

Issue: Group III Written Notice with termination (willful disregard and blatant circumvention of standard office procedure); Hearing Date: 05/17/05; Decision Issued: 06/13/05; Agency: ODU; AHO: Carl Wilson Schmidt, Esq.; Case No. 8060, 8061



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8060 / 8061

Hearing Date: May 17, 2005
Decision Issued: June 13, 2005

PROCEDURAL HISTORY

On March 15, 2005, Grievant was issued a Group III Written Notice of disciplinary action with removal for:

Willful disregard and blatant circumvention of standard Office of the Registrar procedure by processing 17 unauthorized Administrative Drops for the personal benefit of a student. These actions enabled the student to remain in good academic standing and to be eligible for financial aid. These actions caused a significant financial loss to the University.

On March 23, 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 she requested a hearing. On April 21, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 17, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel

Agency Party Designee
Agency's Counsel
Witnesses

ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action with removal for willful disregard and blatant circumvention of standard Office of Registrar procedure.

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:

Old Dominion University employed Grievant as a Clerk in the University Registrar's Office until her removal effective March 15, 2005. The chief objective of her position was:

To timely and accurately issue student transcripts according to office, university and federal policy, reviewing student records for accuracy, and maintaining accurate payment records for transcripts issued. To prioritize requests using sound judgment and customer service skills. To maintain academic history by posting grade changes, CLEP, and Experiential Learning credit awarded to students.¹

She has been employed by the University for over 30 years prior to her removal effective March 15, 2005. Grievant received an overall rating of "Contributor" on her most recent performance evaluation. She has a history of satisfactory work performance.² No evidence of prior active disciplinary action was introduced during the hearing.

¹ Agency Exhibit D.

² Grievant Exhibit 2.

Approximately 15 percent of Grievant's time was devoted to accomplishing the following core responsibility:

Provide detailed information to students seeking to adjust their academic record through the Adjusted Resident Credit process. Receive application from students and review the academic record for eligibility. Evaluate the student record and applies appropriate notations to academic history after approval from the Registrar. Confirm that academic record reflects new gpa and hours, and inform student when the process is complete, providing an updated copy of the academic record to the student. Receive and accurately post Internal/External Transfer credits for Graduate students. Post experiential learning credits reported by the Office of Experiential Learning.³

The Office of the Registrar maintains student transcripts. Transcripts record a student's academic performance and represent the University's certification of completion of course work and academic programs. The University's integrity depends in part on the accuracy of its student transcripts.

On occasion, a student signs up for a class and later wishes to drop that class after the customary deadline to change courses. Although the University lacked a written policy⁴ setting forth the requirements to "administratively drop" a class late in the course, the Registrar's Office usually requires a memorandum, written on University stationary, from the department head in the program authorizing the change. If a drop request is granted, it is the same as if the student had never signed up for the course. What ever grade the student had received or would otherwise have received does not appear on the student's transcript. Tuition paid by the student to the University is returned to the student causing a loss of revenue to the University.

Under the University's practice, Clerks receiving requests for administrative drops were supposed to obtain approval from a supervisor, the Registrar, or the Associate Registrar before processing the request and updating the student's transcript.⁵ On January 22, 2004, the Registrar sent staff an email instructing them not to inform faculty, University staff, or students that all a class instructor had to do to obtain an administrative drop was to send an email to the Registrar's office. The Registrar advised that emails were an acceptable method of making a request but that

³ Agency Exhibit D.

⁴ On February 21, 2005, the Registrar sent her staff a memorandum stating the policy and requiring staff to sign and date the memorandum. See, Grievant Exhibit 7.

⁵ The Associate Registrar testified that the administrative drop request should be given by a clerk to the Registrar and not to a supervisor for approval.

the request had to come from a department Chair. She added that “all requests for prior semesters should come through me or [the Associate Registrar].”⁶

The Student performed poorly in the classroom. He signed up for courses and then placed himself at risk of receiving failing grades. To avoid receiving a failing grade on his transcript, the Student would submit forged documents from school administrators purporting to authorize his removal from particular courses. To obtain an administrative drop, he would frequently appear at the Registrar’s office and ask to speak with Grievant. The Student was cordial with other office staff but he preferred to obtain assistance from Grievant. Grievant wrote the Student’s cell phone number on her memo board in her office. She has the cell phone numbers of a few other students as well.

