

Issue: Group II Written Notice (failure to follow supervisor's instructions); Hearing Date: 03/12/03; Decision Issued: 03/18/03; Agency: DOA; AHO: Carl Wilson Schmidt, Esq.; Case No. 5658



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5658**

Hearing Date: March 12, 2003  
Decision Issued: March 18, 2003

**PROCEDURAL HISTORY**

On December 20, 2002, Grievant was issued a Group II Written Notice of disciplinary action for:

*[Grievant] was instructed to submit Healthcare Reconciliations to management for approval prior to sending Health Reconciliations to her agencies as stated in the email dated June 5, 2002. It was noted that for both October and November, her healthcare reconciliations were sent to her agencies prior to management's approval. It was brought to her attention in the email dated December 9.*

On January 16, 2003, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On February 19, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On March 12, 2003, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant

Supervisor  
Six Payroll Benefits Analysts

## **ISSUE**

Whether Grievant should receive a Group II Written Notice of disciplinary action 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 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 Accounts employs Grievant as a Payroll Benefits Analyst. One of her responsibilities is to process healthcare insurance reconciliations. This process enabled the Agency to be assured that other agencies have properly accounted for expenditures on employee healthcare insurance.

Grievant's Supervisor sent Grievant and several other employees in similar positions an email stating:

I would like to review your healthcare reconciliations prior to their being sent to the agencies, even if there are not changes or IAT's<sup>1</sup> needed. I will review the reconciliation and return it to you for forwarding to the agency for their approval process. It is the individual staff member's responsibility to ensure their assigned agencies return the healthcare reconciliations prior to the deadline. When you are out of the office unexpectedly and reconciliations are outstanding, please let me know, and I will follow up with the affected agencies. Come see me if you have any questions.

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<sup>1</sup> An IAT is an Inter-agency transfer.

Grievant received the email and was aware of her obligation to have healthcare reconciliations approved by the Supervisor before being sent to agencies.

On December 3, 2002, the Supervisor realized that Grievant may have been submitting healthcare reconciliations to agencies prior to the Supervisor's review. Grievant testified that she was sending healthcare reconciliations to her agencies at the same time she was sending them to the Supervisor.

### CONCLUSIONS OF 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>2</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>3</sup> The Supervisor instructed Grievant not to send healthcare reconciliations to agencies prior to the Supervisor's review. Grievant sent healthcare reconciliations to agencies without prior approval thereby acting contrary to a supervisor's instructions and justifying issuance of a Group II Written Notice.

Grievant contends the Supervisor issued the disciplinary action in order to retaliate against Grievant for seeking mediation with the Supervisor. This argument is untenable because the Supervisor identified the problem with Grievant's work performance on December 3, 2002, but the Supervisor did not learn Grievant wanted mediation until December 9, 2002. The Supervisor's actions do not appear to be motivated by the Grievant's request for mediation.

### DECISION

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

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<sup>2</sup> The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

<sup>3</sup> DHRM § 1.60(V)(B)(2)(a).

## 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>4</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>4</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.