

**Issue: Group I Written Notice (unsatisfactory work performance and disruptive behavior); Hearing Date: 08/17/05; Decision Issued: 08/25/05; Agency: VCCS; AHO: Thomas P. Walk, Esq.; Case No. 8119**

**DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION,  
DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

**IN RE: VIRGINIA COMMUNITY COLLEGE SYSTEM, CASE NO. 8119**

**HEARING DATE: AUGUST 17, 2005**

**DECISION ISSUE: AUGUST 25, 2005**

**PROCEDURAL BACKGROUND**

I received formal notice of my appointment as hearing officer in this matter on June 23, 2005. A pre-hearing conference to be conducted by telephone was scheduled for June 29, 2005. The grievant was available for this conference call but the representative for the agency was not available at the scheduled time. Approximately one hour subsequent to the original time he called and left a message apologizing for his missing the scheduled conference.

I set the matter for hearing on July 19, 2005 and established a deadline for the exchange of witness lists and documents. The grievant complied with this deadline but the agency did not due to the failure of my written directive to reach the appropriate official. A request for the cancellation of the hearing and extension of time in which to provide the required information was made by the agency and granted by me for good cause. A further pre-hearing conference was set for July 19, 2005 but was again cancelled at the request of the agency due to the representative needing medical treatment. Finally, on August 1, 2005a pre-hearing conference was held and the matter scheduled for hearing August 17, 2005. A new deadline for exchange of witness lists and

exhibits was established with the grievant being given additional time in order to compensate for the fact that the agency had received her materials at a much earlier date.

I found good cause for the extension of the hearing beyond the 35 day time line based on the good faith reasons of the agency for needing an extension and the fact that the grievant had remained in her position throughout without any economic loss.

### **APPEARANCES**

Grievant

Representative for Agency

Interim Dean

Four witnesses for agency and four witnesses for grievant, not including the grievant.

### **ISSUE**

Was the agency correct when on March 21, 2005 it issued a Group I Written Notice for unsatisfactory work performance and disruptive behavior?

### **FINDINGS OF FACT**

The grievant filed this appeal from the Group I Written Notice issued to her on March 21, 2005. The notice alleges that the grievant engaged in unsatisfactory work performance and disruptive behavior. Following denial of relief at the third resolution step in the grievance process this matter was qualified for a hearing.

The grievant has been employed by Virginia Community College System (the “Agency”) for several years in administrative office support positions. At the relevant

times to this grievance she was working at an Education Center, a satellite facility of the agency. In late 2004 the agency received a grant, the result of which was to be various training programs to be provided to displaced workers and small businesses at the satellite facility. The grant was to be administered under the supervision of the interim dean (his current position hereafter “dean”). The grievant and the dean had problems in dealing with one another prior to the grant being awarded and the planning for the grant programs started in earnest.

The grievant expressed her lack of enthusiasm toward the program because of it being seen by her as the program of the dean. The attitude of the grievant toward the dean and the vice president of the agency is amply reflected in an email sent by her to a co-worker on September 23, 2004 in which she referred to the dean and the vice-president as “f\_\_\_\_\_ing cowards.” Planning meetings for the grant programs were held on December 1, 2004 and December 6, 2004. The grievant was asked to participate in each of those meetings. At each meeting she refused to contribute to the meeting in a positive manner on each occasion. Also on December 1, 2004 a meeting was held with the grievant, dean, and another administrator regarding another issue which had arisen at the facility. The grievant refused to discuss the issues and withdrew from the meeting.

On March 16, 2005 an open house was held at the facility to celebrate and further promote the success of the grant program. The grievant refused to socialize with the guests and made it apparent that she did not consider herself to be affiliated with the program.

### **APPLICABLE LAW AND OPINION**

This matter is governed by the provisions of the employee grievance procedure of the Commonwealth of Virginia. The underlying standards are set forth in the standards of conduct established by the Virginia Department of Personnel and Training. Part V of Policy 1.60 sets out, in various categories, unacceptable conduct. The offenses set out are not intended to be all-inclusive and the agency administration is granted broad discretion to sanction activities believed to undermine the effectiveness of the activities of the agency.

The least serious of the activities are organized into Group I Offenses. That section is the one in which the agency alleges the grievant's behavior in this case falls.

The notice relies on two items set forth in the list of behaviors. Neither description of conduct is further defined in the policy. Although each party has presented documents and evidence related to events prior to November, 2004 and subsequent to the issuance of the notice, I am basing my decision on an examination of the acts of the grievant occurring between those dates as is set forth in the written notice. I believe, however, that the actions of the grievant pre-dating November, 2004 are relevant to reflect her intent.

I find that her failure to cooperate in the planning for the administration of the grant programs does constitute unsatisfactory work performance by the grievant. The evidence is clear that the grievant is a good worker and valued employee the majority of the time. In this instance, whether because of her dislike of the dean or otherwise, she failed to fulfill legitimate job expectations. When a supervisor requests or requires that a

subordinate attend a meeting, that person is expected to contribute in a meaningful, positive way to the meeting. Here, the grievant failed to do so on two separate occasions. Against the background of her earlier statements about her supervisor and her actions in the unrelated meeting on December 1, 2004, these refusals indicate a clear desire to not be a part of the grant program except to the extent necessary to fulfill her normal daily duties at the facility. It is interesting, however, that the evidence is also clear that she performed those job requirements admirably and did nothing to actively undermine the success of the program.

I am not stating that any of these events, in isolation, would have justified the issuance of this disciplinary notice. In particular, the actions at the open house on March 16, 2005 were inappropriate but I do not see that event as being an integral part of her job responsibilities.

The evidence also tends to indicate certain systemic problems in communication between officials at the main campus of the agency and employees at the satellite office. The grievant has been diligent in bringing these issues to the attention of her supervisors but I find that those problems have no bearing on my decision. I understand, however, the extent to which they may be a source of frustration for the grievant.

### **DECISION**

For the reasons stated above I uphold the issuance of the Group I Written Notice on the ground of unsatisfactory work performance. I find that the agency has not met its burden of proof with regard to the allegation of disruptive behavior.

## **APPEAL RIGHTS**

As the Grievant Procedure Manual sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

**Administrative Review:** This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.

2. **A challenge that the hearing decision is inconsistent with state or agency policy** to the Director of the Department of Human Resource Management. This request must cite to a particular mandate in the state or agency policy. The Director's authority is limited to ordering the hearing officer to review the decision to conform it to written policy. Requests should be sent to the Director of Human Resources Management, 101 N. 14<sup>th</sup> St., 12<sup>th</sup> Floor, Richmond, VA 23219 or faxed to (804) 371-7401.

3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests should be sent to the EDR Director, One Capital Square, 830 E. Main St., Suite 400, Richmond, VA 23219 or faxed

to (804) 786-0111.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of the original hearing decision**. A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

**Judicial Review of Final Hearing Decision:** Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The court shall award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits of the appeal. Either party may appeal the final decision of the Circuit Court to the Court of Appeals pursuant to Virginia Code §17.1-405.

DECIDED this August 25, 2005.

---

Thomas P. Walk, Hearing Officer