

Issues: Group III Written Notice (falsification of official documents) and Termination; Hearing Date: 05/07/03; Decision Issued: 05/12/03; Agency: NSU; AHO: David J. Latham, Esq.; Case No. 5705/5724; **Administrative Review**: HO Reconsideration Request received 05/20/03; Reconsideration Decision issued 05/27/03; Outcome: No basis to reopen hearing or change original decision; **Administrative Review**: EDR Ruling Request received 05/20/03; EDR Ruling No. 2003-099 issued 06/20/03; Outcome: HO did not violate grievance procedure; **Administrative Review**: DHRM Ruling Request received 05/20/03; DHRM Ruling issued 08/18/03; Outcome: No violation of personnel policy. No reason to interfere with decision.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Nos: 5705/5724

Hearing Date: May 7, 2003
Decision Issued: May 12, 2003

PROCEDURAL ISSUES

Following a denial of qualification for hearing by the agency head, grievant requested a compliance, qualification and consolidation ruling from the Director of the Department of Employment Dispute Resolution (EDR). The Director reviewed the request and issued a ruling that qualified the grievances for hearing and consolidated them into one hearing.¹

Grievant requested as part of the relief she seeks, to be cleared for graduation from the University. Hearing officers may provide certain types of relief including rescission of discipline and payment of back wages and benefits.² However, hearing officers do not have authority to award University degrees.³

¹ Exhibit 7. *Compliance, Qualification and Consolidation Ruling of Director Numbers 2003-049 & 2003-053*, April 16, 2003.

² § 5.9(a) Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective July 1, 2001.

³ § 5.9(b)4 & 7. *Ibid.*

The hearing officer's authority is limited to employment matters between grievant and her employer. The determination of whether a candidate shall receive a degree is an academic matter that must be resolved between the candidate and the university.

APPEARANCES

Grievant
Attorney for Grievant
Nine witnesses for Grievant
Vice President of Academic Affairs
Advocate for Agency
One witness for Agency

ISSUES

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

FINDINGS OF FACT

The grievant timely filed two grievances. The first grievance alleged a number of issues but had its genesis in the issuance of a Group III Written Notice issued for falsification of official documents.⁴ The second grievance also alleges several issues but was precipitated by the termination of grievant's employment on January 27, 2003.⁵

Norfolk State University (hereinafter referred to as agency) has employed the grievant for less than three years as an educational support specialist. In 2000, grievant began a course of graduate study towards a Masters degree. By the end of the summer 2001 semester, she had received credit for nine courses, thereby earning 27 of 39 credits required for the degree. Thereafter, her transcript reflects that she took three 3-credit courses during the fall of 2001 and one 3-credit course in spring 2002.

On May 31, 2001, grievant filed an application for employment as a program advisor with the university. In her cover letter, grievant stated that she had a Master's degree while the last page of her attached resume indicated that she would complete the Master's program in December 2001. On August 20, 2001, grievant filed an application for a military program advisor position. Her

⁴ Exhibit 2. Grievance Form A, filed October 16, 2002.

⁵ Exhibit 6. Grievance Form A, filed February 10, 2003.

cover letter contained identical language stating that she had a Master's degree. The attached resume stated that she had a Master's degree but did not include any qualifying language. On December 17, 2001, grievant filed an application for employment as a Counselor and again stated that she had a Master's degree. After grievant filed the first two applications, the Acting Dean of Liberal Arts spoke with grievant and advised her not to state in correspondence that she had a degree until such time as she actually received it.

