

Issue: Group II Written Notice (failure to follow a supervisor's instruction, perform assigned work, or otherwise comply with established written policy); Hearing Date: 10/22/03; Decision Issued: 10/31/03; Agency: Dept. of Veterans Services; AHO: Wanda N. Allen; Case Number: 5827

DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION
DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the Matter of Veterans Services Case number 5827

Hearing Date: October 22, 2003
Decision Issued: October 31, 2003

PROCEDURAL BACKGROUND

On March 24, 2003, Grievant was issued a Group II Written Notice of disciplinary action for violation of the Memo of Instructions issued on November 1, 2002 instructing the grievant on the proper procedures for the use of the Vetrex program and macros for the Hampton Veterans Services Office.

A timely request for a hearing was filed by the Grievant challenging the Agency's position on July 24, 2003. Any delay in the processing of the grievant's request was explained by the Human Resource Manager in a memo to the Department of Employment Dispute Resolution dated August 5, 2003.

APPEARANCES

Grievant
Regional Manager for the Agency
Three Witnesses for the Agency

ISSUES

Whether Grievant should receive a Group II Written Notice of disciplinary action with removal for failure to follow a supervisor's instructions and perform assigned work.

FINDINGS OF FACTS

Grievant has worked for the Department of Veterans' Services in the Hampton Field Office since May, 2000 having served in numerous positions with the Virginia Department of Veterans' Affairs for approximately five years. She is within four courses from receiving a Bachelor of Arts Degree in Business Administration with a secondary degree in Computer Information Technologies.

The Vetrex program is used for the processing of veterans' claims. Plagued with problems over the past year with alterations to the system causing the entire system to crash and man hours to be lost, the information technology personnel for the agency investigated numerous possible reasons for the problems. One of the major concerns was that whatever was causing glitches was only occurring at the Hampton field service office.

In an attempt to isolate the problem the Information Technology Manager sent a memo to the Hampton Office on November 1, 2002 the problems that were found. More importantly the memo detailed the proper procedures to follow until further notice. At the time of the memo corrective actions had been taken and the Vetrex program was working properly on all three computers in the office including the one used primarily by the grievant.

Of particular note are the memo warnings:

"There is to be no creation or customization of any macros or templates for an vetrex forms or documents. The vetrex forms and documents that have been made available in the program are the only ones to be used "

"There is to be no mapping through the network to any of the other computers, nor any configuration changes, for any reason, without prior authorization " (Agency Exhibit #1)

As emphasis to the November 1, 2002 memo from the Information Technology manager, the Regional Manager sent his own memo to the Hampton Staff on November 4, 2002. Restating the concerns of the agency, his memo added: "Failure to comply with (the) memo may result in disciplinary action." (Agency Exhibit #2)

Continuing to address the possible problems with the system, grievant the computer staff in Roanoke replaced the grievant's CPU on March 7, 2003. The new CPU had 32 Macros installed. (Agency Exhibit #3) Grievant signed an acknowledgement form on March 6, 2003 confirming her understanding of all previous memos regarding the use and maintenance of the new system. (Agency Exhibit #4)

On March 12, 2003 the office manager for Hampton checked the grievant's computer to discover that there were only 8 installed macros. The computer information technology team from Roanoke, Virginia verified this

information on March 4, 2003. Although the grievant only worked on March 10 and March 11, the program had been altered in violation of the previous memos.

The officer manager issued the Group II written notice on March 24, 2003 citing the memos and acknowledgment form of March 6, 2003 emphasizing that no alteration of the program would be justified without approval.

A Second Step Response meeting was held in Roanoke on May 16, 2003 in Roanoke with the grievant accompanied by a representative. The grievant through her representative offered alternative explanations for the problems with the Vetrex program and the missing macros. Alternative scenarios including someone else tampering with the computer, which the grievant acknowledged was unlikely. A computer glitch causing the data path to be changed so macros could not be read or macros disappearing because of a malfunctioning computer.

The agency and the grievant agreed that the developer of the Vetrex program would be contacted to review various scenarios in an attempt to offer guidance as to the problems with the program.

Based on the inquiry to the program developer regarding the disappearing macros, he opined that the only possibility of that "someone, or another application, is intentionally deleting them. As you know, even if files are marked 'read only' anyone with knowledge of Windows or DOS can change the attributes of the file and delete it anyway." (See Agency Exhibit #5, originally marked #1 when presented at the hearing).

APPLICABLE LAW AND OPINION

To process veterans' claims through the Commonwealth of Virginia the Veterans' Service Agency utilizes a programmed entitled Vetrex. The Hampton field office having been plagued with Vetrex program problems, instituted corrective procedures to address the problems during 2002. All personnel were informed of the written procedures and asked to sign an acknowledgement of understanding. Specific do's and don'ts were outlined, as well as instructions to follow, in the event of questions.

