

Issue: Group III Written Notice with termination (falsifying a state document);  
Hearing Date: 12/11/02; Decision Date: 12/12/02; Agency: DOC; AHO:  
David J. Latham, Esq.; Case No.: 5589



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

Case No: 5589

Hearing Date: December 11, 2002  
Decision Issued: December 12, 2002

APPEARANCES

Grievant  
Warden Senior

ISSUES

Did the grievant's actions warrant disciplinary action under the agency's Standards of Conduct? If so, what was the appropriate level of disciplinary action for the conduct at issue?

## FINDINGS OF FACT

The grievant filed a timely appeal from a Group III Written Notice issued because she had falsified a state document on August 22, 2002.<sup>1</sup> The grievant's employment was terminated on August 28, 2002.<sup>2</sup> Following failure to resolve the grievance, the agency head qualified the grievance for a hearing.<sup>3</sup>

The Department of Corrections (DOC) (hereinafter referred to as agency) has employed the grievant for three years. She was a corrections officer senior at the time of her dismissal.

Grievant had been absent for three days from July 25 through July 27, 2002. As a result of her failure to comply with instructions to obtain approval from her watch commander, a Group I Written Notice was issued to the grievant.<sup>4</sup> She filed a grievance that advanced to the second resolution step.<sup>5</sup> The warden senior reviewed documentation submitted by the grievant to support her absence and upheld the discipline; the Group I Written Notice remains active.

One of the items of documentation submitted by grievant in support of her absence is a hospital emergency department home care instruction form. It appeared to the warden senior that a date on the form had been covered with correction fluid and a new date of July 28, 2002 written in. He contacted the hospital and learned that grievant had not been at the hospital on July 25 but had been there on June 1, 2002. He requested that the hospital send him a copy of the June 1, 2002 home care instruction form. The hospital requested a release form signed by grievant before releasing the form. Grievant signed such a release form.<sup>6</sup> The hospital then sent to the warden senior a copy of the home care instruction form for June 1, 2002. A comparison of the two forms reveals that information in the upper left corner containing the date of June 1, 2002 was obliterated, and the date of July 25, 2002 entered in its place. The excuse date of June 3, 2002 in the lower right corner was changed to July 28, 2002. Otherwise all of the handwritten instructions and signatures on both the original form and the altered form are identical.

When confronted about the obvious alterations, grievant admitted to the warden senior that a friend had made the alterations on the home care instruction form. Grievant said that she knowingly submitted the altered form because she wasn't thinking. Grievant made the same admissions during the hearing. The warden senior then issued a Group III Written Notice to grievant for falsification of a record, and terminated her employment.

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<sup>1</sup> Exhibit 3. Written Notice, issued August 27, 2002.

<sup>2</sup> Exhibit 2. Approval of termination by Regional Director, August 28, 2002.

<sup>3</sup> Exhibit 1. Grievance Form A, filed September 25, 2002.

<sup>4</sup> Exhibit 9. Written Notice, issued August 13, 2002.

<sup>5</sup> Exhibit 8. Grievance Form A, filed August 15, 2002.

<sup>6</sup> Exhibit 3. Authorization to Release Medical Information form, signed August 23, 2002

## APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. Murray v. Stokes, 237 Va. 653, 656 (1989).

Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances.<sup>7</sup>

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the Code of Virginia, the Department of Personnel and Training<sup>8</sup> promulgated Standards of Conduct Policy No. 1.60 effective September 16, 1993. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action. Section V.B.3 defines Group III offenses to include acts and

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<sup>7</sup> § 5.8, Grievance Procedure Manual, *Rules for the Hearing*, Effective July 1, 2001.

<sup>8</sup> Now known as the Department of Human Resource Management (DHRM).

behavior of such a serious nature that a first occurrence should normally warrant removal from employment.

The Department of Corrections, pursuant to Va. Code § 53.1-10, has promulgated its own Standards of Conduct and Performance, which is modeled very closely on the DHRM Standards of Conduct. Group III offenses include acts and behavior of such a serious nature that a first occurrence should normally warrant removal from employment; one example of a Group III offense is falsifying any records or other official state documents.<sup>9</sup>

It is undisputed that grievant falsified, or caused to be falsified, a home care instruction form that, upon submission to the agency, became an official state document. Grievant knowingly submitted this falsified document to the agency as support for an absence that she had incurred. Given the obvious alterations, and grievant's admission under oath, the agency has borne the burden of proof, by a preponderance of evidence, to show that grievant committed a Group III offense.

While acknowledging her culpability in submitting the falsified document, grievant contends that the warden senior obtained information from the hospital by "tricking" her into signing a release authorization form that had not been completely filled out. She contends that form she signed was only for the release of information for the date of June 1, 2002. She maintains that the warden senior added the date of July 25, 2002 after she had signed the form.

Grievant's allegation is not persuasive for four reasons. First, grievant acknowledged that she did not read the form but just signed it when asked to do so. If she did not read the form, she can not be certain what date(s) were on the form. Second, she also acknowledges that the warden senior told her, when asking her to sign it, that the purpose was to obtain information about the July 25, 2002 date. Thus, she knew from the warden senior's verbal representation that he intended to obtain information about her alleged emergency room visit on July 25, 2002. Third, the warden senior testified credibly that the form was completely filled out with both dates at the time grievant signed it. Fourth, and most significantly, even if grievant's allegation is true, the date of June 1, 2002 was on the form when she signed it. The date of June 1, 2002 is the most important date because the hospital records from this date prove conclusively that the dates on the form were falsified.

## DECISION

The disciplinary action of the agency is affirmed.

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<sup>9</sup> Exhibit 4. Section 5-10.17A & B.2, Department of Corrections Procedure Number 5-10, *Standards of Conduct*, June 1, 1999.

The Group III Written Notice issued on August 27, 2002 for falsifying an official state record, and the termination of grievant's employment are hereby UPHeld. The disciplinary action shall remain active pursuant to the guidelines in Section VII.B.2 of the Standards of Conduct.

### 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:

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>10</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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<sup>10</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

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David J. Latham, Esq.  
Hearing Officer