In August 2002, grievant retained an attorney to assist her with multiple employment-related issues. In her letter to the university's attorney, grievant's attorney represented that grievant had a Master's degree from the university.⁶ The University's General Counsel requested the Associate Director of the Higher Education Center to review grievant's complaints. The Associate Director knew that grievant did not have a Master's degree and contacted the Registrar's office for verification. When the Registrar verified that grievant had never been awarded a Master's degree,⁷ grievant was given the disciplinary notice and administratively suspended with pay pending an investigation.⁸

Further investigation eventually revealed irregularities regarding grievant's academic record. First, grievant's transcript reflects that she took an internship (work) course during the fall 2001 semester. By grievant's estimate, she worked 25-30 hours per week during this internship. However, grievant was absent from work from September 11 through December 16, 2001 due to medical leave under the aegis of the Family and Medical Leave Act (FMLA). Grievant now maintains that she actually took the course during summer 2001. The three internship supervisors responsible for overseeing student work during an internship all stated that grievant had not been under their supervision. Logs are required to be maintained for each internship. The university has requested these logs for grievant's internship but they cannot be located.

Second, grievant's transcript also indicates that she completed two other courses during the fall 2001 semester.⁹ During this time, she was utilizing FMLA medical leave and therefore was purportedly unable to work or attend school. Third, the instructor for the class shown on the transcript as having been completed in the spring of 2002 maintains that grievant never attended that class. This instructor did not enter a grade for grievant and does not know who wrote it on the final grade roster. Grievant asserted that she actually attended the class during the spring 2001 semester. The instructor for the spring 2001 course states that grievant's name never appeared on the course roster or the final grade roster.¹⁰ Although the instructor hand wrote a grade for grievant on

⁶ Exhibit 15. Letter from grievant's attorney to university general counsel, August 27, 2002.

⁷ Exhibit 14, p.4. Memorandum from Registrar to grievant's supervisor, September 17, 2002.

⁸ Exhibit 1. Letter to grievant from her supervisor, September 20, 2002.

⁹ Exhibit 14. Grievant's transcript, September 4, 2002.

¹⁰ Exhibit 14, p.6. Email from course instructor to Special Assistant to President, February 19, 2003.

the final grade roster, grievant was auditing the class – she was not enrolled in the course. Grievant contends that a coworker registered her for the spring 2002 class; the coworker denies doing so.¹¹

In March 2002, grievant and others were requested to prepare a brief biographical summary of their credentials for a university web site. Grievant submitted a summary that stated that she had already received a Master of Arts from the University.¹²

The university grants degrees only after two requirements have been met. First, a student must complete all academic requirements required for the degree.¹³ The student must then file a written application for graduation and pay an application fee of \$130.00. Grievant filled out such an application and obtained certification from her faculty advisor that she would complete degree requirements in August 2001.¹⁴ However, during the hearing, the faculty advisor admitted that he signed a false certification because he never reviewed grievant's academic record. The university has no record of having received either the application form or payment of the \$130 fee. Grievant did not produce a receipt or any other evidence of fee payment.

Second, in order to obtain a degree, all financial obligations to the university must be satisfied. Although employees may take up to two courses each semester without paying tuition, they are required to pay tuition for any additional courses and must also pay any miscellaneous fees incurred. Grievant has incurred various fees and tuition charges since 2000 and, as of the date of this hearing, had an outstanding balance of \$2,625.01. In October 2002, she signed up for payroll deduction to begin paying this debt on an installment basis.

The university's policy is not to release a certified copy of a student's transcript until both academic and financial obligations have been fulfilled. However, it will release an uncertified copy to the student as graduation nears so that students can utilize this information when applying for jobs.

Following extensive investigation by the human resources department and the Vice President for Academic Affairs, it was concluded that grievant has never received a Master's degree and that grievant committed improprieties sufficient to justify dismissal. Grievant's employment was terminated on January 27, 2003.¹⁵

¹¹ Exhibit 11. Email from coworker, January 3, 2003.

¹² Exhibit 16. Bio sketch prepared by grievant, March 18, 2002.

¹³ Exhibit 3. See memorandum from Vice President for Academic Affairs to Human Resources Director, January 7, 2003.

¹⁴ Exhibit 14. Application for graduation form.

