

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. 5663



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5663**

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 prepare a correcting entry on the payroll for one of her assigned bureau agencies to avoid an employee overpayment and did not comply with the supervisory instruction issued. She chose to process an alternative method which did not correct the overpayment.*

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 Grievant's responsibilities includes processing payroll information for employees working in several State agencies.

An employee of one of the agencies for which Grievant is responsible received a supplemental income payment. Federal income taxes were withheld from that payment. The employee complained that too much Federal income tax was withheld from the additional payment. The employee's contention was correct. Additional monies were due to the employee. Grievant was responsible for making the accounting entry that refunded the employee \$176.99.

On December 10, 2002 at 2:31 p.m., the Supervisor sent Grievant an email instructing her regarding the codes to process in order to accomplish the refund. The Supervisor checked the computer system at 3 p.m. and at 3:30 p.m. to see if Grievant had made the entries into the computer, but Grievant had not done so. The Supervisor went to find Grievant to speak with her about the needed change. Grievant was away from her desk in another part of the officer performing other duties. The Supervisor told Grievant that Grievant had an email from the Supervisor regarding the employee's refund. The Supervisor did not go into detail regarding what procedure the Supervisor wanted Grievant to follow to fix the problem. Grievant returned to her desk but did not open the Supervisor's email. Grievant believed she had gotten enough instruction from the Supervisor regarding how to make the accounting change and Grievant felt she was proficient enough to determine how to make the correction. Grievant made several entries into the computer system using the procedures she believed would work best.

She forgot to enter one part of the necessary coding.<sup>1</sup> Grievant's changes did not correct the problem. Later in the day, the Supervisor reviewed what Grievant had done and concluded Grievant's changes were not consistent with the Supervisor's email. The Supervisor had another employee correct the problem.

## **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).

"Inadequate or unsatisfactory work performance" is a Group I offense. In order to prove inadequate or unsatisfactory work performance, the Agency must establish that Grievant was responsible for performing certain duties and that Grievant failed to perform those duties. This is not a difficult standard to meet. Grievant failed to properly account for the employee's tax refund. Her work performance was inadequate thereby justifying issuance of a Group I Written Notice.

The Agency contends Grievant should be issued a Group II Written Notice for failure to follow supervisor's instructions as contained in the Supervisor's email to Grievant. The evidence, however, showed that Grievant did not read the Supervisor's email. Grievant relied on the Supervisor's discussion of the issue and that discussion did not contain the same level of detail regarding how to correct the problem as was written in the email.

Grievant contends the Supervisor issued the disciplinary action in order to retaliate against Grievant for seeking mediation with the Supervisor. Although the disciplinary action coincided with Grievant's request for mediation on December 9, 2002, there is no evidence suggesting the Supervisor's actions were motivated by retaliation. Several agencies receiving services from Grievant had complained to the Supervisor about Grievant's performance. The Supervisor's close scrutiny of Grievant's work is consistent with her desire to improve Grievant's work performance.

## **DECISION**

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<sup>1</sup> Grievant used a '+/-' adjustment indicator instead of 'P/M' indicator.

<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.

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

### **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>3</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.

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<sup>3</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

Hearing Officer