

Issue: Group II Written Notice with suspension (failure to perform assigned work);  
Hearing Date: 03/24/04; Decision Issued: 05/05/04; Agency: DJJ; AHO: Carl  
Wilson Schmidt, Esq; Case No. 617



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 617**

Hearing Date: March 24, 2004  
Decision Issued: May 5, 2004

**PROCEDURAL HISTORY**

On January 6, 2004, Grievant was issued a Group II Written Notice of disciplinary action with suspension from February 9, 2004 through February 11, 2004 for:

*In February 2003, [Grievant] was issued a Needs Improvement Action Plan, which addressed her inability to submit overdue case file reviews. As a part of the plan we met each week to review her compliance with the plan. On a monthly basis, she and I planned and documented on a monthly Outlook calendar a schedule to submit case files. To date, she has been unable to submit case files as scheduled on a monthly Outlook calendar. Over the past nine months, she and I have discussed the mitigating circumstances that have impacted her inability to submit overdue case file reviews. Allowances have been made over this period of time. On October 24, 2003, I issued a memo that gave [Grievant] a deadline to update all case files and reviews December 19, 2003. On December 16, 2003, I gave her additional time due to personal mitigating circumstances. The deadline was extended to December 31, 2003. To date, [Grievant] has 20 case files that are overdue for supervisory reviews.*

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 February 25, 2004, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On March 24, 2004, a hearing was held at the Agency's regional office.

## **APPEARANCES**

Grievant  
Agency Party Designee  
Agency Representative  
Witnesses

## **ISSUE**

Whether Grievant should receive a Group II Written Notice of disciplinary action with suspension for failure to perform assigned work.

## **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 Juvenile Justice employs Grievant as a Probation Officer I. The purpose of her position is:

To protect the public through a balanced approach of comprehensive services that prevent and reduce juvenile delinquency through partnerships with families, schools, communities, law enforcement and other agencies while providing the opportunity for delinquent youth to develop into responsible and productive citizens.<sup>1</sup>

The Probation Director hired Grievant in October 2000. No evidence of prior disciplinary action against Grievant was introduced at the hearing.

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<sup>1</sup> Agency Exhibit 12.

Cases are assigned on a rotating basis among six parole officers. When a juvenile is placed on parole, the parole officer is expected to review the case within 30 days and then 90 days thereafter. On average, a juvenile will remain on parole from six to nine months. More serious offenders may remain on parole for a longer period of time. One of the tasks necessary to close a case is to go to the courthouse and obtain copies of the necessary paperwork. In order to avoid having too large of a caseload, Grievant should be closing approximately three to five cases per week.

Juvenile cases are assigned levels from 1 to 4. For example, level 1 cases include juveniles committing first-time misdemeanor offenses; level 4 cases include juveniles committing felony violent offenses. Parole Officers typically must have a greater and more frequent degree of interaction with juveniles assigned to level 4 than with juveniles assigned to level 1. Juveniles requiring services have changed over the past ten years. They are more violent, more likely to be learning disabled, and are more resistant to treatment.

A number of Parole Officer responsibilities can be completed by third parties. Third party services include: in-home visits, mentoring, job placement, and sex offender treatment. These services are paid with "294" (Transition Service) funding. It is up to the Parole Officer to determine when to utilize those services. A Parole Officer who effectively utilizes the services available under "294" funding can reduce the amount of time he or she devoted to direct services to juveniles.

Grievant is responsible for scheduling her daily work tasks. Normally, she should schedule court appearances first and then home and office visits and other duties. As of January 31, 2003, Grievant had 40 cases assigned to her. From January 31, 2003 to January 31, 2004, Grievant was assigned 14 new cases and closed 12 cases leaving a balance of 42 cases as of January 31, 2004. Twenty of these juveniles were in the community and 22 were not in the community.<sup>2</sup> Only one of these juveniles was a level 4. Eight cases were inactive. At least six of Grievant's inactive cases could be closed at any time. Grievant did not close these cases.

Grievant's supervisor met with her on a monthly basis until January 2003 when they began meeting weekly. During these meetings, they discussed cases that Grievant had not yet closed and identified cases that Grievant could submit that week for closure. Grievant received a Notice of Improvement Needed/Substandard Performance setting forth an improvement plan and requiring "all case file reviews are to be up to day by March 30, 2003. Grievant submitted all backlog files as of March 2003.

Grievant's delivery of services is very good. In her October 9, 2003 evaluation, her supervisor comments, "[Grievant] is an asset to the CSU. She serves as a strong

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<sup>2</sup> According to Grievant's Supervisor, as of January 5, 2004, approximately 45 percent of Grievant's cases were overdue.

advocate for the youth on her case load. She has very good assessment skills, which allows her to appropriately identify the needs of the youth and security appropriate services.” Grievant understands the importance of her work and is dedicated to helping juveniles and protecting the community.

Grievant’s organization and time management skills are lacking. In her October 9, 2003 evaluation, her supervisor states, “[Grievant] needs to improve and demonstrate her ability to manage her caseload, per policy and procedures, both the physical file and computer file. [Grievant’s] time management skills hinder her ability to maintain her case files up to date.”<sup>3</sup>

### 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).

“Failure to follow a supervisor’s instructions, perform assigned work, or otherwise comply with established written policy” is a Group II offense.<sup>5</sup> Grievant stipulated that she is behind in her caseload.<sup>6</sup> Therefore, she failed to follow her supervisor’s instructions and perform assigned work. The Agency adequately notified Grievant of its concern about her performance and provided her with opportunities to improve her performance. Grievant’s three workday suspension is within the ten day maximum permitted for a first Group II offense under the Standards of Conduct.

Grievant contends she was behind in her caseload because of the unreasonable burden placed on her by the Agency. There is little doubt that Grievant is expected to accomplish a lot within a short period of time and under pressure. Juvenile offenders are becoming more violent thereby requiring greater services. The evidence showed, however, that Mr. ED was able to consistently maintain a reasonable case load while

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<sup>3</sup> Agency Exhibit 12.

<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.

<sup>5</sup> DHRM § 1.60(V)(B)(2)(a).

<sup>6</sup> From January 31, 2003 to January 31, 2004, Grievant’s caseload ranged from a low of 40 to a high of 47 cases.

being assigned the same type of cases as Grievant was assigned.<sup>7</sup> He accomplished this through effective time management and use of “294” funding.

## DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Group II Written Notice of disciplinary action with suspension 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. Please address your request to:

Director  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

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. Please address your request to:

Director  
Department of Employment Dispute Resolution  
830 East Main St. STE 400  
Richmond, VA 23219

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

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<sup>7</sup> On some occasions, Mr. ED had to work 3.5 to 5 hrs more per week. No evidence was presented suggesting Grievant was prevented from working a few hours more than 40 per week.

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>8</sup>

[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

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<sup>8</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.