

Issue: Removal from employment due to substandard performance; Hearing Date: 05/22/03; Decision Issued: 05/23/03; Agency: UVA Health System; AHO: Carl Wilson Schmidt, Esq.; Case No. 5722



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5722

Hearing Date: May 22, 2003
Decision Issued: May 23, 2003

PROCEDURAL HISTORY

On March 4, 2003, Grievant was removed from employment for poor performance. On March 28, 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 May 1, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 22, 2003, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Representative
Four witnesses

ISSUE

Whether Grievant should be removed from employment due to substandard performance.

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its 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 University of Virginia Health System employed Grievant as a Patient Access Specialist until her removal on March 4, 2003. She began working for the University approximately 12 years ago. In October 2002, her position in another division of the University Health System was eliminated due to budget reductions.¹ She was offered the opportunity for placement elsewhere within the University Health System. After meeting with the appropriate human resource staff, Grievant decided to work as a Patient Access Specialist.

A Patient Access Specialist is responsible for scheduling patient appointments and registering patients. Before any new Patient Access Specialist may begin performing the tasks of the position, the new employee must take training in scheduling, registration, and insurance. Upon completion of the scheduling training, the employee must pass a scheduling exam. Upon completion of the registration training, the employee must pass a registration exam. No test is required following the insurance training.

Grievant took the scheduling test and the registration test in October 2002. She failed both tests. In late December 2002 and early January 2003, Grievant took the tests again and failed them again, even though she had repeated the required training.

On January 22, 2003, Grievant received a Formal Performance Improvement Counseling Form stating:

[Grievant] has failed to meet our performance expectations (failed reg. Training exams occurring on approximately October 31, 2002 and 1/9/03) and has thus not demonstrated the ability to perform as a patient access specialist.

Specific changes in performance or behavior required and the time frame in which this must occur: [Grievant] to take and pass (score of 80%) both

¹ Grievant was one of approximately 70 employees whose positions were eliminated.

a written and 'role playing' exam on or about 2-6-03 to demonstrate her ability to perform the scheduling and registration function of patient access. Failure of the above would result in suspension with another 2 week period followed by another exam to occur as a means of demonstrating correct performance.

On February 7, 2003, Grievant participated in a practice demonstration during which two staff members pretended to be patients and Grievant was responsible for registering the patients in accordance with her training. Three people reviewed Grievant's performance. Grievant failed the two role-playing examinations. She passed the registration test, however, on her third attempt.

On February 10, 2003, Grievant was given a Formal Performance Improvement counseling Form stating, in part:

[Grievant] failed to meet the expectations outlined in the 1-22-03 counseling.

On 2-7-03 [Grievant] passed by one response the written registration test. This was her third attempt. She failed however to pass either of the two role-playing evaluations. An Access Manager and an Access Quality Analyst, both of [whom] scored her the same – 3 of 40 points and 3 of 24 points, observed these evaluations.

Based on the above and the plan outlined in the 1-22-03 Formal Performance Improvement Counseling, [Grievant] will be suspended for one day on 2-11-03. Between 2-12-03 and 2-26-03 [Grievant] will receive some additional one-on-one training and will be asked to perform, with an instructor present, some actual scheduling, pre-registration and registrations in a live work setting. She will also have as an option, time to observe. At the end of the 2-week period she will again be evaluated using the same 2 role-playing scenarios. Passing will result in her being placed in a work setting to perform full Access functions while in a 90 day Performance Warning period that ends on 5-12-03. If she should not pass the evaluation termination would possibly be the result. In addition, if she passes the evaluation, but fails to meet performance standards in the 90-day period, [termination] would possibly result.

 √ Suspension from 2-11-03 through 2-11-03 (hours suspended _____)
 √ Performance Warning from 2-12-03 through 5/12/03 (not to exceed 90 days)

Prior to taking her exam on March 3, 2003, Grievant received the following training:

Date	Instruction
02/12/03	2-4 p.m. registration without insurance (2 hours one on one)
02/13/03	1-3 p.m. registration without insurance (2 hours one on one)
02/14/03	[Grievant] out ill
02/17/03	[Grievant] out inclement weather
02/18/03	2-4 p.m. registration practical demonstration (2 hours one on one)
02/19/03	1-3 p.m. – 4 scenarios to work on her own
02/20/03	2-4 p.m. registration practical demonstration (2 hours one on one)
02/21/03	[Grievant] absent
02/24/03	3-4 p.m. practical demonstration with insurance cards (1 hour one on one)
02/25/03	Practical demonstration scenarios to review on her own 1-4 p.m.
02/26/03	3-4 p.m. Ask questions and review scenarios prior to Pediatric clinic trip (1 hour one on one)
02/27/03	Trainer trip to Pediatric clinic 2:15-4 p.m. (Review work in clinic)
02/28/03	Inclement weather
03/03/03	Exam

