

Issue: Group III Written Notice with suspension (falsifying leave records); Hearing Date: 05/20/05; Decision Issued: 05/26/05; Agency: DMHMRSAS; AHO: Carl Wilson Schmidt, Esq.; Case No. 8070



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8070

Hearing Date: May 20, 2005
Decision Issued: May 26, 2005

PROCEDURAL HISTORY

On March 29, 2005, Grievant was issued a Group III Written Notice of disciplinary action with a three workday suspension¹ for:

Falsifying leave records - [Grievant] presented a Leave Request with doctor's appointments that were falsified.

On March 30, 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 May 3, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 20, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Representative
Witnesses

¹ During the Step Process, the Agency reduced the suspension from ten to three workdays.

ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action with suspension for falsifying leave records.

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 Mental Health Mental Retardation and Substance Abuse Services employs Grievant as a Nutritionist at one of its Facilities. No evidence of prior disciplinary action against Grievant was introduced at the hearing.

Grievant wanted to take personal sick leave for the entire days of Thursday, March 17, 2005, Friday March 18th, 2005, and Monday March 21, 2005. On March 11, 2005, Grievant submitted a Leave Request form to her Supervisor requesting the sick leave. Attached to the Leave Request was a photocopy of three appointment cards. The appointment cards were preprinted forms from medical providers. The cards contained blank spaces in which the medical providers customarily would write information such as date and time of scheduled appointment.

On the first card, under "HAS AN APPOINTMENT ON", Grievant wrote 3-17-05 and 11:00. On the second card, Grievant wrote in her first initial and last name and, "Thurs. Mar 18". She also wrote "1:00" in the blank before the preprinted text P.M. On the third card, under "You have an appointment scheduled on:", Grievant wrote "March 21, 2005". Someone had already typed in 02:00PM for the time of the appointment. Grievant did not indicate on the cards that she had written the dates. Grievant did not tell the Supervisor that she had written information on the cards.

When the Supervisor received the Leave Request and attached cards, she became concerned about the accuracy of the cards since she recognized Grievant's handwriting on the cards. The Supervisor contacted the Human Resource Officer who initiated an investigation.

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), 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*.

Once a request for leave is submitted to a State agency, it becomes a record of that agency. If Grievant intended to falsify the leave request, then she would have engaged in behavior rising to the level of a Group III offense.

Facility Policy VII.A.6(a), *Leave Usage*, governs employee requests for sick leave. Page 3 of this policy states,

Sick leave absences of three (3) days or more are subject to verification (at the discretion of the appropriate Department Head or Center Director) through the requirement of certification by a physician. ***

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.

When directed to do so, failure of the employee to provide required verification of leave for specified periods of absence not covered by the above provisions shall result in denial of the absence being charged to Sick Leave or Family – Personal Leave and the absence shall be without pay. The employee shall also be subject to a written counseling.⁴

Based on this policy, the Supervisor's request that Grievant provide notes from medical providers prior to taking three days of leave for sick leave was an appropriate request.

Grievant falsified her request for sick leave. She presented notes from medical providers with dates and times written on the notes by Grievant. Grievant attempted to make the Supervisor believe that the dates and times on the notes were written by the medical providers because those dates and times were written on appointment cards Grievant obtained from the medical providers. Grievant was attempting to provide verification of appointments from medical providers when those medical providers had not generated any documents verifying Grievant's appointments. The Agency has presented sufficient evidence to support its issuance of a Group III Written Notice. An employee receiving a Group III Written Notice may be suspended for up to 30 workdays. Grievant's three workday suspension was consistent with the Standards of Conduct.⁵

Grievant argues she had medical appointments scheduled for March 17, 18 and 21, 2005 but did not attend them because she was called to another State to assist with an ill relative. It is not necessary for the Hearing Officer to address whether Grievant scheduled appointments and why she may not have attended those appointments. Grievant's falsification occurred when she submitted the Leave Request on March 11, 2005. Whether she attended medical appointments has no bearing on that falsification.

Grievant contends she has been harassed by her Supervisor. Agency managers took Grievant's assertion seriously and began an investigation. Agency managers made changes in Grievant's reporting relationship and addressed some of her other concerns. She testified that she was satisfied with the actions taken by the Agency. Thus, Grievant's assertion of harassment by her Supervisor is now moot. There is no credible evidence to show that the Supervisor's alleged harassment influenced the outcome of the disciplinary action against her. After the Supervisor believed she recognized Grievant's handwriting on the medical provider cards, the Supervisor contacted the Facility's Human Resource Director. After reporting the matter, the Supervisor's role in the disciplinary action ended. How the Agency investigated the allegation and its decision to discipline Grievant was made by staff not involved with Grievant on a daily basis.

⁴ Agency Exhibit 1.

⁵ No credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with three workday suspension 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.