand the number of object codes by adding subobject codes to further define expenditures within various programs and functions. If an object code is closed, expenditures cannot be made or tracked under that code.

Oracle Corporation issued a new version of its database. The new version (called 11i) was not completely compatible with the old version (called 10.7). The Agency was in the process of moving its data from the old to the new software.<sup>5</sup> Part of that transition involved comparing data in the two systems and researching discrepancies. For example, if an object code was closed under version 10.7 but was appeared open under version 11i, the difference could be the result of prior error or of an intentional act by someone using the system and believing an object code was no longer necessary. In order to determine this, one could review a pivot table and a maintenance form. A pivot table further defines the object code in terms of money spent and fund structure. A maintenance form shows the person making the request, the nature of the request, and why the request was made. If an object code was closed in error, the absence of a maintenance form would reflect this. If an object code was closed correctly, the maintenance form would explain who made the decision to close and why.

The Accounting Manager held a meeting in his office to discuss discrepancies between version 10.7 and version 11i.<sup>6</sup> Grievant attended along with the Supervisor and the Fiscal Technician Senior. The Accounting Manager went over the procedures to follow to resolve discrepancies. He showed Grievant how to research discrepancies and instructed Grievant to review the pivot table and maintenance form for each discrepancy. Grievant observed the Accounting Manager research discrepancies. The Accounting Manager also instructed Grievant to provide the Fiscal Technician Senior with a copy of the most recent data under SSCARS, the Social Services Commonwealth Accounting and Reporting System. Grievant left the meeting and began researching discrepancies.

Grievant found a discrepancy between the new and old software regarding object code 87801. She noticed that the object code had been closed in 1999 for version 10.7

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<sup>5</sup> The new version was to be in use effective July 1, 2002.

<sup>6</sup> Grievant had been responsible for updating financial accounts under version 10.7. Her duties would continue under version 11i.

and she assumed that it was closed correctly. She failed to review a pivot table or look for a maintenance form explaining why the code was closed. She also failed to provide the Fiscal Technician Senior with the most recent SCCARS information she had in her possession.

On April 22, 2002 a federal reporting manager approached the Accounting Manager at the Agency's facility and demanded to know why the Agency was not processing certain location reimbursements. The Accounting Manager researched the problem and discovered that the cost accounting code that would authorize the reimbursement had been closed in error.<sup>7</sup> He reached this conclusion because there was no maintenance form asking for or explaining why the cost code needed to be closed. If Grievant had researched whether a maintenance form existed, she would have realized no form existed and not closed the cost code for the location reimbursements.

On April 26, 2002, the Accounting Manager sent Grievant a memorandum<sup>8</sup> stating:

The purpose of this memorandum is to inform you of formal disciplinary action being taken against you for your failure to follow a manager's instructions. On Thursday, April 18, 2002, you were assigned the task of Cross Validation of Program to Cost Code after considerable time together researching the issues surrounding the recommendation for changing the rules. You requested that this assignment be given to you for completion. Your request was granted with instructions on how I wanted this task to be performed and you indicated that you understood the needed procedures. I was later made aware that you abandoned my instructions and omitted some of the procedures.

Your actions generated the need for managers to perform additional research and could have delayed the local reimbursement. This is the latest in a series of incidents in which you have failed to perform the assigned work. For this reason I am issuing you a Group II Violation under the Virginia Standards of Conduct. I am hoping that this will assist you in understanding the importance of following the instructions of management.

### Counseling Memorandum

On June 7, 2002, the Accounting Manager presented Grievant with a counseling memorandum<sup>9</sup> stating:

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<sup>7</sup> Grievant admitted, "I assumed that it (account code 87801) should have been closed."

<sup>8</sup> Agency Exhibit 4.

<sup>9</sup> Agency Exhibit 11.

The purpose of this memorandum is to inform you of your failure to follow a manager's instructions. On Tuesday, June 4, 2002, you provided [Fiscal Director] and I a report of Federal Revenues and Expenditures. The information contained in the report was grossly incorrect.

