

Issue: Group I Written Notice (unsatisfactory work performance); Hearing Date: 08/13/03; Decision Issued: 08/18/03; Agency: GMU; AHO: Carl Wilson Schmidt, Esq.; Case No. 5775



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5775

Hearing Date: August 13, 2003
Decision Issued: August 18, 2003

PROCEDURAL HISTORY

On April 4, 2003, Grievant was issued a Group I Written Notice of disciplinary action for unsatisfactory work performance. On May 7, 2003, Grievant 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 July 17, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On August 13, 2003, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Designee
Agency Representative
Project Manager

ISSUE

Whether Grievant should receive a Group I Written Notice of disciplinary action for inadequate or unsatisfactory job performance.

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:

George Mason University employs Grievant as a Media and Resource Center Supervisor. She has been employed by the University for approximately 13 years. No evidence of prior disciplinary action against Grievant was introduced into evidence.

The Learning Support Services (LSS) division contains several units. The Student Technology and Resource Training (STAR) unit is within the LSS and has several sub-units including the Media Resource Center (MRC). Grievant coordinates the Media Resource Center. Grievant reports to the LSS Operations Manager. Another LSS unit is the Mason Media Lab (MML). The MML Production Manager also reports to the Operations Manager.

At the request of the Operations Manager, the Production Manager donated several books and other resources located in the MML to the MRC. While the resources were located in the MML, only MML students and faculty had ready access to the resources. By moving the resources to the MRC, additional students and faculty would have access to the resources. The Production Manager initially was reluctant to donate the materials because she feared not being able to retrieve the materials easily when she needed them.

On March 13, 2002, the Operations Manager sent Grievant an email stating:

[Mr. JB] bought a bunch of reference books for the Mason Media Lab. Now that the MML is being used by groups for projects, I'm concerned the books might walk off. As such I'm going to have them incorporated into the MRC's library, where they will be available for checkout.

I've got a couple students coming in this week to work with [Production Manager] on what books she wants to keep in the MML and which she wants to send to the MRC. Once they have that sorted out, I'll ask students to contact you about transporting the books down to you. I trust you can incorporate them into your holding from there.

I want these books to be available to MML users for extended check out periods of say a week. Since the MML is donating them and they were purchased with MML needs in mind, I want them to be available to MML users for an extended period. Please do what you can to make this as seamless a process as possible. I've had several MRC users complain to me about the MRC checkout process -- they feel it is needlessly complicated and state that even longtime staff members who are known to you have been required to produce an ID -- and by staff members who say they are often approached by people seeking to borrow reference materials because these people would prefer not to deal with the cumbersome checkout procedures of the MRC.

As I've mentioned on numerous occasions, I think the MRC needs to grow its client base and the surest way to do so is to make sure that MRC users have a good experience using the land. As such, please make sure that MML users seeking use of MML materials don't have to jump through a lot of hoops to do so. If that means you do some of the client paperwork or otherwise streamline the process please do so. Until there is more client traffic through the MRC you need to do what you can to make the current client experience as pleasant as possible.

Let me know if you have any questions.

On March 26, 2003, the Production Manager was working with three students in the MML. She needed to obtain a tutorial book and volumes 1, 2 and 3 of the operating manual for Final Cut Pro 3.0 software. She had donated these books to the MRC. The Production Manager walked¹ to Grievant's unit and said she needed to checkout the Final Cut Pro books because she was working with students. Grievant had discretion to determine the number of books an individual could checkout.² Grievant usually permitted individuals to checkout two books but had allowed individuals take up to 13 items at a time. Grievant informed the Production Manager that the Production Manager could checkout only two books and not the four books she needed to assist

so she told Grievant she was rescinding her donation of the four books and would take them with her to the MML. Grievant agreed and deleted the books from the MRC database.

CONCLUSIONS OF POLICY

¹ Grievant and the Production Manager work in the same building in different areas. They have known each other for approximately seven years.

² On October 24, 2000, Grievant had permitted the Production Manager to checkout four items.

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).³ 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.

Grievant was responsible for determining the number of books an individual could checkout from MRC. She could have permitted the Production Manager to checkout all four books and avoid a conflict. Grievant was instructed to accommodate and streamline requests originating from the MML. Grievant should have exercised her judgment to permit the Production Manager to remove four books. Because Grievant failed to permit the Production Manager to checkout four books, the Production Manager permanently removed the books from the MRC. Books that were once available to the entire University community became available only to MML clients. Grievant’s behavior amounted to inadequate or unsatisfactory job performance thereby justifying issuance of a Group I Written Notice.

Grievant contends the problem was resolved when the Production Manager removed the books from the MRC. Grievant’s argument is unsupported by the evidence. Once the books were removed from the MRC, the books were no longer available to the community at large thereby creating an access problem and not resolving a problem.

Grievant argues she was justified in permitting the Production Manager to take only two books because the Production Manager had informed Grievant that the books would be used by unnamed students. Grievant believes that if the books had been lost she would have been unable to identify and hold accountable the students who lost the books. Grievant’s argument fails because it was the Production Manager who was checking out the books and who would be responsible for the books if the students lost them.⁴

³ The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

⁴ The Production Manager intended to let the students use the books while the students were working with her. She did not intend to let the students remove the books from MML. This fact was not known to Grievant at the time of the Production Manager’s request.

Grievant asserts that had she permitted the Production Manager to take four books, her actions would have been contrary to certain University policies and software licensing. No credible evidence was presented suggesting Grievant's assertions are correct.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group I Written Notice of disciplinary action 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.⁵

⁵ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

[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