

Issue: Group II Written Notice with 3-day suspension (misuse of State property);
Hearing Date: 12/16/02; Decision Date: 12/17/02; Agency: DSS; AHO: Carl
Wilson Schmidt, Esq.; Case No.: 5592



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5592

Hearing Date: December 16, 2002
Decision Issued: December 17, 2002

PROCEDURAL HISTORY

On October 22, 2002, Grievant was issued a Group II Written Notice of disciplinary action with three-day suspension for:

The employee misused state property by submitting personal mail (more than 12 bridal shower invitations) to the DSS mailroom, stamped with the unit's cost code so that the postage would be charged to the Commonwealth.

On October 24, 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 November 20, 2002, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On December 16, 2002, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Representative
Office Services Specialist

Supervisor
Program Administrative Specialist II
Lead Worker

ISSUE

Whether Grievant should receive a Group II Written Notice of disciplinary action with suspension.

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 Social Services employs Grievant as an Administrative Program Specialist III. She worked for another State agency before joining the Agency in 2001. She has been a valuable employee to the Agency. No evidence of prior disciplinary action against Grievant was introduced.

Grievant stamped 12 bridal invitations with her unit's cost code and submitted those invitations to the mailroom staff. A mailroom employee noticed that the invitations contained a return address for someone living in Maryland and suspected the invitations were an employee's personal mail. Agency staff opened one of the invitations and read Grievant's name inside. Agency staff questioned Grievant about the invitations and she admitted stamping them with unit's cost code and placing them into the Agency's mail system.

Grievant was notified of the Agency's intent to discipline and suspend her. She responded:

I was not aware of the severity of mailing the bridal invitations using the cost code, as I thought if there was a problem it could be paid back and settled. I have recently consulted with the mailroom to find out what the procedures are for mailing. If I needed to use the divisions mailing services a memo needed to be forwarded to the mailroom and the

supervisor along with the check copy and the check made payable to the Treasurer of Virginia, to the division of finance. I should have researched the information prior to my just sending the invitations, but because of the timeframe I was working with I assumed this was ok to take care of later.

I realize now that this was not the correct procedure to follow. *** I never intended this to be harmful to agency, division, or myself. I am willing to correct my mistake by paying back the postage, if this acceptable. Please be assured this will not occur again, since I am aware of the consequences. If you have any further questions please contact me at your earliest convenience.¹

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).² 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).

Attempting to have postage paid by the Commonwealth for personal mail rises to the level of a Group II Written Notice. Resources of the Commonwealth cannot be used to pay for the cost of sending employee mail. Although the Agency may have established a basis for employees to use Agency mailing equipment, that use is contingent on prior or simultaneous reimbursement by the employee. Grievant did not obtain prior approval to have personal mail stamped by the Agency and did not make any attempt to reimburse or investigate how to reimburse the Agency for mailing costs prior to sending invitations to the mailroom.

Employees receiving a Group II Written Notice may be suspended for up to ten workdays. Grievant’s suspension for three days is appropriate under the circumstances of this appeal.

Grievant contends she did not intend to have the Agency pay for her postage without reimbursement by her. This evidence is insufficient to establish Grievant’s argument.³ If Grievant was unaware of the Agency’s practice regarding reimbursement

¹ Agency Exhibit 3.

² The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

³ Grievant argues she thought she was following the proper protocol for use of the Agency’s mailing procedure. She did not present evidence describing the protocol she was following.

for postage, the question arises how did Grievant intend to reimburse the Commonwealth for the postage. Grievant presented no evidence suggesting she expected to reimburse the Commonwealth by some other method. Had the letters not been noticed by mailroom staff, there is no reason to believe Grievant would have ever paid the Commonwealth for the postage.

Grievant contends she was not aware of the details of the Standards of Conduct presented to her during the orientation process. Employees are obligated to make themselves aware of the Commonwealth's policies governing employee behavior. After presenting Grievant with a copy of the Standards of Conduct, the Agency has completed its obligation to give Grievant notice of the possibility of disciplinary action against her.⁴

Grievant contends she should have been disciplined less severely through a counseling memorandum. Although an Agency may counsel an employee when the employee engages in behavior contrary to the Standards of Conduct, the Agency is not obligated to do so.

Grievant offered documents suggesting other employees misused Agency equipment.⁵ The evidence is insufficient for the Hearing Officer to conclude that the Agency is targeting her and ignoring misuse by other employees. No evidence was presented showing who created the documents and how they were created.

Grievant contends Agency managers made improper statements during the step process that were designed to chill her right to file a grievance. If those statements were true, the Agency would have acted improperly; however, Grievant did not present evidence connecting those allegedly improper statements to the Agency's reason for disciplining her. Even if Agency managers made the alleged statements, those statements would be insufficient to reverse the disciplinary action.

Grievant seeks transfer from her current unit to another unit within the Agency. The Hearing Officer lacks the authority to transfer employees. Grievant's request must be denied.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action with suspension is **upheld**.

⁴ See Agency Exhibit 5.

⁵ Grievant Exhibit 3 and 4.

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.⁶

[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].

Carl Wilson Schmidt, Esq.
Hearing Officer

⁶ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.