

Issue: Group III Written Notice with termination (food stamp fraud); Hearing Date: 02/28/05; Decision Issued: 03/10/05; Agency: DSS; AHO: Carl Wilson Schmidt, Esq.; Case No. 7994



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 7994

Hearing Date: February 28, 2005
Decision Issued: March 10, 2005

PROCEDURAL HISTORY

On October 4, 2004, Grievant was issued a Group III Written Notice of disciplinary action with removal for "intentionally committing fraud with respect to obtaining Disaster Food Stamp benefits." On November 2, 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 she requested a hearing. On February 3, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On February 28, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Designee
Agency Advocate
Witnesses

ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action with removal for intentionally committing fraud with respect to obtaining Disaster Food Stamp benefits.

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 Social Services employed Grievant until her removal on October 8, 2004. No evidence of prior disciplinary action was introduced during the hearing.

On October 6, 2003, Grievant completed an application to receive disaster food stamp benefits at a local Department of Social Services. The program was established as a result of Hurricane Isabel.

Grievant received a payroll deposit of \$660.46 on September 30, 2003 and of \$690.65 on October 16, 2003. Thus, her monthly net income was \$1,351.11. On the application, Grievant listed her net income during the disaster benefit period as \$600.

Grievant has a two year old child. She listed child care expenses during the disaster benefit period of \$140. When a fraud investigator asked Grievant about the \$140.00, Grievant said she had paid the child's grandmother to watch the child. The fraud investigator contacted the grandmother and asked about her watching the child. The grandmother said she watched the Grievant's child but did not charge any fee to do so during the disaster benefit period. The grandmother said she did not receive \$140 from Grievant.

Federal regulations require the Agency to investigate all of its employees receiving food stamp benefits. Following an investigation of Grievant, her case was referred to the local Commonwealth's Attorney for prosecution for food stamp fraud. Two felony warrants were issued. The local Commonwealth's Attorney agreed to

withdraw the felony charges against Grievant if she paid back the disaster food stamp amount of \$256 in court. Grievant paid the \$256.¹

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).² 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).

“Falsifying any records, including, but not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents” constitutes a Group III offense. DHRM § 1.60(V)(B)(3)(b).³ “Falsifying” is not defined by DHRM § 1.60(V)(B)(3)(b) or DHRM § 2.10, but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee in order for the falsification to rise to the level justifying termination. This interpretation is less rigorous but is consistent with the definition of “Falsify” found in Blacks Law Dictionary (6th Edition) as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. ***

The Hearing Officer’s interpretation is also consistent with the New Webster’s Dictionary and Thesaurus which defines “falsify” as:

to alter with intent to defraud, *to falsify accounts* || to misrepresent, *to falsify an issue* || to pervert, *to falsify the course of justice*.

An application for food stamps is an official State document once it is submitted to a local Department of Social Services for consideration of State benefits under State policy.

¹ Grievant’s agreement with the Commonwealth’s Attorney states, “By payment of \$256, [Grievant] is not admitting guilt.”

² The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

³ The Hearing Officer construes this language to include the circumstances where an employee creates a false document and then submits it to an agency where that document becomes a record of the agency.

Grievant claimed she received net income of only \$600 when in fact her income for the disaster benefit period was \$1,351.11. In other words, she reported only 44.40 percent of her income. Grievant knew or should have known that her income was substantially higher than \$600. By reporting only \$600 as her income, Grievant intentionally misrepresented her actual income thereby falsifying her application for disaster food stamps.⁴

Grievant admits "I filled out the application"⁵ but contends she did not fill out the dates of the disaster benefit period. The dates for the disaster benefit period shown on the application are September 18 to October 17. Grievant contends those dates were filled out by the local agency worker. She asserts that when she wrote her income as \$600 she believed the disaster benefit period began at the time she completed the application until October 17, 2004. This would be a period of approximately two weeks.

After reviewing the handwritten dates at the top left of the application, the handwriting is the same as in the handwritten portion of the application Grievant admits she drafted. For example, the "9" appearing at the top of the application appears to be the same as the "9" appearing in the child's social security number. The "8" in 18 has a larger upper circle than the lower circle and so does the "8" in Grievant's year of birth, "/80". The "0" in 10 at the benefit period starts and ends the same as does the second and third "0" in \$600.00 for Grievant's amount of income. The "7" in the application date begins with a slight downward line to the left as does the two "7"s Grievant wrote in her permanent address "7278" and the first number of her telephone number, the two times "7" appears in her child's social security number and "7" Grievant wrote for her savings account balance of "27.00." Based on these facts, there exists a preponderance of evidence to support the conclusion that Grievant entered the dates of the disaster benefit period as September 18th to October 17th, 2004.

Grievant claimed she paid \$140 in dependent care costs during the disaster benefit period. Grievant identified the child's grandmother as the daycare provider. The fraud investigator determined that Grievant had not paid the grandmother based on the grandmother's statements. When listed \$140 in dependent care expenses for which she had not paid, Grievant intentionally falsified the disaster food stamp application.

Grievant presented evidence that she had paid the \$140 to her aunt and not to the grandmother. Grievant argues the fraud investigator assumed Grievant was saying Grievant paid the grandmother \$140 but in fact Grievant was not making that statement. Grievant's assertion is not credible. Her defense of paying the \$140 to her aunt and not the grandmother is a compelling defense that if true would have been raised for the first time prior to the hearing.

⁴ Grievant argues that if she had reported the correct net income of \$1,351.11, her income would have been below the allowable limit for a household of two. No evidence was presented suggesting Grievant knew the income limit at the time she filled out the application. Regardless of her independent qualification, the fact remains that she intentionally misrepresented her income as \$600.

⁵ Agency Exhibit 1, letter dated January 4, 2005 from Grievant to Agency Commissioner.

Grievant argues that because the criminal charges against her were dismissed, she cannot be held responsible for intentional fraud. The Agency's dismissal of Grievant was not based on her criminal conviction but based on the facts underlying her application for benefits. The Agency has established based on a preponderance of the evidence that Grievant's application for food stamps was intentionally falsified.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal is **upheld**.

APPEAL RIGHTS

You may file an administrative review request within **15 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 15 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 15-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.⁶

[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

⁶ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.