The Student drafted a memorandum, dated December 20, 2001, on ODU Chance Program stationery to Grievant from the Senior Lecturer asking that the Student be registered into two classes for the Fall 2001 semester but with an “Incomplete” as the grade until the grade was later changed. The Senior Lecturer testified that his signature was forged and that he would not have written the memorandum on the stationery selected because he was not part of the Chance Program. Grievant signed her initials in the upper right-hand corner and listed the date 12/20. No supervisor initialed the memorandum.⁷

On January 24, 2002, the Chair, Occupational and Technical Students⁸ drafted a memorandum to Grievant asking that the Student be administratively withdrawn from two classes. The memorandum is not signed by the Chair but was drafted by him and was not a forgery drafted by the Student. Grievant did not initial the memorandum. No supervisor placed initials on the memorandum.⁹

The Student drafted a memorandum, dated August 12, 2002, from the Chair and Graduate Program Director to the “Office of the Registrar.” The memorandum asks that the Student be dropped from two courses in the Fall 2000 term for “Medical reasons.” The chair and Graduate Program Director testified that the forgery of his signature was a very good likeness of his actual signature.¹⁰ Supervisor BM wrote on the memorandum, “Okay per [Registrar]” and the date of 8/13/02.¹¹

⁶ Agency Exhibit I.

⁷ Agency Exhibit A, p. 39.

⁸ This individual is also referred to as the Chair and Graduate Program Director.

⁹ Agency Exhibit A, p. 47.

¹⁰ The Chair and Graduate Program Director does not have a stamp of his signature.

¹¹ Agency Exhibit A, p. 57.

The Student drafted a memorandum, dated August 28, 2002, on Old Dominion University stationary addressed to "Office of the Registrar" from the Chair and Graduate Program Director. The memorandum asked that the Student be administratively dropped from two classes in the Spring 2002 term. The signature of the Chair and Graduate Program Director appears identical to the signature on the August 12, 2002 memorandum. No supervisor's initials appear on the memorandum.¹²

The Student drafted a memorandum, dated January 26, 2003, from the DECA Chair to the "Office of the Registrar". The memorandum asked that the Student's "Incomplete" for the Summer 2002 term be extended until the end of the Spring 2003 term. The memorandum is unsigned but was not prepared by the DECA Chair. Grievant wrote her initials in the upper right hand corner and the date 1-3-03. No supervisor's initials appear on the memorandum.¹³

The Student drafted a memorandum, dated May 29, 2003, on Old Dominion University stationary addressed to Grievant from the Chair and Graduate Program Director. The memorandum asked Grievant to remove the Student from a course in the Spring 2003 term and add him to a course in the Summer 2003 term. The signature of the Chair and Graduate Program Director appears identical to the signature on the August 12, 2002 memorandum. Grievant presented the memorandum to Associate Registrar EP who wrote "ok" and her initials on the memorandum.¹⁴

A memorandum dated August 6, 2003 addressed to Grievant at the Office of the Registrar from an Associate Professor of Accounting asks Grievant to remove the Student from a course he took during Summer 2003. Supervisor DM wrote his initials on the memorandum and the date 8/8.¹⁵

The Student drafted a memorandum, dated March 16, 2004, on University stationary from the Chair and Graduate Program Director to Grievant asking that the Student be administratively dropped from two courses. Grievant wrote her initials in the top right hand corner and the date 3/29/04. No supervisor initialed the memorandum.¹⁶

The Student drafted a memorandum, dated May 10, 2004, on University stationary addressed to Grievant and stating, "[Grievant] please remove [Student] from the following courses from the Occupational & Technical Education department. He will be changing concentrations and I have approved his petition to the office for administrative drops of these courses." The Student forged the signature of the Chair

¹² Agency Exhibit A, p. 54.

¹³ Agency Exhibit A, p. 36.

¹⁴ Agency Exhibit A, page 51.

¹⁵ Agency Exhibit A, p. 37.

¹⁶ Agency Exhibit A, p. 60.

and Graduate Program Director. Grievant wrote her initials in the top right hand corner and the date of 5/20. Grievant presented this memorandum to Supervisor SJ who wrote her initials and "ok" on the memorandum. This memorandum dealt with classes the Student had taken in the Summer 2002 and Summer 2003 terms.¹⁷

The Student drafted a memorandum dated June 10, 2004 addressed to Office of the Registrar purportedly from the MBA Director. The memorandum asked that the Student be dropped from a Summer 2004 course. The Student forged the signature of the MBA Director. The Student wrote the memorandum on University stationary for the College of Business and Public Administration. Grievant wrote her initials and the date of 6/10 at the top right hand corner of the memorandum. No supervisor's initials appear on the memorandum.

