

Issue: Group III Written Notice (falsification of an official State document); Hearing
Date: 8/01/05; Decision Issued: 08/02/05; Agency: DOC; AHO: Carl Wilson
Schmidt, Esq.; Case No. 8124



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8124

Hearing Date: August 1, 2005
Decision Issued: August 2, 2005

PROCEDURAL HISTORY

On February 25, 2005, Grievant was issued a Group III Written Notice of disciplinary action for:

Falsifying any records, including but not limited to, vouchers, reports, insurance claims, time records, leave records or other official state documents; On December 8, 2004, you are found to have falsified the Uniform Individual Log Isolation/Segregation/Detention record.

On March 2, 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 June 29, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On August 1, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Representative
Witnesses

ISSUE

Whether Grievant should receive a Group III Written Notice of disciplinary action for falsification of an official State document

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 Corrections employs Grievant as a Correctional Officer Senior at one of its Facilities. He has been employed by the Agency for approximately 14 years without prior disciplinary action.

On December 8, 2004, Grievant was working in a housing unit. One of his responsibilities was to perform cell checks where he would walk in front of inmates' cells, look inside, and observe inmate behavior to determine whether inmates were secured in their cells. After performing the security check, Grievant was to make a notation in a log book of the time he made his rounds. Grievant was to perform security checks every 30 minutes.

At approximately 3:40 p.m., an inspection team reviewed Grievant's log book and observed that the last security check occurred at 3:02 p.m. At approximately 4:20 p.m., the inspection team returned to Grievant's post to review his log book again. The log book showed that the last security check was made at 3:32 p.m. The inspection team members became concerned that the log book had been falsified because there was no 3:32 p.m. entry when the team read the log at 3:40 p.m. and Grievant could not have conducted a 3:32 p.m. round after 3:40 p.m. The matter was referred for review. Grievant admitted he wrote in the time the round should have been made, not the time it was actually made.

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.” Department of Corrections Procedure Manual “(DOCPM)” § 5-10.15. 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.” DOCPM § 5-10.16. Group III offenses “include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.” DOCPM § 5-10.17.

“[F]alsifying any records, including but are not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents” constitutes a Group III offense.¹ “Falsifying” is not defined by the DOC Standards of Conduct, 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*.

A log maintained within a correctional institution to verify rounds made by corrections officers is an official State document. Grievant knew or should have known that by writing the time on the log to show when the round should have occurred instead of when it actually occurred, he was falsifying the log. The Agency has presented sufficient evidence to support its issuance of a Group III Written Notice.

Grievant argues that the disciplinary action should be reduced because the Agency took too long to issue the Written Notice. On December 8, 2004, the Major referred Grievant for disciplinary action to the Associate Warden. On December 27, 2004, the Associate Warden referred the matter to the Warden Senior.² On February 16, 2005, the Warden Senior sent Grievant a memorandum which he received on February 20, 2005 indicating that a pre-disciplinary hearing would be held on February 25, 2005.³ The reason for the delay was because the Agency continued to examine and re-examine the log book and consider the appropriate action to take.

¹ DOCPM § 5-10.17(B)(2).

² Agency Exhibit 7

³ Agency Exhibit 6.

Agency managers are expected to timely process of disciplinary actions.⁴ For approximately one and one-half months, the Agency deliberated how it wished to proceed against Grievant. Although this length of time may seem excessive, it is not so lengthy as to undermine the Agency's contention that Grievant's behavior is serious enough to warrant removal. Furthermore, the Agency's Written Notice accounts for the unnecessary delay in taking disciplinary action. Section IV of the Written Notice states:

A 40-hour suspension is being mitigated to a Group III Written Notice due to the following circumstances: Employee's 14 years of service; Employee's contributory ratings; Employee has no active Written Notices in the length of time from the incident until the date of the disciplinary hearing.

Grievant argues the Agency has inconsistently disciplined its employees. He offers as an example, another employee who engaged in similar behavior but received only a Group I Written Notice. In that case the matter was referred only to the Associate Warden who had the authority to issue a Group I Written notice. Because the Associate Warden did not believe the disciplinary action should involve suspension or removal, the matter was not referred to the Warden Senior for consideration. The Warden Senior testified that had the matter been referred to him he would have taken action consistent with the action taken against Grievant. Based on the evidence presented, issuance of a Group I Written Notice appears to be an error by the Associate Warden rather than a practice by the Agency to treat differently similarly situated employees.

Based on these considerations, there is no reason for further mitigation.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III 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.

⁴ DOCPM § 5-10.27(E).

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.⁵

[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

⁵ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

