

Issue: Group III Written Notice with termination (abuse of position and role within the University; conspiring to violate University policy for personal gain); Hearing Date: 04/23/03; Decision Issued: 05/16/03; Agency: NSU; AHO: Carl Wilson Schmidt; Case No. 5691; **Administrative Review: EDR Ruling requested on 05/23/03; EDR Ruling Date: 07/25/03; Outcome: HO's decision did not violate any provision of the grievance procedure [2003-105]; Administrative Review: DHRM Ruling requested on 05/23/03; DHRM Ruling Date: 07/09/03; Outcome: No violation of personnel policy; No reason to interfere with decision; Judicial Review: Appealed to the Circuit Court in the City of Norfolk on 08/07/03; Outcome: Court cannot find that HO's decision is contradictory to law. HO's decision is affirmed (11/10/03) [C03-1611]; Judicial Review: Appealed to the Court of Appeals on 12/03/03; Outcome: pending**



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case No: 5691**

Hearing Date: April 23, 2003  
Decision Issued: May 16, 2003

**PROCEDURAL HISTORY**

On February 27, 2003, Grievant was issued a Group III Written Notice of disciplinary action with removal for:

*Group III infraction is for [Grievant's] abuse of her position and role within the University, and conspiring to violate University policy for personal gain.*

On March 7, 2003, 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 April 3, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On April 23, 2003, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Grievant's Counsel  
Agency Party  
Agency Counsel  
Eight witnesses

## **ISSUE**

Whether Grievant should receive a Group III Written Notice of disciplinary action with removal.

## **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:<sup>1</sup>

Norfolk State University employed Grievant as an Education Specialist III until her removal on January 10, 2003. She had been employed by the University for approximately 13 years and had favorable evaluations. Grievant was the Director of the Graduate Audit working in the Registrar's Office. When a student asked to be certified for graduation, one of Grievant's duties was to verify that the student had completed all of the necessary coursework to earn a degree. One of the steps in this process required Grievant to contact the student's academic department to obtain an evaluation of the student. If a student's evaluation revealed a deficiency, Grievant informed the student of the deficiency and delayed the student's certification for graduation until the deficiency was resolved.

The Bursar's Office determines whether students have paid tuition and fees owed to the University. This office maintains records and balances including credit memos and reimbursement payments.

The Registrar's Office is responsible for registering students for classes. Students are prohibited from registering for classes if they have a balance owed to the University. Prior to the Fall<sup>2</sup> of 2001, when students went to the Registrar's Office to

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<sup>1</sup> Agency Exhibit 1 is a letter dated January 9, 2001 indicating that Grievant was being given a Group III Written Notice. The Agency did not follow the proper procedure to issue a Written Notice and, thus, the Hearing Officer gives Agency Exhibit 1 no weight.

<sup>2</sup> In the Fall of 2001, the University modified its computer systems so that if a student owed more than \$250, the Register's Office staff would be unable to automatically register the student. Only by obtaining override authority from student financial services, could staff in the Registrar's Office register students otherwise owing money to the University.

register for classes, Registrar's Office staff would not know whether the students owed money to the University. Thus, if a student owing money to the University attempted to register for classes, the Registrar's Office staff would register the student unless the student revealed that he or she owed money.

Several staff in the Registrar's Office were trained and required to perform the duties of other staff. On occasion, one of Grievant's duties was to register students for classes.

Grievant took academic credits at the University under the Employee Tuition Waiver Program and matriculated in the Masters of Arts Degree program in Urban Education. She was enrolled from Spring 1999 to Fall 2001 with most of her classwork in 1999 and 2001. She marched in the graduation ceremonies held in December 2001. Although Grievant has completed all of the necessary academic work to receive her degree, she has not received it because she retains a balance owed to the University for her education.

The University provides to all eligible employees tuition waiver benefits up to six credit hours per semester of registered NSU instruction. The waiver is computed at NSU in-state tuition rates and is for tuition only. Responsibility for payment of mandatory and non-mandatory fees remains with the student/employee. Employees may pay tuition and fees by payroll deduction. Neither the University nor Grievant chose to use payroll deduction so that Grievant would reimburse the University.