In March, 2003, the grievant was the recipient of a new CPU, which when installed contained 32 macros. Nevertheless, less than three weeks later, 24 macros were discovered missing by the office manager. Grievant denied any knowledge of the missing macros.

Grievant through out the disciplinary process as well as during the course of the hearing contended that she simply did not remove any macros from the computer. She argued that the agency could not prove that she removed any macros. Nor did she fail in any way to follow the memorandums sent to her prior to the issuance of the Group II written notice.

The information technology witnesses testified that Vetrex is a specialized program that has been programmed to use a processing system called Cetus Word Pad. Failure to use this particular system confuses the program and causes it to malfunction. Part of the training that the grievant received regarding the Vetrex program emphasized this particular aspect of the system.

Grievant testified that she often saved text documents which she generated using the Vetrex program in Microsoft WORD. In fact the information technology specialist testified that a review of the grievant's hard drive revealed a directory with documents created in vertex but saved to this personal directory. The specialist said that part of the reasons for the November 1, 2002 memo was to ensure that no employee changed paths for the vertex program. Vertex is not programmed in Microsoft WORD. Not using the Cetus Word Pad path and changing it to WORD was a direct violation of the memo.

Even in light of the explanation provided by the information technology specialist, the grievant insisted that she had done nothing wrong. Her defense was that she simply did not delete, alter or change paths for any macros on her CPU. She never offered any reasonable explanation for the missing macros and her mere denial was not persuasive. In this instance, the grievant's background in computer systems might be an impediment. She has failed to grasp the underlying reason for the issuance of the Group II notice: failing to follow a supervisor's instructions. Regardless of whether she felt that saving documents in Microsoft WORD was acceptable, she failed to follow the mandates of the memos sent to her by the agency- not to alter the paths.

The Department of Human Resource Management ("DHRM") has issued a Policies and Procedures Manual setting forth Standards of Conduct for State employees. According to DHRM, Group II offenses "include acts and behavior which are more severe in nature than a Group I offense and are such that an additional Group II offense should normally warrant removal." DHRM { 1.60 (V)(B)(2).

Failure to follow a supervisor's instructions perform assigned work or otherwise comply with applicable established written policy constitutes a Group II offense. DHRM { 1.60(V)(B)(2)(a).

In this instance the agency had incurred hundreds of manpower hours to correct a problems that was isolated to one workstation used by the grievant. To continue to inconvenience others, abuse agency resources and ignore agency policy is sufficient to warrant removal if corrective action is not taken.

According to the Employee Grievance Procedure, Virginia Department of Employment Dispute Resolution, Rules for Hearing IV (D), in disciplinary actions, the agency must show by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. In this case the agency has met its burden of proof necessary to demonstrate that the grievant failed to comply with applicable established written policy.

Reviewing the Grievant's written response in requesting a hearing, she felt that corrective action would be appropriate to include counseling to address, curtail or correct any problems regarding work performance to behavior. She claimed to have not received any verbal, written or interim notification of any deficiencies. She acknowledged receipt of the memos, one in particular written just to her (November 1, 2002). But consistent with her continuing on the job behavior, she failed to follow the concepts outlined in he memo choosing to feel it just didn't apply to her.

DECISION

The Agency's issuance to the Grievant of a Group II Written notice is upheld.

The Group II Written Notice issued on March 24, 2003 is hereby made a part of the grievant's personnel records.

No additional disciplinary action is recommended.

APPEAL RIGHTS

As Sections 7.1 through 7.3 of the *Grievance Procedure Manual* set forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision become final and is subject to judicial review.

Administrative Review

This hearing decision is subject to four types of administrative review, depending upon the nature of the alleged defect with the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.

2. **A challenge that the hearing decision is inconsistent with state or agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy.

3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirements of the grievance procedure with which the hearing decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure.

A party may make more than one type of request for review. All requests for review must be in writing, and **received** by the administrative reviewer, within **10 calendar** days of the **date of the original hearing decision**. (Note: the 10-day period, in which the appeal must occur, begins with the date of **issuance** of the **decision, not receipt** of the decision. However, the date the decision is rendered does not count as one of the 10 days; the day following the issuance of the decision is the first of the 10 days.) A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 10 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or
2. All timely requests for administrative review have been decided and, if ordered by EDR or HRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decisions

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director of EDR before filing a notice of appeal.

[See Sections 71. 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.]

Wanda N. Allen, Esq.
Hearing Officer