Your failure to understand and follow instructions is of great concern. In the past we have discussed these concerns and have granted you time to enhance your work performance. I am willing to assist you with understanding the assignments but you must request assistance.

As stated above this is a major error which prevents managers from making year-end decisions. If these errors continue and there is no improvement in your work performance, then we will have no alternative but to exercise more extensive disciplinary actions. Additional disciplinary actions could result in suspension and/or discharge.

#### Group II Written Notice – July 8, 2002

On June 20, 2002, the Department of Planning and Budget informed the Agency that the Governor's Secretary of Technology launched a new initiative to better identify the resources allocated to information technology by Virginia state government. Part of that effort involved improvements to the expenditure structure used to record expenses by agencies. The Agency was provided with new object codes for seat management services (1205) and IT related training (1228). These codes were to be utilized beginning July 1, 2002.

On June 21, 2002 at 8:03 a.m., Grievant was instructed "Please make sure 11i is set up with the changes in object code."<sup>10</sup> At 9:23 a.m., Grievant sent an email to the Agency's internal computer consultant with a copy to the Accounting Manager stating:

I believe that we have crossed this bridge before. I just wanted to verify that when we discussed this previously, it was determined that you would take care of updating the system with new object codes. If this isn't the case, please advise because I will need your assistance to insure that R11i is updated with the new object codes discussed below.<sup>11</sup>

The Accounting Manager responded at 10:14 a.m. to Grievant's email<sup>12</sup> stating:

I feel this is something that you should attempt to do. [The computer consultant], is a good source of assistance but she is working with a full

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<sup>10</sup> Agency Exhibit 8.

<sup>11</sup> The email refers to codes 1205 and 1228.

<sup>12</sup> Agency Exhibit 8.

plate. Please ask her to inform you on the how to do, but this is a part of your position responsibilities.

Grievant replied at 10:48 a.m.:

I realize object codes are a part of maintaining the Chart of Accounts and that is why I asked [the computer consultant], to assist me in taking care of this. The only opportunity I've ever had to set up an object code on the present version of FAAS, [the computer consultant] said that she takes care of that. I was never shown how to set up an Object Code and therefore I would not have any idea how to go about setting one up on R11i. As per my request of [the computer consultant], I would be happy to get the training necessary to complete this type of update.

The Accounting Manager responded at 11:14 a.m.:

[Grievant], this is not correct. [You] have set up object code in [version] 10.7 before, but if you need to understand the process [then] that is another issue. I just do not want [the computer consultant] to be processing work that we can and should do in this unit. I feel [the Supervisor, Fiscal Technician Senior] or I can show you how to handle this function. If anyone in the unit can handle this, [then] we should not add it to [the computer consultant's] already full plate. Please stop the email and setup a meeting with [the Supervisor] and I to address your concern.

Grievant and the Supervisor<sup>13</sup> spoke on Friday, June 21, 2002. The Supervisor instructed Grievant to call the Accounting Supervisor and set up a time to meet on Monday, June 24, 2002. Later that day, the computer consultant informed Grievant that the process for adding object codes would be the same for version 11i as it was for version 10.7. Grievant did not schedule a meeting with the Accounting Manager. She also did not make the change to the object code. She had experience in revising object codes in version 10.7 and should have known how to make the changes in version 11i. This change would have required no more than a few minutes.

On June 26, 2002, the Accounting Manager issued a memorandum<sup>14</sup> to Grievant stating his intent to recommend that Grievant be removed from her employment. He states:

Reasons for this proposed recommendation that you be terminated are as follows: On Friday, June 21, 2002 I emailed you requesting that you set up a meeting to show you how to establish an object code in the 11i version of Oracle. On Tuesday, June 25, 2002 you had failed to request

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<sup>13</sup> Grievant reported directly to the Supervisor who reported to the Accounting Manager.