¹⁵ Exhibit 5. Letter from Human Resources Director to grievant, January 22, 2003.

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. In all other actions, the employee must present her evidence first and must prove her claim by a preponderance of the evidence.¹⁶

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 Human Resource Management (DHRM) 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. Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant removal from employment. Falsifying any records including official state documents is an example of a Group III offense.¹⁷

¹⁶ § 5.8, EDR *Grievance Procedure Manual*, effective July 1, 2001.

¹⁷ Exhibit 10. Section V.B.3, DHRM Policy 1.60, Standards of Conduct, September 16, 1993.

The agency has demonstrated by a preponderance of evidence that grievant, in fact, has not been awarded a Master's degree from the university. Not only does she not have an actual degree, but also it is undisputed that she continues to have an outstanding debt of \$2,625.01 to the university. The university will not issue a diploma until this debt is satisfied. Moreover, grievant's academic record is so clouded by disputed records and other issues that the university cannot possibly certify grievant for graduation at this time. Having satisfactorily demonstrated that grievant does not possess a Master's degree, it follows that grievant's three job applications and website biography constitute falsification of official state documents.

Grievant has been trapped in her own web of deceit. First, she states in her graduation application that she had completed graduation requirements in August 2001, but her transcript reflects that three courses were taken in the fall of 2001 and one course was taken in spring 2002. Second, she was out of work for the entire 2001 fall semester utilizing FMLA leave due to alleged complications resulting from pregnancy, but her transcript reflects a nine-credit course load including a work internship of 25-30 hours per week. Third, grievant contends that she actually performed the internship during the summer of 2001 but the supervisors responsible for overseeing grievant's internship deny this. Fourth, grievant contends that she actually took the spring 2002 course one year earlier in the spring of 2001, but she has produced no evidence that she ever enrolled for the course during 2001.

Grievant contends that she did not submit the application for the program advisor position until December 17, 2001. However, during the hearing, the agency produced the actual original application package signed and submitted by grievant. The date stamp shows that it was received on May 31, 2001, the closing date for the position. In addition, the reference letters proffered by grievant were all dated in mid- to late-May 2001. Moreover, even if one accepts grievant's contention, the fact remains that grievant did not then, and does not to this day, possess a Master's degree from the University. Thus, her application constitutes a falsification whether it was submitted in May 2001, December 2001, or today.

Grievant offered as evidence a second version of her application cover letter that does not contain the paragraph stating that she has a Master's degree.¹⁸ By implication, grievant infers that the agency's exhibit has been falsified. However, the hearing officer carefully examined the original application package bearing grievant's signature and is satisfied that the agency's copy (Exhibit 8) is the only true copy of the original.¹⁹ Moreover, grievant offered no testimony or evidence as to who might have falsified her cover letter or what motivation there might have been for doing so.

¹⁸ Exhibit 12, p.3.

¹⁹ The words "program advisor" were handwritten on the photocopy but this does affect the accuracy of the reproduction.

Grievant also alleged that a coworker had registered grievant for a class that grievant took. However, the coworker has denied in writing that she ever registered grievant for any courses. Grievant has failed to explain why a coworker would register grievant for a class, and if she had, why the coworker would deny doing so. It therefore appears more likely than not that grievant accessed the coworker's computer and registered herself, utilizing the coworker's password to make it appear that the coworker had registered grievant.

Grievant denies that the Acting Dean of Liberal Arts cautioned her not to state that she had a Master's degree before actually receiving it. Given the preponderance of evidence against grievant in this case, the testimony of the Dean is deemed more credible than grievant's denial.

One of grievant's witnesses, the Acting Registrar, testified that grievant has never been approved for graduation, and that she had not enrolled or registered for the spring 2001 class for which she later received credit in the spring of 2002.

