

Issue: Group III Written Notice with termination (food stamp fraud); Hearing Date: 03/04/05; Decision Issued: 03/16/05; Agency: DSS; AHO: Carl Wilson Schmidt, Esq.; Case No. 7995



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 7995**

Hearing Date: March 4, 2005  
Decision Issued: March 16, 2005

**PROCEDURAL HISTORY**

On November 12, 2004, Grievant was issued a Group III Written Notice of disciplinary action with removal for committing "intentional fraud with respect to obtaining Disaster Food Stamp Benefits."

On December 9, 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 2, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On March 4, 2005, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Grievant's Counsel  
Agency Party Designee  
Agency Advocate  
Witnesses

## ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action with removal for intentional 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 as a Reconciliation Unit Supervisor. She was employed by the Agency for approximately 15 years until her removal effective November 12, 2004.

Grievant listed her net income on the application as \$1,000 during the disaster benefit period beginning September 18, 2003 through October 17, 2003.<sup>1</sup> On September 30, 2003, Grievant received a payroll check with net pay of \$867.15 and on October 16, 2003, she received a payroll check with net pay of \$867.03. Her actual net pay during the disaster benefit period was \$1,734.18.

Part V of the application contains a penalty warning stating, “IF YOUR HOUSEHOLD RECEIVES FOOD STAMPS, YOU MUST NOT: GIVE FALSE INFORMATION OR HIDE INFORMATION TO GET OR CONTINUE TO GET FOOD STAMPS BENEFITS.” Part VI of the application states in part, “I UNDERSTAND THE QUESTIONS ON THIS APPLICATION AND THE PENALTY FOR WITHHOLDING OR GIVING FALSE INFORMATION.” Grievant signed the application.

As a result of the income Grievant listed along with other household income and assets, Grievant received Disaster Food Stamps.

Federal regulations require the Agency to audit all of its employees receiving food stamps. After reviewing Grievant’s application and speaking with Grievant, a local fraud investigator referred Grievant to the local Commonwealth’s Attorney for

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<sup>1</sup> Grievant wrote in the dates “9-18-03” and “10-17-03” and was aware of the time period.

prosecution for food stamp fraud. Grievant was tried on September 8, 2004 in a local Circuit Court.

On March 1, 2005, the Circuit Court entered an Order stating in part:

On March 1, 2005, came the attorney for the Commonwealth, and [Grievant] who stands indicted for a felony, to-wit: welfare fraud (Virginia Code Section 18.2-95, 63.2-522) as charged in the indictment, appeared according to the condition of her recognizance, and came also, [Grievant's Attorney], her attorney.

On September 8, 2004, the Court heard this case and found the evidence sufficient for a finding of guilt, but without entering judgment, took the matter under advisement and continued it to this date for final disposition.

The Court, having heard the evidence and argument of counsel, the Court finds the accused guilty of petit larceny (Virginia Code Section 18.2-96), a misdemeanor.

The Court Adjudges and Orders that the defendant is sentenced to confinement in the jail of this County for a period of six (6) months, the execution of which sentence is suspended for one (1) year.

### **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).<sup>2</sup> 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)

"Falsifying" is not defined by DHRM § 1.60(V)(B)(3)(b), 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

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<sup>2</sup> The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

rigorous but is consistent with the definition of “Falsify” found in Blacks Law Dictionary (6<sup>th</sup> 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 disaster food stamps filed with a local Department of Social Services to obtain disaster food stamps in accordance with the policies of Department of Social Services is an official State Document.

Grievant reported only 57.67 percent of her net income during the disaster benefit period. Grievant knew or should have known that her actual net income was substantially higher than \$1,000. By drastically under-reporting her income, Grievant falsified her application for disaster food stamps.

Grievant contends she was asked to approximate of her income and that this explains the variance of her estimate with her actual income. Under reporting income by 42.33 percent is not an approximation. The income of State employees is typically stable over several months. It would be surprising if Grievant did not have some realistic expectation of her actual net income.

Grievant contends she was removed from employment prematurely because the Circuit Court had not yet convicted her of any crime. This argument fails because the Agency issued its disciplinary action based on its conclusion that Grievant engaged in intentional fraud and not based on Grievant having been convicted in Circuit Court. The Court’s conviction is consistent with the Agency’s determination.

## 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 14<sup>th</sup> St., 12<sup>th</sup> 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.<sup>3</sup>

[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].

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Carl Wilson Schmidt, Esq.  
Hearing Officer

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<sup>3</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