There is a delay shown on Grievant's University financial account between the time she accrues debits relating to tuition and credits relating to tuition reimbursement. After credits are given, the actual amount owed remains. On March 20, 2001, Grievant's account showed a balance owed of \$354 after accounting for outstanding credits owed to her. Grievant registered for classes on May 22, 2001 while owing the University money after all outstanding balances had been credited to her. On August 10, 2001, Grievant again registered for classes while owing \$354 plus the additional fees arising from the May 22, 2001 registration.<sup>3</sup> Grievant registered for additional classes on August 13, 2001 and September 25, 2001 without having paid the balance as it existed on March 20, 2001 plus the additional fees accruing since that time. By the time Grievant had completed her coursework and the University had credited her for all tuition, Grievant owed the University \$2,491.36.

During a 12-month period, students receive nine statements from the University showing the unpaid amount on their accounts. When Grievant went to register for classes, she knew or should have known she owed money to the University even after

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<sup>3</sup> If the Hearing Officer assumes Grievant is immediately credited with tuition reimbursement at the time she registered for classes on May 22, 2001, Grievant's balance of \$354 (on March 20, 2001) increased by \$366 (\$1,146 tuition less \$780 reimbursement) for a total of \$720. Without this assumption, the balance owed is even higher.

considering that the University would reimburse to her registration fees under the tuition reimbursement program.

## 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>4</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).

On July 1, 1996, the University adopted Accounting Policy and Procedures No. 19 which “sets forth University policies for recording, managing, and collecting outstanding debts owed to the University.”<sup>5</sup> The policy applied to all receivables of the University and states, in part:

In the case of student tuition and fees, payment due dates shall be established at the time of registration. Students are given credit or receive deferments for tuition assistance from outside agencies and financial aid awarded at the time of registration. The tuition assistance and financial aid funds and all other payments are due by a date set each semester prior to the last day of classes, at which time the student becomes responsible for the outstanding balance and the entire account becomes past-due.

Student accounts will be billed twice during the fall and spring semesters and once during the summer semester with follow-up on any past-due balances per established collection procedures. \*\*\*

Any student with a balance from previous semesters cannot re-enroll unless he/she has sufficient financial aid to cover the previous balance and the current balance or arrangements are made with the Vice President for Finance and Business or his/her designee.

Grievant held a position of trust within the University. Part of her duties included making sure that students comply with academic and financial requirements of the

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<sup>4</sup> The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

<sup>5</sup> Agency Exhibit 15.

University. Grievant knew or should have known<sup>6</sup> that the University prohibited students from registering for classes if the students owed money to the University. Grievant registered for classes several times in 2001. When she did so she breached the trust she had with the University. Her behavior rises to the level of a Group III offense.<sup>7</sup>

Grievant contends she knew she owed money but did not pay those sums because the amounts were inflated and inaccurate. Although this may explain why Grievant did not timely pay, it does not excuse her failure to do so. Grievant could have paid the fees that she believed were owed while waiting for the University to correct the amount she owed. Grievant only made two payments -- \$30 on July 27, 1999 and \$379.64 on October 29, 2001. By the time the University had credited Grievant with all of the tuition reimbursement to which she was entitled, Grievant owed \$2,491.36.

Grievant contends that she did not owe the fees claimed by the University because she took courses on the Naval base. She argues the University's policy is that employees who take fees on the Naval base are not obligated to pay fees that would otherwise accrue to students taking classes on the University's main campus. This argument fails because Grievant was unable to establish the existence of this policy. The evidence showed that Grievant took some classes on the main campus and, thus, knew that she would be obligated to pay some fees.

## DECISION

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

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<sup>6</sup> Grievant contends she was not aware of the University's policy requiring students to have paid money owed the University before registering for classes. Her co-workers including subordinates who testified during the hearing were aware of this requirement. It seems unlikely that Grievant was not aware of the requirement, but, in any event, Grievant should have known of the requirement.

<sup>7</sup> Several factual allegations made by the University were not substantiated. For example, the University argued Grievant violated the University's policy by marching in a graduation ceremony while owing money to the University. No written policy was introduced showing the University prohibited students from marching in graduation during the time period in question. The University offered a paragraph from a student handbook, but could not substantiate at what time the paragraph was first included in the handbook. The University also suggested Grievant acted improperly by obtaining a transcript while owing money to the University. No written policy was presented suggesting Grievant could not obtain such a transcript. In addition, the University alleged Grievant conspired with her co-workers to violate University policy. None of her co-workers indicated Grievant forced them to take any actions they would not have otherwise taken. They testified that they did not know Grievant owed money to the University when they registered Grievant for classes. Failure to establish these allegations is not fatal to the University's disciplinary action. The University disciplined Grievant because she violated her position of trust with the University. The University has presented sufficient evidence to support its primary contention.