On March 3, 2003, Grievant participated in a practice demonstration using the same examination Grievant participated in on February 7, 2003. The University changed the three evaluators in order to make sure the assessment was independent of factors other than Grievant's performance. Grievant again failed the two role-playing examinations.

On March 3, 2003, Grievant received a Formal Performance Improvement Counseling Form stating, in part:

[Grievant] has failed to meet the performance expectations set by Patient Access. On 3/2/03 she failed to pass the practical demonstrations consisting of 2 demonstrations. These were the same demonstrations provided at the last examination of which she also failed. Between the last counseling, additional one-on-one training occurred with some supervised work in a clinic (2 +/- hours). (12 +/- hours) Time for independent practice was also provided.

√ Termination 3/4/03

CONCLUSIONS OF POLICY

University of Virginia Medical Center Policy #701, *Employee Rights and Responsibilities*, provides for a series of steps when University staff believe an employee's work performance is inadequate:

The Medical Center may use a process of performance improvement counseling to address unacceptable performance when appropriate, except in cases of serious misconduct where suspension or termination is

warranted. The purpose of the performance improvement counseling process is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service in the future.

Performance improvement counseling steps include informal coaching, formal (written) performance improvement counseling, suspension and/or performance warning, and ultimately termination.

A. Informal Coaching

If performance issues develop once a staff member has completed his/her probationary period, the supervisor will bring these issues to the attention of the employee in an informal coaching session. This session should take place as soon as possible after the deficiency is noted, and in most cases should be conducted in private.

B. Formal (Written) Performance Improvement Counseling

If the performance issue persists subsequent to informal coaching, formal performance improvement counseling may be initiated. The severity of the performance issue may warrant formal counseling without prior informal coaching.

[T]he employee will receive a Performance Improvement Counseling Form documenting the expectations for performance improvement, the time frame for the improvement, and action to be taken if the employee fails to achieve and maintain the required performance level.

C. Suspension

A disciplinary suspension of up to five (5) working days would normally be applied progressively after at least one formal performance improvement counseling.

The suspension must be documented on a Performance Improvement Counseling Form indicating the date and time the suspension begins and ends.

D. Performance Warning

A performance warning is issued to specify a period of time (not to exceed 90 days) during which the employee is expected to improve or correct performance issues and meet all performance expectations for their role, or face termination.

The performance warning should be documented on a Performance Improvement Counseling Form stating how the employee fails to meet expectations, what must be done to meet expectations, and the time frame for achieving expectations. It will document that unsatisfactory

progress, or failure to meet all performance expectations at any time during the performance warning period will normally result in termination.

Termination will be documented on a Performance Improvement Counseling Form for the personnel file and a copy of the documentation should be given to the employee.

The University provided Grievant with informal coaching, written performance improvement counseling, suspension, and performance warning resulting in removal. The University has met its burden of proving it has complied with the Policy 701. Grievant's removal must be upheld.

Grievant contends she was able to do the job and the University has inappropriately assessed her skills. Two separate performance teams evaluated Grievant and both assessed her skills as being inadequate. There is no basis for the Hearing Officer to reverse the Agency's conclusions regarding Grievant's performance.

Grievant contends she was not given adequate training and was diverted to other duties (such as scanning) not relating to scheduling and registration. The evidence showed that the University had given Grievant substantial training and mentoring such that she should have been able to meet all of the University's performance requirements. Although Grievant's duties for a five month period were not solely devoted to hands-on training of scheduling and registration, the amount of training given to Grievant was more than sufficient to enable her to perfect her skills in scheduling and training.

It is clear to the Hearing Officer that Grievant is an individual of good character who sincerely desires to use her talents and skills to contribute to her community. She ultimately will succeed, as she demonstrated in her prior position with the University that was eliminated due to budget reductions. Unfortunately, her position as a Patient Access Specialist is not the means by which she can achieve that success.

DECISION

For the reasons stated herein, the University's action to remove Grievant from employment based on her performance is **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. 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.²

[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

² Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.