Grievant listed in her grievance a large number of "issues." However, a review of these so-called issues reveals that most are either statements of alleged fact, irrelevant observations, or unsubstantiated allegations. Grievant alleges that the agency: was arbitrary and capricious, misapplied policy, and retaliated against her. However, grievant has failed to support any of these allegations with testimony or evidence.

Grievant has attempted to shift responsibility for her own actions to others. She claims that because her faculty advisor signed her graduation application, she was entitled to a degree. This is patently absurd since the faculty advisor has admitted to making a false certification when he failed to review grievant's record. Grievant states that because the Registrar released an uncertified transcript to her, she *believed* she had a degree. This argument is equally self-serving because grievant knew that she remained in financial debt to the university, and that she had not enrolled in the spring 2001 course. Thus, grievant knew that she had not satisfied either the academic or the financial requirements for graduation.

DECISION

The disciplinary action of the agency is affirmed.

The Group III Written Notice and termination of grievant's employment are hereby UPHELD.

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.²⁰ 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.²¹

[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]

David J. Latham, Esq.
Hearing Officer

²⁰ An appeal to circuit court may be made only on the basis that the decision was *contradictory to law*, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. Virginia Department of State Police v. Barton, 39 Va. App. 439, 573 S.E.2d 319 (2002).

²¹ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Nos: 5705/5724

Hearing Date:	May 7, 2003
Decision Issued:	May 12, 2003
Reconsideration Received:	May 20, 2003
Reconsideration Response:	May 27, 2003

APPLICABLE LAW

A hearing officer's original decision is subject to administrative review. A request for review must be made in writing, and *received* by the administrative reviewer, within 10 calendar days of the date of the original hearing decision. A request to reconsider a decision is made to the hearing officer. A copy of all requests must be provided to the other party and to the EDR Director. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.²²

²² § 7.2 Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective July 1, 2001.

OPINION

Grievant disagrees with the hearing officer's findings of fact and opinion. The grievant's disagreements, when examined, simply contest the weight and credibility that the hearing officer accorded to the testimony of the various witnesses at the hearing, the resulting inferences that he drew, the characterizations that he made, or the facts he chose to include in his decision. Such determinations are entirely within the hearing officer's authority.

Grievant asserts in her cover letter that "new evidence can be produced," however, she has made no proffer of what the purported new evidence is, or why she could not have presented such evidence during the hearing. Without this information, grievant has failed to offer any justification for reopening the hearing. Second, she asserts that the agency was in noncompliance because it provided the original application at the hearing. Grievant fails to explain how this could possibly constitute noncompliance with the grievance procedure. The grievance procedure requires that *copies* of proposed exhibits be provided to the opposing party prior to the hearing; the agency complied with this requirement. Third, grievant accuses the agency of criminal forgery in violation of Code of Virginia § 18.2-172, but fails to provide any evidence or support for this allegation.

Grievant's attached six-page memorandum alleging errors in the decision is difficult to comprehend because it is replete with confusing syntax, grammatical errors, tortured language, self-delusional statements, incorrect assumptions, misstatements of fact, irrelevant observations, unfounded accusations, and unsupported assertions. Nevertheless, the following response is provided in the same order as the memorandum. For ease of reference, numbers have been assigned to each page and item.²³

Page 1

1. A finding of fact derived from the Vice President of Academic Affairs' testimony, which was deemed more credible than grievant's testimony.
2. A finding of fact derived from the totality of the evidence and from the *original* application form date-stamped May 31, 2001.
3. A finding of fact that the actual original application form was more probative and credible than the witness' recollection of an event that occurred nearly two years ago.

²³ The reader should refer first to grievant's memorandum for her alleged error. Numbers have been assigned to each point raised by grievant; refer to the corresponding numerical item in the hearing officer's response.

4. There was no credible evidence to show that the transcript was falsified (other than the fact that it listed a course in spring 2002 that grievant did not take during spring 2002).
5. Grievant fails to explain what redaction she is referring to. There is no evidence that the agency tampered with grievant's resume.
6. Incorrect assumption by grievant. The letter from the registrar was reviewed.
7. Addressed above in response to item two of grievant's cover letter.
8. Finding of fact derived from Dean of Liberal Arts' testimony, which was deemed credible and logical.