## 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>8</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>8</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

POLICY RULING OF THE DEPARTMENT OF  
HUMAN RESOURCE MANAGEMENT

In the matter of  
Norfolk State University  
July 9, 2003

The grievant has requested an administrative review of the hearing officer's May 16, 2003, decision in Case No. 5691. The grievant objects to the hearing officer's decision on the basis that it is inconsistent with agency policy (Department of Human Resource's Policy Number 1.60). The grievant also has requested an administrative review from the Department of Employment Dispute Resolution. The agency head, Ms. Sara Redding Wilson, has requested that I respond to this administrative review request.

**FACTS**

The Norfolk State University employed the grievant as an Education Support Specialist III until she was removed from employment. On December 13, 2002, Norfolk State University (NSU) officials issued to her a Group II Written Notice and removed her from employment for "Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy" for acts committed from Spring 1999 through Fall 2001. Because the agency was conducting an investigation and the grievant was on sick leave, the effective date of termination was January 10, 2003. Further, upon the advice of employees from DHRM and the realization that the violations were level three offenses, the original Group II Written Notice was withdrawn and replaced with a Group III Written Notice with termination. The new Group III Written Notice with removal was issued for the grievant's "abuse of her position and role within the University, and conspiring to violate University policy for personal gain." The grievance that she had filed in appeal of the original disciplinary action was terminated and a new grievance was initiated. In his decision dated May 16, 2003, the hearing officer upheld the disciplinary action taken by NSU officials. The employee appealed the decision to the Department of Human Resource Management.

The relevant policy, the Department of Human Resource Management's Policy No.1.60, states that it is the Commonwealth's objective to promote the well being of its employees in the workplace and to maintain high standards of professional conduct and work performance. This policy also sets forth (1) standards for professional conduct, (2) behavior that is unacceptable, and (3) corrective actions that agencies may impose to address behavior and employment problems. Section V, Unacceptable Standards of Conduct, of that policy sets forth, but is not all-inclusive, examples of unacceptable behavior for which specific disciplinary action may be warranted.

In the instant case, the grievant was charged with "abuse of her position and role within the University and conspiring to violate policy for personal gain." Based on the evidence, the hearing officer concluded that NSU officials showed, by a preponderance



of the evidence, the disciplinary action taken against the grievant was warranted and appropriate under the circumstances.

## **DISCUSSION**

Hearing officers are authorized to make findings of fact as to the material issues in the case and to determine the grievance based on the evidence. In addition, in cases involving discipline, the hearing officer reviews the facts to determine whether the cited actions constitute misconduct and whether there are mitigating circumstances to justify reduction or removal of the disciplinary action. If misconduct is found but the hearing officer determines that the disciplinary action is too severe, he may reduce the discipline. By statute, this Department has the authority to determine whether the hearing officer's decision is consistent with policy as promulgated by DHRM or the agency in which the grievance is filed. The challenge must cite a particular mandate or provision in policy. This Department's authority, however, is limited to directing the hearing officer to revise the decision to conform to the specific provision or mandate in policy. This Department has no authority to rule on the merits of a case or to review the hearing officer's assessment of the evidence unless that assessment results in a decision that is in violation of policy and procedure.

In the present case, the hearing officer determined that there was sufficient evidence to support the allegations the agency made against the grievant. DHRM Policy No. 1.60, Standards of Conduct, provides guidance to agencies for handling workplace misconduct and behavior and for taking corrective action. This Agency has determined that the hearing officer's decision comports with the provisions of this policy and will not interfere with the decision. The grievant raised an additional concern, that it was improper for NSU to withdraw the Group II Written Notice and issue a Group III in its place. Our review of this matter determined that because the Group II Written Notice did not properly describe the violation and set forth the appropriate disciplinary action, it was permissible for NSU officials to withdraw the Group II Written Notice and issue a Group III Written Notice with termination instead. When NSU officials withdrew the written notice, the grievance was terminated because there was no relief to be gained by continuing with that grievance. Again, because there was no violation of personnel policy, there is no basis for this Agency to interfere with this decision.

If you have any questions regarding this correspondence, please call me at (804) 225-2136.

Sincerely,

Ernest G. Spratley  
Manager, Employment  
Equity Services