

Issue: Group III Written Notice with termination (violating Rules of Conduct Governing Relationships with Inmates); Hearing Date: 01/19/05; Decision Issued: 01/26/05; Agency: DOC; AHO: Jay A. Richardson, Esq.; Case No. 7961

CASE NO. 7691

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF EMPLOYMENT  
DISPUTE RESOLUTION  
DECISION OF HEARING OFFICER

IN RE:

**CASE NUMBER 7691**

Hearing Date: January 19, 2005  
Decision Issued:

**PROCEDURAL HISTORY**

On October 28, 2004, Grievant was issued a Group 111 Written Notice of disciplinary action for breach of Department of Corrections, DOC Procedure 5-22 (Rules of Conduct Governing Employees Relationships with Inmates) and termination of Grievant's employment effective October 28, 2004. On November 9, 2004, Grievant timely filed a grievance to challenge the disciplinary action. The outcome of the challenge was not satisfactory to the Grievant and a hearing was requested. On January 3, 2005, the Department of Dispute Resolution assigned this Appeal to the Hearing Officer. On January 19, 2005, a hearing was held at the Agency's institution.

**APPEARANCES**

Grievant  
Agency Party Designee  
Agency Advocate

**ISSUE**

Whether Grievant should receive a Group III Written Notice of Disciplinary Action with termination of employment.

**BURDEN OF PROOF**

The burden of proof is on the Agency to show by the preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Such evidence shows that what is sought to be proved is more probable than not.

CASE NO. 7691

## **FINDINGS OF FACT**

Based on the evidence presented which consisted of Agency documents as contained in Agency Exhibit 1, Tabs 1 through 7, and the testimony of the Warden, the Hearing Officer makes the following findings of facts:

The Grievant was employed by the Department of Corrections as a Correctional Officer. The Grievant had not received any disciplinary action prior to the disciplinary action giving rise to this grievance.

Based on information received from staff at the prison relative to the Grievant being involved with Inmate M, in the form of letters written by the Grievant to Inmate M, the allegation was investigated and it was determined that the Grievant had, in fact, written to Inmate M correspondence which is now part of the record, was intimate in nature and constituted a serious breach of DOC Procedures 5-22 (Rules of Conduct Governing Relationships with Inmates). DOC Procedure 5-22.6 G.1 Sexual Misconduct provides “...behavior of a sexual nature includes sexual abuse, sexual obscenity, and conversations or correspondence of an emotional, romantic, or intimate nature. Sexual misconduct will be treated as a Group 111 offense under DOC Procedure 5-10, Standards of Conduct (underlining added). In essence, it was concluded that the Grievant’s behavior was sufficient to warrant Group 111 disciplinary action.

The Agency in support of the disciplinary action taken fully investigated the Grievant’s behavior and uncovered the letters Grievant had written to Inmate M which the Grievant admitted to writing when confronted with the evidence. The Grievant declined to testify and did not present any evidence to overcome the charges.

## **CONCLUSIONS OF POLICY**

The Department of Corrections Procedures Manual, Chapter Five: Human Resources Subject: Standards of Conduct, dated June 15, 2002, at page 9, Section 5-10.17-22, Third Group Offenses (Group 111), paragraph A provides that these offenses include acts and behavior of such a serious nature that a first occurrence normally warrants removal. Section B, paragraph 22, defines sexual misconduct with offenders as behavior of a sexual nature such as “...correspondence of an emotional, romantic, or intimate nature.”

The Grievant sought reduction of the Group 111 action, reinstatement to her job as Correctional Officer and transfer to another institution on the basis that she had admitted her serious acts of misbehavior and had been a victim of discrimination. There was no evidence that Grievant had been a victim of discrimination and no evidence was produced by the Grievant that would warrant reducing the disciplinary action in this matter. There are no circumstances

CASE NO. 7691

connected to the Grievant's offense that would justify mitigation. Any preferential treatment accorded to the Grievant in this matter would be a threat to the integrity and proper operation of the institution for which the Agency is responsible.

### DECISION

For reasons stated herein, the Agency's issuance to the Grievant of a Group 111 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.

(See Sections 7.1 through 7.3 of the Grievance Procedure 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.)

CASE NO. 7691