

Issue: Group II Written Notice with termination (failure to follow established written policy); Hearing Date: 06/30/04; Decision Issued: 07/02/04; Agency: DJJ; AHO: Carl Wilson Schmidt, Esq.; Case No. 746



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 746

Hearing Date: June 30, 2004
Decision Issued: July 2, 2004

PROCEDURAL HISTORY

On April 22, 2004, Grievant was issued a Group II Written Notice of disciplinary action with removal for:

[Grievant] failed to perform his on call intake coverage and responsibilities pursuant to 16.1-255, DJJ Policy 9114, and [Court Service Unit] policy and practice. After midnight, a police officer contacted [Grievant], the on-call Intake Officer, who was already in the office completing another case, about a juvenile arrest who needed to go into Detention. When the officer arrived at the office with the juvenile in custody, [Grievant] had already left the office. The officer tried to reach [Grievant] by phone and pager but received no response.

On April 29, 2004, 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 he requested a hearing. On June 2, 2004, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 30, 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 removal for failure to follow established written policy.

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 employed Grievant as a Probation Officer working in an intake unit. The objective of his position was:

To receive, review and process complaints that are alleged to fall within the Jurisdiction and venue of the [Juvenile and Domestic Relations Court] and determine a course of action that promotes community protection, client accountability, and client competency development.¹

On January 15, 2003, Grievant received a Group I Written Notice for disruptive behavior and a Group II Written Notice for failure to follow a supervisor's instructions.²

When police officers arrest juveniles, those juveniles are released or detained following their arrest. The Agency uses a computer data base in order to determine whether juveniles should be released or detained. If juveniles are detained, the

¹ Agency Exhibit 5. Employee Work Profile.

² Agency Exhibit 4.

Department takes physical custody of the juveniles pending court action. An intake officer is the one who takes initial control of the juvenile on behalf of the Department.

On April 6, 2004, Grievant's work shift began at 3 p.m. and ended at midnight. He was obligated to remain "on call" from midnight until 8 a.m. on April 7, 2004. To be on call, Grievant had to be able to arrive at the court within one hour of being called to respond.

After midnight, Grievant remained working at the intake office. The Police Detective met with Grievant at 1 a.m. in order to transfer control of a juvenile to Grievant. After completing this case, the Police Detective left the intake office and arrested a second juvenile at the juvenile's home. The juvenile had been caught by his foster mother packaging cocaine for sale.³ At 3:27 a.m., the Police Detective called Grievant and spoke with him. The Police Detective informed Grievant that the detective had custody of a juvenile who needed to be placed in detention. Grievant told the Police Detective that he had been there all night. The Police Detective said, "I know, but I have no other option for this juvenile." Grievant responded, "O.K., hold on for a minute while I pull some information." Grievant left the Police Detective on hold for 29 minutes. The Police Detective finally hung up. He attempted to reach Grievant again four times from 3:53 a.m. to 4:04 a.m. At 4:14 a.m., the Police Detective took the juvenile from the Police Operations Center and traveled to the intake office hoping Grievant or someone else would be there. He attempted to call Grievant four times from 4:29 a.m. to 4:40 a.m. Grievant had left the intake office. At 4:52 a.m., the Police Detective and the juvenile returned to the Police Operations Center because Grievant could not be reached. The Police Detective made three additional calls to Grievant from 6:08 a.m. to 7:18 a.m. The Police Detective purchased breakfast for the juvenile and at approximately 8 a.m., took the Juvenile to the intake office where the juvenile was processed and detained by the Senior Intake Officer.⁴ Grievant's unavailability caused the Police Detective to work overtime.

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).⁵ Group II offenses "include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally

³ Based on the juvenile's background, his score using the Agency's assessment scoring was 23. A score of 15 is necessary before an intake officer will authorize a juvenile to be detained.

⁴ The Police Detective expressed to the Senior Intake Officer his frustration at having to "baby-sit" a juvenile who he believed should have been transferred to the Agency several hours earlier.

⁵ The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

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).

Va. Code § 16.1-255 authorizes an intake officer of a juvenile court to issue a detention order for a juvenile. Intake officers are expected to be available 24 hours a day in case of emergency.⁶ Agency Policy 9115(II)(A) provides:

While many intake cases are urgent and must be handled immediately (hence, the 24-hour response requirement), many others are considered routine and intake interviews, conferences or arraignments may be scheduled. These should be arranged expeditiously.⁷

Agency policy required Grievant to be reasonably accessible to juveniles in order to “accommodate individual client circumstances and emergencies.”⁸ If an intake officer is not readily accessible to determine whether a juvenile should be detained, the public is at risk that a police officer may release that juvenile without knowing the extent of the juvenile’s criminal history.

“Failure to follow a supervisor’s instructions, perform assigned work, or otherwise comply with established written policy” is a Group II offense.⁹ Grievant failed to properly respond to the requests of the Police Detective. He should have quickly determined whether the juvenile’s name was in the database and informed the Police Detective. By keeping the Police Detective on hold for 29 minutes, Grievant failed to performed his assigned work and failed to comply with established written policy. Grievant left the intake office without attempting to contact the Police Detective.

Grievant contends the Police Detective’s account of the events is unreliable because one of his written description of events incorrectly states that he called Grievant at approximately 2 a.m. instead of 3:25 a.m. The Hearing Officer finds this discrepancy to be insignificant. What time the Police Detective called Grievant is not as important as the fact that Grievant keep the Police Detective on hold for 29 minutes and unnecessarily forced the Police Detective to work overtime.

Grievant contends he placed the Police Detective on hold for 29 minutes because he was busy searching the Agency’s computer data base using an incorrect spelling of the juvenile’s name. This argument is untenable because the evidence showed that a simple search of the database should take no longer than two minutes to complete for someone with Grievant’s experience.

⁶ 6 VAC 35-150-300(C).

⁷ Agency Exhibit 16. Agency Policy 9115.

⁸ Agency Exhibit 21.

⁹ DHRM § 1.60(V)(B)(2)(a).

Grievant contends he should have been offered progressive disciplinary action such as suspension rather than removal. DHRM Policy 1.60, *Standards of Conduct* does not require progressive disciplinary action. Grievant accumulated a second active Group II Written Notice thereby justifying removal from employment. The Agency chose not to suspend Grievant because of he had been counseled repeatedly in the past and had active disciplinary action.

Grievant argues that the Agency's actions arose out of improper discrimination or harassment. No credible evidence was presented to support this assertion. The Agency disciplined Grievant because of his behavior on April 7, 2004.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action with removal 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 14th St., 12th 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 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.¹⁰

[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

¹⁰ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.