

Issue: Group II Written Notice with 15-day suspension (failure to follow supervisor's instruction, perform assigned work, or otherwise comply with established written policy);
Hearing Date: 10/24/03; Decision Issued: 11/18/03; Agency: VDOT; AHO: Carl
Wilson Schmidt, Esq.; Case No. 5834



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 5834

Hearing Date: November 3, 2003
Decision Issued: November 18, 2003

PROCEDURAL HISTORY

On July 14, 2003, Grievant was issued a Group II Written Notice of disciplinary action with 15 workday suspension for:

Failure to follow a supervisors instructions, perform assigned work or otherwise comply with established Written Policy. On 6/23/03 Internal Auditors and the District Inventory Management Analyst found that [Grievant] was still out of compliance with IMS Policies despite repeated warnings over the past 15 months. [Grievant] also has an active Group II Written Notice.¹

On July 14, 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 he requested a hearing. On October 8, 2003, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On November 3, 2003, a hearing was held at the Agency's regional office.

¹ Agency Exhibit 6.

APPEARANCES

Grievant
Grievant's Counsel
Agency Representative
Agency Party Designee
Witnesses

ISSUE

Whether Grievant should receive a Group II Written Notice of disciplinary action with suspension for failure to follow a supervisor's instructions to comply with inventory management 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 Virginia Department of Transportation employs Grievant as an Electrician Supervisor Senior. He has held that position since 1988 and has been employed by the Agency for approximately 27 years. Eight employees report directly to Grievant. The purpose of his position is "To provide leadership and to supervise the maintenance and repair of all electrical-mechanical equipment in the [Facility] and [another Facility], and to perform other duties as assigned." On July 28, 2000, Grievant received a Group II Written Notice for "Failure to comply with established written policy – [Grievant] failed to properly follow IMS Policies & Procedures by changing and writing over First Count totals after the Counter(s) had recorded their counts."²

Grievant spends approximately five percent of his time managing inventory using the Inventory Management System (IMS) System. His Employee Work Profile says he:

² Agency Exhibit 5. Grievant contends the Written Notice should not have been issued. Since that matter is not before the Hearing Officer in this grievance, the Hearing Officer cannot address whether the July 28, 2000 Written Notice had merit.

Plans, develops, and monitors the IMS Inventory program to include adhering to purchasing regulations and meeting established goals. Ensures appropriate segregation to duties, compliance to policy/procedures and meet deadlines. Establishes, monitors, and adjusts stock levels as needed. Reviews reports for accuracy and authorizes by signature. Responds to local audit findings and ensures proper resolutions to irregularities. Ensures designated backup maintains adequate proficiency levels in performing IMS work.³

Grievant is the Inventory Manager for two of the approximately 60 sites in his region.

When items are purchased, the Agency must place those items in its inventory. This process includes assigning the appropriate identifier to a particular type of item and tracking the number of items in inventory. When previously purchased items are no longer presently utilized by the Agency, the Agency must decide whether to sell the items as surplus property or to return them to inventory for subsequent use in another area or function of the Agency. In any event, the items must be tracked. Agency inventory managers have 30 days to decide whether to process an item as surplus or place it into inventory.

On November 27, 2001, Grievant attended a seminar on IMS Policies and Procedures.⁴ He has received similar training on at least two other occasions.

On April 25, 2002, the District Inventory Analyst began requiring Grievant to send her a weekly progress report regarding what progress Grievant had made in putting items into inventory, items identified as surplus, and items identified as surplus, scrap or recyclable.⁵ On June 24, 2002, the District Inventory Analyst conducted an audit of Grievant's stock location. The audit included a physical inventory count. One of the findings included, "There were items on the lot or in the stock room area that are not in the Location's stock account."

On June 28, 2002, the Facility Manager instructed Grievant "that all issues regarding to IMS for your stock locations be **fully completed** no later than September 1, 2002."⁶ (Emphasis original.) He added, "I am requesting that you no longer send weekly updates as to your progress, but, instead, that you send daily updates on those days that you work on these items."

³ Agency Exhibit 8.

⁴ Agency Exhibit 9.

⁵ Agency Exhibit 3.

⁶ Agency Exhibit 3.

On November 7, 2002, the District Inventory Analyst visited Grievant's stock rooms and concluded they remained non-compliant. On November 8, 2002, she sent Grievant's Supervisor an email stating in part:

In the last year, on numerous occasions I have visited stock location ... and left instructions concerning the inventory items in this location. It appears that [Grievant] has made little progress, over the last year, in his endeavor to bring this inventory location into compliance. *** I informed [Grievant] that all instructions relating to this location will be completed by January 17, 2003, or disciplinary action will be taken."

