

Issue: Group I Written Notice (unsatisfactory job performance); Hearing Date: 05/01/03; Decision Issued: 05/19/03; Agency: DGS; AHO: Carl Wilson Schmidt, Esq.; Case No. 5687



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 5687**

Hearing Date: May 1, 2003  
Decision Issued: May 19, 2003

**PROCEDURAL HISTORY**

On December 19, 2002, Grievant was issued a Group I Written Notice of disciplinary action for:

*Unacceptable Performance: Written complaint ... from the cashier's office regarding an unprofessional attitude and abusive telephone conversation with the cashier's office staff.*

On January 22, 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 April 7, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 1, 2003, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Agency Representative  
Six witnesses

## **ISSUE**

Whether Grievant should receive a Group I Written Notice of disciplinary action for 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:

The Department of General Services employs Grievant as an Administrative Program Specialist II. One of Grievant’s core responsibilities is “Communicates in a professional manner on a daily basis ....”<sup>1</sup> On August 1, 2002, Grievant received a Group II Written Notice for hitting an “office door with such force that the door closer screws were pulled out of the door causing damage to the property.”<sup>2</sup>

VDOT asked the Department of General Services to auction a VDOT car to the public. Following the auction, a VDOT employee wanted to determine if the buyer had paid for the car before VDOT released the vehicle to the buyer. On October 1, 2002, the VDOT employee called Grievant for information. Grievant did not know the answer to the VDOT employee’s question, so Grievant called Ms. W, a Fiscal Tech Senior, in the cashier’s office.<sup>3</sup> Grievant asked Ms. W if the award had been paid. Ms. W answered “yes” and said that a fax had been sent to Grievant on the prior day. Grievant asked for another fax to be sent and Ms. W sent Grievant a second fax of the award. Shortly thereafter, the VDOT employee with whom Grievant had been speaking called Ms. W and asked for information about the award. This was the same information Grievant earlier had asked of Ms. W. The VDOT employee told Ms. W that Grievant had referred her to Ms. W. Ms. W believed Grievant should have assisted the VDOT employee without referring that employee to Ms. W since Ms. W had already provided Grievant with all of the information necessary to resolve the VDOT employee’s question.

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<sup>1</sup> Agency Exhibits C, E.

<sup>2</sup> Agency Exhibit B.

<sup>3</sup> Grievant works in a location away from the Agency’s cashier’s office.

On October 7, 2002, Grievant called Mr. F, a Fiscal Tech Senior in the cashier's office. Grievant asked for information but became frustrated with the response she received from Mr. F. Grievant hung up the telephone in the middle of Mr. F's response. Mr. F felt Grievant's behavior was inappropriate. Mr. F had received calls in the past from Grievant where she would say "Lord have mercy" and then abruptly hang up the telephone.

The Agency had counseled Grievant in the past about the need to improve her interactions with employees and customers.

### **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).

"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. This is not a difficult standard to meet.

Grievant referred a VDOT caller to Ms. W when doing so was unnecessary. Grievant had all of the information necessary to assist the caller. By referring the caller to Ms. W, Grievant created unnecessary work for Ms. W and unnecessary confusion for the VDOT employee. Grievant should not have abruptly hung up the telephone before her conversation with Mr. F ended. By doing so she failed to communicate in a professional manner.

Grievant contends she did not hang up the telephone on Mr. F. The Agency, however, has presented credible evidence to support its allegation that Grievant hung up on Mr. F. It is likely Grievant did not realize she had abruptly hung up on Mr. F.

Grievant contends the Agency should have brought the matter to her attention sooner than it did. The Agency's delay is not unreasonable given that it had to investigate whether it felt Grievant's behavior rose to the level justifying disciplinary action.

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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.

The evidence showed that since October 2002, Grievant has made improvement in her daily interactions with other employees and customers. The Hearing Officer has every reason to believe Grievant's assertion that she will be successful in achieving her goals regarding her continuing improvement.

## 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.<sup>5</sup>

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<sup>5</sup> 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].

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Carl Wilson Schmidt, Esq.  
Hearing Officer