

Issue: Group II Written Notice (failure to follow supervisor's instructions, perform assigned work, or otherwise comply with established written policy); Hearing Date: 04/09/03; Decision Issued: 04/11/03; Agency: DOC; AHO: Carl Wilson Schmidt, Esq.; Case No. 5685



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Grievance No: 5685

Hearing Date: April 9, 2003
Decision Issued: April 11, 2003

PROCEDURAL HISTORY

On October 28, 2002, Grievant was issued a Group II Written Notice of disciplinary action for:

Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy. On 10/15/02 you were instructed by a supervisor to take the laundry cart back to the Laundry. You refused and stated that you were not going to comply because it was raining and you did not want to get wet. The supervisor gave a valid order, i.e. it did not violate policy or state law. Furthermore, the prison's operation has never ceased due to inclement weather and all officers are issued raincoats. Therefore, no valid reason was given for your refusal to comply.

On November 25, 2002, Grievant timely filed a grievance to challenge the disciplinary action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On March 27, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On April 9, 2003, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Designee
Agency Advocate
Sergeant
Captain

ISSUE

Whether Grievant should receive a Group II Written Notice of disciplinary action for failure to follow a 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 Corrections employs Grievant as a Corrections Officer Senior. He began working for the Agency on December 1, 1995. No evidence of prior disciplinary action against Grievant was presented.

On October 15, 2002, Grievant was working the 4 p.m. to midnight shift as the floor officer in a housing building at the Agency's Facility. At approximately 9:30 p.m., Grievant was working with the Sergeant to retrieve dirty blankets from inmates. As the blankets were collected, they were placed in large bins on rollers. The bins were approximately five feet by five feet square and were stored outside of the building. Once all of the blankets were collected, the Sergeant instructed Grievant to help roll the laundry bins to the laundry room located in a building approximately 150 yards away. It was raining at the time. Grievant said he would not roll the bins because he did not want to get wet. The Sergeant again ordered Grievant to roll the bins to the laundry. Grievant again refused saying he did not want to get wet. The Sergeant proceeded to push the bins to the laundry without Grievant's assistance. The Sergeant did not want to wait until the rain stopped to push the bins because the bins would remain outside

and fill with water. Once filled with water the bins would be too heavy to push. He also did not want to delay other duties he had to complete during his shift.

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.” Department of Corrections Procedure Manual “(DOCPM)” § 5-10.15. 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.” DOCPM § 5-10.16. Group III offenses “include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.” DOCPM § 5-10.17.

Failure to follow supervisor’s instructions is a Group II offense.¹ Grievant’s supervisor instructed him to help push laundry bins to the laundry room. The instruction was within the Sergeant’s authority to give and one with which Grievant was obligated to comply. Grievant failure to comply with the Sergeant’s order justifies issuance of a Group II Written Notice.

Grievant contends he did not comply with the Sergeant’s order because he believed the Sergeant was joking. The evidence is insufficient for the Hearing Officer to conclude that the Sergeant was joking or that Grievant had a reasonable basis to believe the Sergeant was joking.²

DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Group II 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.

¹ DOCPM § 5-10.16(B)(1).

² Grievant did not call any witnesses or present any documents.

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.³

[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

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