

Issue: Group I Written Notice (disruptive behavior); Hearing Date: 05/10/05;  
Decision Issued: 05/11/05; Agency: W&M; AHO: Carl Wilson Schmidt, Esq.; Case  
No. 8047



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

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 8047**

Hearing Date: May 10, 2005  
Decision Issued: May 11, 2005

**PROCEDURAL HISTORY**

On January 13, 2005, Grievant was issued a Group I Written Notice of disciplinary action for disruptive behavior. On February 21, 2005, 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 April 11, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 10, 2005, a hearing was held at the College's regional office.

**APPEARANCES**

Grievant  
Agency Party Designee  
Agency Representative  
Witnesses

**ISSUE**

Whether Grievant should receive a Group I Written Notice of disciplinary action for disruptive behavior.

## **BURDEN OF PROOF**

The burden of proof is on the College 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 College of William and Mary has employed Grievant as a Trades Technician III for approximately five years.<sup>1</sup> The purpose of his position is:

To provide moving and storage support, including assembly and disassembly of furniture, to customers consisting of Faculty, Students, Alumni, community organizations and others. Maintain accurate records of services provided to facilitate billing.<sup>2</sup>

On occasion, students ask that furniture be removed from their living quarters. Some of the furniture can be quite heavy and difficult to move. One of Grievant’s responsibilities includes moving furniture.

On January 13, 2005, Grievant and another employee moved large and heavy pieces of furniture from a fraternity living area. Grievant disagreed with the necessity for moving the furniture and wished to bring his concern to the attention of others at the College. Grievant walked to a student resident building to try to speak with the Resident Life Area Director. One door to the building was locked. The other employee banged<sup>3</sup> on the door several times in the hope that the sound would be heard by the Area Director if he was in his apartment inside the building. After a few minutes passed without anyone answering the door, Grievant left and walked to another building door. The Area Director walked to the door where the banging originated and opened it. He did not see anyone at that door but could see Grievant approaching the other building door. The Area Director and Grievant saw each other and Grievant walked to the Area Director. Grievant had to walk down several steps to get to the building door where the Area Director was standing.

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<sup>1</sup> No evidence of prior active disciplinary action against Grievant was introduced at the hearing.

<sup>2</sup> Grievant Exhibit 1.

<sup>3</sup> Grievant did not ask the other employee to bang on the door.

Grievant told the Area Director that “this furniture moving in and out of these rooms has to stop.” The Area Director said “this is above me.” He added “This is a policy that [his supervisor’s] have adopted for our department and I can’t do anything about it.” The Area Director was trying to explain that he was not the person with whom Grievant should speak about the policy since he could not change the policy. Grievant said, “[Area Director] we can settle this like men. I don’t appreciate carrying those wardrobes up and down the steps.” The Area Director said, “I know you don’t and I don’t appreciate someone pounding down the damn door either.”

Grievant became irate and began yelling and cursing at the Area Director. Grievant pointed his finger in the face of the Area Director.<sup>4</sup> Grievant said, “I know you are a big boy, but I’m not scared of you. If you are gonna disrespect me, I will disrespect you.” The Area Director was concerned that Grievant may hit him. Grievant’s behavior continued for approximately three more minutes. The Area Director was telling Grievant to leave but Grievant refused to leave. Finally, Grievant left and attempted to slam the door behind him, but it was caught by the Area Director.

Following the incident, the Area Director contacted his supervisor who told Area Director to file a complaint with the College police. The Area Director did so.

### **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>5</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).

“Disruptive behavior” is a Group I offense.<sup>6</sup> Grievant’s behavior was disruptive to the College because Grievant directly confronted and upset the Area Director. By yelling and cursing at the Area Director, Grievant displayed behavior inappropriate for the workplace. Grievant was unnecessarily abrasive towards the Area Director and

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<sup>4</sup> Grievant’s finger was approximately six inches from the Area Director’s face.

<sup>5</sup> The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

<sup>6</sup> DHRM Policy 1.60(V)(B)(1)(e).

could have made his point more calmly. The College has presented sufficient evidence to support its issuance of a Group I Written Notice.<sup>7</sup>

Grievant denies he made the alleged statements to the Area Director. He contends it is the Area Director's word against his word. Grievant's argument fails because the burden of proof on the College is merely to show by a preponderance of the evidence that the disciplinary action should be upheld. The Area Director's testimony was credible. The Area Director immediately reported Grievant's behavior to the Area Director's supervisors and to the College police.

Grievant contends that employees in his work unit are unwelcoming and that his supervisor favors others over him. Grievant's argument fails because the Area Director is not within Grievant's work unit. No credible evidence was presented showing the Area Director had any outstanding complaints against Grievant or had some desire to falsely accuse Grievant of poor behavior.

Grievant contends his supervisor issued the Written Notice without properly considering Grievant's information. This argument fails because Grievant had the opportunity to meet with College managers during the Step Process of the grievance procedure and was able to present any relevant evidence of his choosing to the Hearing Officer.

It is clear to the Hearing Officer that Grievant has a strong work ethic and a desire to excel in his employment, but on January 13, 2005, Grievant's interpersonal skills were lacking. Even otherwise good employees make mistakes, and when they make mistakes they are subject to disciplinary action.

## **DECISION**

For the reasons stated herein, the College's issuance to the Grievant of a Group I Written Notice of disciplinary action 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.

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<sup>7</sup> No credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.

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>8</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>8</sup> Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

