

Issue: Group III Written Notice with termination (removal of State property); Hearing
Date: 06/14/05; Decision Issued: 06/23/05; Agency: VCU; AHO: Carl Wilson
Schmidt, Esq.; Case No. 8092



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8092

Hearing Date: June 14, 2005
Decision Issued: June 23, 2005

PROCEDURAL HISTORY

On April 8, 2005, Grievant was issued a Group III Written Notice of disciplinary action for with removal:

State Policy 1.60, "Standards of Conduct." Specifically, you are charged with "theft or unauthorized removal of state records, state property, or the property of other persons (including, but not limited to, employees, patients, supervisors, inmates, visitors and students)." The evidence is on March 23, 2005, at approximately 5:05 p.m. you were observed in [the Center] with your arm in the safe. When asked the purpose to go into the safe, after hours, you replied by telling me the contents of the safe. After you left, I checked the contents of the safe and noticed that a patient parking validation sticker book was torn and stickers were missing. On March 24, 2005, I contacted the VCU Police and the VCU Internal Audit office in order to conduct an investigation. VCU Police Officer [name] was assigned to investigate the situation and during his investigation, you admitted to not only taking one patient parking validation sticker, but four stickers resulting in an arrest.

On April 25, 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 25, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 14, 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 unauthorized removal of State property.

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 Virginia Commonwealth University employed Grievant as Fiscal Technician Senior until her removal effective April 11, 2005. She began working for the Agency in January 2004. Her duties did not involve patient contact. The purpose of her position was:

This position is responsible for processing accurately and timely all [Center] accounting transactions according to GAAP and VCU's policies. This includes purchase orders, requisitions, travel, wage and leave hours, cash deposits, on line and manual transfer vouchers, processing bills for shared resources and monthly reconciliation of FBM reports. This position is also responsible for maintaining accurate documentation and files for all

[Center] transactions. This position will assist with all the other functions performed in the Business Office.¹

VCU has separate parking for employees and for patients and visitors to its medical facilities. Parking for patients and visitors is closer to the hospital than is employee parking. Patients and visitors must pay to park in VCU owned parking areas. Grievant knew she was not to park in the patient parking deck when she was going to work. She typically parked in an employee parking area.

VCU's medical related facilities consist of several organizational units sometimes referred to as centers. A center may decide to reimburse patients for their parking costs by giving the patients parking stickers. The stickers look like postage stamps² and are purchased in the form of booklets of stamps. Patients use the parking stickers to pay the cost of parking as they exit the parking area. Each center decides whether it will provide its patients with parking stickers. Centers wishing to provide parking reimbursement purchase parking stickers at cost not exceeding \$5 per sticker.

Grievant works at the Center. The Center purchased parking stickers for its patients. A patient at the Center wishing to obtain a sticker would ask for one at an information booth or obtain a sticker from an employee designated to hand out stickers. Several books of stickers were kept in the Center's safe near Grievant's work area until needed by the employees authorized to distribute the stickers. Grievant knew the safe's combination and routinely accesses its contents.

On March 23, 2005, Grievant's friend had a medial appointment at approximately 1 p.m. at the hospital. Grievant's friend was not a patient at the Center where Grievant worked. He was a patient at a location several blocks from the Center. Grievant left the Center and drove her vehicle to pick up the friend and drive back to the hospital. Grievant parked her vehicle in the patient's parking deck because she was transporting a patient to the hospital and he was experiencing considerable pain and could not walk from the lot in which she normally parked. Grievant returned to the Center and continued working until approximately 5 p.m. when she received a text message from her friend informing her he wished to leave. Grievant gathered her belongings and began walking down the hall toward the office exit. She stopped and returned to the safe where the parking stickers were kept. She remembered that her friend had asked her to obtain a parking sticker. She opened the safe and removed one parking sticker. Grievant's Supervisor observed Grievant removing something from the safe but was not sure what Grievant removed. Grievant took the parking sticker with her and used the sticker to obtain free parking as she exited the hospital parking deck with her friend. The Supervisor reported her concerns to a manager and the Agency began an investigation.

¹ Agency Exhibit 5.

² Agency Exhibit 8.

A VCU Police Officer interviewed Grievant about the parking sticker. Grievant told the VCU Police Officer that she took one parking sticker for a boyfriend who was a patient at the hospital. She admitted to taking other parking stickers on other days.

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).³ 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).

“[U]nauthorized removal of state records, state property ...” is a Group III offense.⁴ The parking sticker was State property. Grievant was not authorized to remove the sticker (1) by a supervisor, (2) pursuant to any policy, or (3) because of the position she held. Agency managers required the stickers to be held in a safe because the stickers “were the same as cash” and the Agency did not wish to have the stickers readily available to employees or the public. Grievant knew or should have known that the stickers were of value⁵ to the Agency and could not be removed without specific permission. By removing a parking sticker without authorization Grievant engaged in behavior justifying the Agency to issue a Group III Written Notice. Removal is permitted by the *Standards of Conduct* when an employee receives a Group III Written Notice.⁶

Grievant contends she was giving a parking sticker to a patient who otherwise would have been entitled to a sticker and, thus, she did nothing wrong. Grievant’s argument fails because she was not authorized to distribute parking stickers to patients. Her position did not have patient contact and Grievant would not be expected to distribute parking stickers to patients. She points out that on one occasion another Agency employee asked her to obtain a parking sticker so that the sticker could be given to a reporter writing a story about the Agency. This example is insufficient to establish that Grievant was authorized to distribute parking stickers. One example (that

³ The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

⁴ Agency Exhibit 6.

⁵ Although the sticker did not have a value exceeding \$5, there is no provision in the *Standards of Conduct* setting forth a de minimus standard that must be met. The *Rules for Conducting Grievance Hearings* do not authorize mitigation based on monetary value.

⁶ No credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.

appears to be an exception) does not establish Grievant's authority to hand out parking stickers.

Grievant argues that she did not intend to steal the sticker. She intended to give the sticker to a patient who would otherwise be authorized to receive a parking sticker and avoid paying parking fees. The Hearing Officer finds that the Agency has not established that Grievant intended to steal the sticker for her own personal benefit.⁷ The evidence presented suggests Grievant removed the sticker because she falsely assumed she was permitted to do so for the benefit of a patient at the hospital. In order to issue the Group III Written Notice, however, the Center does not have to establish that Grievant intended to steal the stickers – it is only necessary for the Center to establish that Grievant intended to remove the sticker and she lacked authorization to do so. The Agency has met this burden.

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

⁷ The Agency argues that the Supervisor asked Grievant why she was taking something from the safe and when Grievant merely reported the contents of the safe that Grievant was intending to hide her misbehavior. The testimony of the Supervisor showed that the Supervisor did not ask Grievant why Grievant was taking something from the safe. The Supervisor asked Grievant if Grievant was checking the checks and "what's in the safe?" Grievant's response to list the contents of the safe was a logical response to the question being asked. Grievant's response does not support the conclusion that she was attempting to hide what she was doing.

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.⁸

[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

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