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9. Finding of fact derived from testimony.
10. Whether grievant was on FMLA leave or VSDP leave is not material to the issue adjudicated in this case.
11. Finding of fact derived from testimony, and undisputed during the hearing. The exact dates are not material to the falsification issue adjudicated.
12. Irrelevant observation by grievant. The fact that permission was granted to take the course during summer 2001 is not proof that the course was actually taken at that or any other time.
13. Irrelevant observation by grievant. If the doctor certified that grievant was so ill that she could not work, it is presumed that she could not attend three-hour classes. The physician's note did not include an exemption to attend such classes.
14. Previously addressed. (See Page 1, item 1, above)
15. Grievant's assertion is not credible. She has not shown either that someone else wrote her biography, or that anyone else would have reason to do so.
16. Self-delusional statement by grievant. Grievant's statement demonstrates that she cannot distinguish between the reality of whether she has actually completed all academic requirements, and the illusion that she has because a single letter states that she has. When, as here, the letter was written based on false assumptions, then the content of the letter is similarly false.

17. Irrelevant observation by grievant. Speculation about what someone else should have done does not alter the fact that grievant has never received a Master's degree.
18. The Vice President for Academic Affairs explained that the commencement program is prepared and printed well in advance of the commencement ceremony. The names of candidates who would normally be expected to receive degrees are included, conditioned upon the student fulfilling all requirements by the date of the ceremony. If a student fails to actually fulfill all requirements, she will not receive a diploma or degree.
19. Unsupported assertion by grievant.
20. Irrelevant observation by grievant. The written notice includes an explanatory note that this was the date that the offense was brought to the attention of the Associate Director.
21. This statement is one of the few points on which both parties are in agreement.
22. Irrelevant observation by grievant, because grievant has not received either a Master's degree or the diploma that would signify that such a degree had been conferred.
23. Unsupported assertion by grievant. No proof was proffered during the hearing to establish that fees had been waived for grievant or any other employee.

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24. Irrelevant observation by grievant. The composition of grievant's financial indebtedness to the University is irrelevant. The important fact is that grievant still has an unsatisfied financial obligation that precludes the awarding of a degree.
25. Misstatement of fact by grievant. University policy provides that an uncertified copy of a student's transcript may be given to the student prior to graduation to assist the student when applying for employment.
26. Hearing officers do not testify during hearings. The statement to which grievant refers was part of the testimony of the Vice President for Academic Affairs.
27. Hearing officers do not offer proof during hearings; only the parties may proffer proof. The agency's witness provided credible testimony that each employee was requested to provide his or her own biographical statement.

28. Self-delusional statement by grievant. The transcript (on which grievant relies so heavily to support her contention of having received a degree) reflects that course 621C was taken in the fall of 2001, not 2000.
29. Misstatement of fact by grievant. She repeatedly testified during the hearing that she had submitted the program advisor job application on December 17, 2001.
30. The hearing officer did not produce (and does not have access to) any University documents. The agency produced the original resume during the hearing to rebut grievant's assertion that the copy of the resume had been altered.
31. Unsupported assertion by grievant.
32. Unfounded accusation by grievant. The hearing officer reviewed all documents entered into evidence by the parties.
33. Only one original cover letter was produced.
34. Incorrect assumption by grievant. The motive for alleged falsification by unnamed University employees is completely lacking. Grievant failed to offer even a theory, let alone evidence, of who would have falsified documents or why they might have done so.
35. The resumes speak for themselves. They are, in fact, falsified because grievant falsely stated she had a Master's degree.