On January 21, 2003, the District Inventory Manager re-inspected Grievant's stock location and concluded the location was not fully in compliance although Grievant had made "great strides in getting this location into compliance."

On February 12, 2003, the Agency adopted a policy required a dollar figure to be attached to every item in inventory.⁷ If the acquired price of an item was not known, Inventory Managers could use the fair market value of the item.⁸ On March 26, 2003, the Supervisor sent Grievant an email stating in part:

Have you started looking at the items that you need to add a cost to? I hope you realize those items will be part of this upcoming IMS year review. I would like to get a reply back from you before the end of the week on your progress.⁹

Over the prior six months, the Agency took steps to help Grievant by having the District Inventory Analyst and the Supervisor work closely with Grievant to help him comply with inventory policy. Grievant showed improvement but never came into compliance.

On June 23, 2003, the District Inventory Management Analyst and Senior Internal Auditor conducted an annual inventory compliance review at the Facility's Electrical/Mechanical Maintenance stock location. The purpose of the review was to check for compliance with IMS policies and procedures and to inform Agency management as to how effectively the stock location is managing the Department's inventory assets. The auditors made several findings including:

Items were found on the lot and in storage areas that are not being tracked in inventory. It is the policy of the Department that all supplies and materials that are owned and in the physical possession of the

⁷ The policy was introduced in 2001 but not stringently enforced until 2003.

⁸ The definition of fair market value was not given to Inventory Managers, but Grievant's actions establish that he understood how to determine fair market value.

⁹ Agency Exhibit 1.

Department and are being stored for future use by the Department must be maintained in an IMS inventory account.

A list of items was attached to the findings letter. The auditors observed items that were not placed in inventory within 30 days after the items were placed in Grievant's control. Grievant had set aside several items to be processed as surplus property but had not created the necessary paperwork to process the items. They remained unaccounted.

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).¹⁰ 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.¹¹ Compliance with inventory policies is of significance to the Agency because it considers inventory to be the equivalent of money. Grievant failed to comply with policy because he failed to timely include items in inventory or process them as surplus property. Grievant had several items that he did not place in inventory within the 30 day time frame. The Agency has established that Grievant's actions were contrary to policy and instructed to comply with policy.

Accumulation of a second active Group II Written Notice "normally should result in discharge."¹² Although Grievant has an active Group II Written Notice, the Agency appropriately mitigated the disciplinary action to a 15 day suspension in light of Grievant's immense technical abilities and desire to serve the Agency.

Grievant argues that complying with the IMS is a time intensive activity and he was unable to comply given his other responsibilities that took priority. He points out that inventory management is only five percent of the time allocated to his position. Whether Grievant's duties should amount to five percent of his time does not lessen his obligation to complete them.

¹⁰ The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

¹¹ DHRM § 1.60(V)(B)(2)(a).

¹² DHRM § 1.60(VII)(D)(2)(b).

Grievant was one of several Inventory Managers. The other managers in his region may have encountered distractions and emergencies similar to those experienced by Grievant. Only one other Inventory Manger was unable to effectively comply with his inventory management responsibilities.¹³ The Hearing Officer does not have any reason to believe Grievant's unscheduled workload is substantially greater than the unscheduled workload of any other Inventory Manager, yet the latter are able to complete their inventory duties.

Grievant argues that the stockroom is a "living, breathing thing" where the inventory can be in 100 percent compliance on Monday but out of compliance by Wednesday because of new items to be added to the stockroom. Grievant's assertion is correct but this argument does not consider that the Agency grants a 30 day time period to have items placed into the inventory or placed in surplus. If the stockroom is out of compliance, Grievant has 30 days to get additional items into inventory to become compliant. Agency auditors found numerous items that had not been addressed within 30 days.

Grievant argues that the Agency adopted a new standard on February 12, 2003 requiring him to place a fair market value on any item being placed in inventory and that the fair market value for many Agency items cannot be readily determined. Grievant estimated he spent 100 hours trying to determine the fair market value of a particular item. The evidence showed, however, that Grievant could have utilized his support staff to complete the fair market value assessment. Instead, Grievant chose to perform the work himself.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action with 15 workday 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

¹³ He was relieved of his duties for managing inventory.

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.¹⁴

[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

¹⁴ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.