<sup>14</sup> Agency Exhibit 9.

the meeting, nor had you completed the assignment. This is a continuation of your repeated pattern of failing to follow your manager's instructions or perform assigned work. On April 26, 2002 you were issued your first Written Notice of a Group II Offense for the same type of behavior.

### **CONCLUSIONS OF LAW AND POLICY**

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." DHRM § 1.60(V)(B).<sup>15</sup> 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." DHRM § 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." DHRM § 1.60(V)(B)(3).

"Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy" is a Group II offense.<sup>16</sup>

On April 18, 2002, the Accounting Manager showed Grievant the steps to follow to properly verify discrepancies in accounts between the new and old computer systems. She failed to follow several of the steps required by her manager. She made assumptions about the accounts that resulted in errors. Had she followed the Accounting Manager's instructions, she would not have made the errors. Grievant failed to follow her supervisor's instructions on April 18, 2002. The Agency has met its burden of proof.

On June 21, 2002, the Accounting Manager instructed Grievant to schedule a meeting with him and the Supervisor to address Grievant's concern about how to establish new object codes in the Oracle 11i software. The Supervisor instructed Grievant on Friday to schedule the meeting for Monday. Grievant failed to schedule a meeting because she felt she had learned from the computer consultant how to make the change. She failed to inform the Accounting Manager that she believed a meeting was no longer necessary<sup>17</sup> and she failed to make the change to the computer system. She intentionally rejected the instructions of her supervisors thereby justifying issuance of a Group II Written Notice.

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<sup>15</sup> The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

<sup>16</sup> DHRM § 1.60(V)(B)(2)(a).

<sup>17</sup> Since the Accounting Manager asked for the meeting, it was up to him to decide whether the meeting remained necessary. Grievant did not inform him of the information she obtained from the computer consultant. Thus, the Accounting Manager never had the option to decide whether to meet.



Accumulation of a second active Group II Written Notice “normally should result in discharge.”<sup>18</sup> Grievant has an active Group I and two active Group II Written Notices. Her removal from employment is upheld.

Grievant contends the assignment to change the cost code was not due until July 1, 2002 when the new computer system became active. Grievant’s argument fails because she was not disciplined for simply failing to meet a deadline; she was disciplined for failing to schedule a meeting for her and her two supervisors to train her so that she could complete a task requiring immediate attention.

Grievant argues that the Agency retaliated against her because she previously filed a grievance. The evidence presented is insufficient for the Hearing Officer to conclude that the Agency’s actions were motivated by retaliation.<sup>19</sup> No evidence was presented suggesting she was singled out for discipline or that the disciplinary actions against her were unmerited. Grievant’s request for relief must be denied.

Grievant asks the Hearing Officer to reverse the Agency’s counseling memorandum to her dated June 7, 2002. Section 5.9(a) of the *Grievance Procedure Manual* authorizes the Hearing Officer to rescind disciplinary actions. A counseling memorandum is not a disciplinary action. Thus, the Hearing Officer does not have the authority to grant Grievant’s request. Her request to reverse the June 7, 2002 counseling memorandum must be denied.

## DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant on April 26, 2002 of a Group II Written Notice of disciplinary action is **upheld**. The Agency’s issuance to the Grievant on July 8, 2002 of a Group II Written Notice of disciplinary action with removal is **upheld**. Grievant’s request for reversal of the June 7, 2002 counseling memorandum is **denied**.

## APPEAL RIGHTS

You may file an administrative review request within **10 calendar** days from the date the decision was issued, if any of the following apply:

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<sup>18</sup> DHRM § 1.60(VII)(D)(2)(b).

<sup>19</sup> For example, Grievant offered evidence that she was scrutinized under the Agency’s dress code; however, it appeared the Accounting Manager revised the dress code procedure for all of the employees in his unit. In any event, it is not clear how Grievant’s dress code evidence relates to the disciplinary actions taken against her.

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy.
3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply.

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 10 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 10-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.<sup>20</sup>

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

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Carl Wilson Schmidt, Esq.  
Hearing Officer

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<sup>20</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.