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36. Irrelevant observation by grievant.
37. The most probative evidence was the original resume reviewed during the hearing. What may have been added to various photocopies, at different times, by different people, for varying reasons, does not alter the clear evidence afforded by the original document.
38. Irrelevant observation by grievant. Grievant was not disciplined for accessing the computer system using the password of a coworker. Testimony may have inferred that grievant had the means, motive, and ability to have done this, but the agency did not charge grievant with this offense.

39. Pursuant to the Standards of Conduct, a supervisor who counsels an employee may, at the supervisor's option, counsel verbally without written documentation, or may document the counseling in writing.
40. No such letter appears among the documents proffered by grievant. If grievant has such a letter, she could have presented it as evidence during the hearing.
41. Unclear assertion by grievant. No explanation as to what class grievant is referring to. Grievant did not provide a copy of the alleged policy during the hearing (or with her request for reconsideration).
42. Unclear assertion by grievant.
43. Irrelevant observation by grievant. The agency did not charge grievant with overriding balances.
44. Grievant offered as evidence that she had a degree the graduation application signed by her advisor. (See Exhibit 14)
45. The parties agree that giving a student a copy of their transcript is not evidence that a degree has been conferred.
46. Unfounded accusation by grievant.
47. Previously addressed in item 25, supra.

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48. Unclear assertion by grievant. Grievant apparently does not understand the meaning of her own attorney's unambiguous statement.
49. The hearing officer's decision states that grievant's "academic record" (not transcript) is clouded. This conclusion was reached based on the overwhelming evidence presented by the agency. No such conclusion can be drawn with regard to the transcript.
50. Grievant refers to "logs" but failed to provide these logs as evidence to support her contention that she completed an internship. Moreover, even if grievant had been able to prove that she completed the internship, it does not alter the fact that she does not have a Master's degree.
51. Grievant makes reference to a policy but has failed to submit a copy of the policy either during the hearing or with her request for reconsideration.
52. Unsupported assertion by grievant.

53. Unfounded accusation by grievant. The fact that the University's general counsel recused himself from the case reflects positively on the agency's desire to have the case adjudicated fairly and independently.
54. Unclear statement by grievant.
55. Irrelevant observation by grievant. Grievant's self-evaluation that she has met the requirements for a degree is irrelevant because the University is the only entity vested with the authority to confer a degree.
56. Unclear statement by grievant. Makes references to unknown official records (6.10) and unknown policy.

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57. The Vice President for Academic Affairs disagreed with the human resources officer's report and overrode his recommendation. Based on all available evidence, the decision to remove grievant from state service was an appropriate action.
58. Unclear statement by grievant. While some University faculty have certainly made mistakes (certifying that grievant completed a class she was not in, certifying grievant for graduation even though she had not completed academic requirements, etc.), these problems had no direct bearing on grievant's false resumes. Grievant is solely responsible for stating in writing that she had a degree when, in fact, she did not.

DECISION

The hearing officer has carefully reconsidered grievant's arguments and concludes that there is no basis either to reopen the hearing, or to change the Decision issued on May 12, 2003.

APPEAL RIGHTS

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 10 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,

2. All timely requests for administrative review have been decided and, if ordered by EDR or HRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision

Within thirty days of a final decision, a party may appeal on the grounds that the determination is *contradictory to law* by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose.²⁴

David J. Latham, Esq.
Hearing Officer

²⁴ An appeal to circuit court may be made only on the basis that the decision was *contradictory to law*, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. Virginia Department of State Police v. Barton, 39 Va. App. 439, 573 S.E.2d 319 (2002).