The Student drafted a memorandum, dated November 17, 2004, addressed to Grievant from the MBA Director asking and authorizing Grievant to remove the Student from two classes. The Student forged the signature of the MBA Director. The Student wrote the memorandum on University stationary for the College of Business and Public Administration. Grievant wrote her initials and the date of 12/1 at the top right hand corner of the memorandum. No supervisor's initials appear on the memorandum.

The Student drafted a memorandum, dated December 20, 2004, addressed to Registrars Office and from the MBA Director asking that the Student be administratively dropped from a course in the Fall term 2004. The Student forged the signature of the MBA Director. The memorandum was written on University stationary for the College of Business and Public Administration. Grievant wrote her initials and the date 12/21 in the top right hand corner of the memorandum. The Student had received a failing grade in the class.¹⁸ By dropping the class, the failing grade was removed from his transcript. No supervisor's initials appear on the memorandum.¹⁹

The Student drafted a memorandum, dated February 8, 2005, from the Associated Professor of Accounting to Registrars Office asking that the Student be permitted to administratively drop a course. Supervisor DH wrote "ok" and his initials along with the date 2/9/05.²⁰

Because of the Student's actions to administratively drop courses, the University suffered a loss of revenue of \$4,128. Had the Student's academic record not been altered to reflect administratively dropped classes, the Student would have been

¹⁷ Agency Exhibit A, p. 48.

¹⁸ The grade was posted in the University's computer system on December 17, 2004.

¹⁹ Agency Exhibit A, p. 77.

²⁰ Agency Exhibit A, p. 42

suspended from the University in the Spring 2002 term and dismissed in the Summer 2002 term.

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).²¹ 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).

DHRM § 1.60(V) lists numerous examples of offenses. These examples “are not all-inclusive, but are intended as examples of unacceptable behavior for which specific disciplinary actions may be warranted. Accordingly, any offense which, in the judgement of agency heads, undermines the effectiveness of agencies' activities may be considered unacceptable and treated in a manner consistent with the provisions of this section.”

The University expected Grievant to become familiar with student transcripts and to question things that seemed unusual or out of the ordinary. Requests for administrative drops are unusual. It is even more unusual when a student has numerous repeated requests for administrative drops. Neither Grievant nor any supervisor was able to detect forged signatures. Grievant was not expected to detect forged signatures. Grievant knew or should have known, however, that she had some responsibility for ensuring the integrity of the transcripts maintained in the Registrar's office. In her March 9, 2005 grievance response, Grievant writes, “I was told that if the request was **questionable in any way**, I was to call the department chair or the instructor and verify that the student was authorized to drop, or to get approval from a supervisor within the Registrar's office.” (emphasis added.) With each additional request for administrative drop, the Student's requests became more and more questionable. The Student had at least 13 requests for administrative drops over a 39 month period, yet Grievant did not contact the department chair or ask a supervisor how a student could be able to receive so many administrative drops in such a short time frame. If this pattern had continued, there is no reason to believe Grievant would have ever taken any action to stop the ongoing fraud. The Agency has presented sufficient evidence to support its issuance of a Group III Written Notice. Removal is a sanction that may be imposed by an Agency when an employee receives a Group III Written Notice. The *Rules for Conducting Grievance Hearings* require the Hearing Officer to

²¹ The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

give deference to the Agency's degree of sanction once it has met its burden of proof to establish the issuance of a Group notice.²²

Grievant contends she should not have been expected to detect forged signatures. Grievant was not disciplined for failing to detect forged signatures. Several supervisors also failed to identify the forged signatures. Grievant is being disciplined for failing to follow the University's procedure that may have enabled her and the supervisory staff to become suspicious of the Student's behavior many months sooner. Had Grievant routinely sought authorization²³ from a supervisor prior to making the administrative drop, a supervisor may have questioned the frequency of the Student's requests for an unusual action. In any event, Grievant should have questioned the frequency of the requests.

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

²² No credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.

²³ Grievant argues she obtained verbal approval from her supervisors for each administrative drop. No supervisor testified that his or her practice was to make verbal authorizations. A supervisor would typically write his or her initials on the memorandum after approving the request. The University has presented sufficient evidence to support its contention that Grievant did not obtain a supervisor's approval for all of the administrative drop requests.

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.²⁴

[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

²⁴ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.