POLICY RULING OF THE DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT

In the matter of
Norfolk State University
August 18, 2003

The grievant has requested an administrative review by the Department of Human Resource Management of the hearing officer's May 16, 2003, decision in Case Number 5705/5724. The grievant objects to the hearing officer's decision because she believes it is inconsistent with various agency and Department of Human Resource Management policies and the Code of Virginia. The grievant also asked the hearing officer to reconsider the decision and 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 (NSU) employed the grievant as an Education Support Specialist I until she was removed from employment. Based on NSU officials' belief that she had falsified her application and biographical data, they issued to her a Group III Written Notice and suspended her from employment with pay while they conducted a thorough investigation. She was charged with "Falsification of office documents." More specifically, she contended that she possessed a Master's Degree when in reality no such degree had been conferred upon her. After the investigation was completed, she was terminated. She filed two grievances, one immediately following her suspension and the second one after she was terminated. The Department of Employment Dispute Resolution combined the grievances so that the same hearing officer could hear them at the same time. In his decision dated May 12, 2003, the hearing officer upheld the disciplinary action taken by NSU officials. The employee appealed the decision to the Department of Human Resource Management regarding consistency with policy, to the Department of Employment Dispute Resolution for procedural compliance, and to the hearing officer for reconsideration of his decision.

In a ruling dated May 27, 2003, in response to the reconsideration request, the hearing officer concluded that there was no basis either to reopen the hearing or to change his original decision. In a ruling dated June 20, 2003, the Department of Employment Dispute Resolution concluded that the hearing officer did not violate the grievance procedure.

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 examples of unacceptable behavior for which specific disciplinary action may be warranted. The examples are not all-inclusive. The policy enumerates the levels of disciplinary action, including what constitutes a Group I, a Group II and a Group III Written

Notice. In the present case, NSU officials issued to the grievant a Group III Written Notice with suspension pending an investigation for falsifying state documents.

DISCUSSION

A hearing officer is 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 as related to disciplinary action.

Among other concerns, the grievant stated that NSU officials violated the Standards of Conduct Policy, Section VII (B), by issuing to her a Group III Written Notice and a memorandum notifying her of their concerns regarding her falsification of her application. The grievant also stated that the Group III Written Notice was not given to her until two weeks after the memorandum was given to

her and the written notice failed to mention termination or suspension for 30 days. Our review of this matter confirmed that NSU officials initiated disciplinary action by issuing a memorandum of intent to discipline with suspension along with a written notice on September 20, 2002. The NSU officials then conducted an investigation after which they issued a letter of termination dated January 22, 2003 (later revised on January 27, 2003). Technically, the steps NSU officials took during the disciplinary process were not in accordance with policy. NSU officials suspended the grievant with pay from "9/20/02" through "Pending Investigation" by issuing a Group III Written Notice and a memorandum explaining the reasons for the suspension. While this is of no consequence, it was improper to issue a written notice to execute a suspension. Also, NSU officials did not take the proper steps to terminate the grievant. Specifically, they did not issue a written notice to terminate the grievant. It was an

improper action to terminate the grievant by issuing the letter dated January 22, 2003, rather than a written notice. However, it is the opinion of this Department that the foregoing procedural issues are unrelated to the resolution of this matter. This is particularly evident given that such procedural issues are unrelated to the propriety of the allegations concerning the infraction. It is very likely, however, that the results would have been the same even if the proper procedural steps had been executed. Based on these facts, we will not interfere with the application of the hearing decision.

In addition to the above challenges, the grievant raised a host of observations and allegations regarding NSU's officials improper handling of her termination and of other personnel actions. Generally, it appears that the grievant either is contesting the weight and credibility that the hearing officer accorded to NSU's witnesses and the conclusions he made regarding the evidence or raising concerns unrelated to the resolution of her grievance. For example, the grievant raised concerns that, among other things, NSU officials violated certain record-keeping requirements. Also, the grievant asserts that NSU officials owe her income from unused leave she had accrued and a bonus she had earned. This administrative review does not address these or other such concerns because to do so would have necessitated that this Agency either re-examine the evidence or address issues unrelated to her grievance. In conclusion, this Agency has no reason to disturb the hearing officer's decision.

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

Sincerely,

Ernest G. Spratley
Manager, Employment
Equity Services