

Issues: Two Group II Written Notices (failure to follow instructions and perform assigned work); Hearing Date: 07/27/05; Decision Issued: 08/12/05; Agency: VCCS; AHO; Carl Wilson Schmidt, Esq.; Case No. 8135/8136



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8135 / 8136

Hearing Date: July 27, 2005
Decision Issued: August 12, 2005

PROCEDURAL HISTORY

On March 4, 2005, Grievant was issued a Group II Written Notice of disciplinary action for:

You are being issued a Group II Written Notice because of your failure to follow your supervisor's instructions and your failure to perform assigned work. You are responsible for solving problems that college users identify and submit on IssueTrak tickets. When the issues are resolved, and only when they are resolved, you are to sign off. Your sign-off indicates that all issues on the ticket had been successfully resolved. It also means that our clients are assured that they will have the same security access in Peoplesoft Version 8.0 that they now have in Version 7.6. An analysis of only ten IssueTrak tickets from [Community College 1] shows that you signed-off on 7 IssueTrak tickets that had significant unresolved issues. You have not followed my instructions. Your failure to do so has resulted in a problem of unknown magnitude. It further damages our professional credibility but more importantly has created an unnecessary hardship of costly unanticipated work hours for staff at our colleges.

On March 22, 2005, Grievant received a Group II Written Notice for:

On March 4, 2005, you issued a Group II Written Notice because of your failure to follow instructions and perform assigned work: specifically for your failure to thoroughly analyze and resolve IssueTrak tickets from [Community College 1]. A subsequent review of IssueTrak tickets, telephone calls and email received from several colleges and comments received during the weekly telephone status meeting all show that problem far exceeds the initial assessment in the problems that have been formerly reported by [Community College 1]. We have received information from [Community College 2], [Community College 3], and [Community College 4]. In fact, you told a person at [Community College 4] to delay submission of IssueTrak tickets until the upgrade to PeopleSoft Version 8.0 was completed. In an e-mail dated February 25, I instructed you to provide appropriate analysis to all IssueTrak tickets and you responded that my request "would slow the problem resolution process down so I do not want to be penalized by extra required hours because you want more analysis and queue to be free of requests." Your decision making and failure to follow my instructions has greatly diminished the level of customer service provided by this office to our colleges. The fact that she did not complete the work on the ticket to sign team has resulted in a high-cost to the VCCS in the additional man-hours necessary to go back to the tickets to correct omissions into repair our relationships with the colleges we asked them to go back and test the changes that they have already tested on numerous occasions unsuccessfully. For someone with responsible the forces to information security, I find your actions totally unacceptable.

Grievant timely filed grievances to challenge the Agency's actions. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On July 1, 2005, the EDR Director issued Ruling Numbers 2005-1057 and 2005-1058 consolidating the two disciplinary actions into one grievance.¹ On July 5, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On July 27, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency Representative
Witnesses

ISSUE

¹ Grievant Exhibit 14.

Whether Grievant's actions warrant disciplinary action under the Standards of Conduct? If so, what is the appropriate level of disciplinary action?

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 Community College System employed Grievant as a Computer System Senior Engineer at its Central Office. The purpose of her position was:

The chief objective of this position is to evaluate, research, design, plan, develop and manage the VCCS' advanced technology proof of concept projects, which are developed into models and guidelines to assist the colleges and to provide information that will aid them in their technology decisions. Additionally, this position is focused on providing on-going support for Directory Services, Webmethods software, SIS and Oracle security and web services. Serves as the primary backup for the VCCS Information Security Officer.²

Grievant holds a B.A. in Theatre, B.A. in Business Administration and Management, and B.S. in Information Systems (Certificate). Grievant worked as a Senior Programmer Analyst at a private company from 1984 to 1985. She was a Senior Programmer Analyst for an engineering company from 1985 to 1987. In 1987, she began working as an Information Center Consultant for a State agency. From 1990 to 1993, she was an Information Center Manager for a government agency. From 1993 to 1995, she was a Personal Computing Automation Unit Supervisor for a government agency. She began working as a Computer Systems Engineer with the Agency in 1995.

No evidence of prior active disciplinary action against Grievant was introduced during the hearing.

² Grievant Exhibit 19. Grievant's Employee Work Profile effective February 16, 2004.

The Agency's Central Office maintains a computer system to support the operations of Community Colleges located throughout the State. The Agency began to upgrade its software from PeopleSoft Version 7.6 to PeopleSoft Version 8.0. Part of this process involved moving or migrating data from the old version to the new version. On March 7, 2005, computer users were scheduled to "Go Live" by using Version 8.0 without having access to Version 7.6. Several Community Colleges wanted to make changes to the database as it existed under Version 7.6 so that those changes could be moved to version 8.0. Colleges were informed that changes to Version 7.6 had to be completed by February 25, 2005; thus, colleges were expected to submit their request for changes on or before February 25, 2005.³

Community colleges may wish for different employees to have different types and levels of access to various parts of the Central Office's information database. The Agency has established a computer security function. Community college Information Technology administrators determine what type and degree of access to information each of their key employees will have. Community college Information Technology administrators then inform the Central Office of their wishes and Central Office staff grant permission to community college employees to have access to information stored in the Central Office's database. Once permission is granted to the employee at the community college, that employee may retrieve or modify information in the Agency's computer system only in accordance with the level of permission held by the employee. If a computer user's permission is not correct, the employee will not be able to perform all of his or her job functions as needed.

In order for community college administrators to request security changes, they complete an electronic form expressing the desired change and then submit the form to the Central Office information technology staff. The electronic system is named IssueTrak. A Central Office employee in charge of security uses IssueTrak to read a community college's request and then makes the changes as requested. Once the changes are made, the employee closes the file in IssueTrak and an electronic message is automatically sent to the community college to inform the college that the request has been closed. Closing an IssueTrak file indicates that the requested task had been completed. In the Fall of 2004, Grievant became the Central Office employee primarily responsible for implementing community college security request changes to the computer system.

In order to save time and clear a queue of work orders, Grievant created a template for community colleges to use. The template set forth shared security classes as a basis to establish employee security access. When Grievant received requests for security changes she often relied on the template to make the changes. Unfortunately, employee security access was not uniform throughout most colleges. By using a template, Grievant was making security changes that had not been requested and omitting changes that had been requested.

³ The original deadline for submitting changes was approximately a week earlier. The Agency chose to extend the deadline.

In February 2005, Ms. VC, an Information Specialist with College 1 submitted a total of ten requests for changes regarding computer security access for her college. For example, she submitted IssueTrack ticket 62589 regarding 19 navigations for computer users. Grievant properly completed only 5 of the 19 navigations. Ms. VC submitted a second ticket numbered 63043 to correct the remaining 14 navigations. Grievant received the ticket but only corrected 2 of the 14 navigations before closing the ticket. Another ticket sought to add three new navigations but Grievant added only one before closing the ticket.

Ms. VC became frustrated at having to submit and re-submit tickets without the work being properly completed. Because of the impending conversation deadline, Ms. VC became so concerned that the work would not be completed on time that she brought her concerns to the attention of the President of College 1. On February 23, 2005 at 5:36 p.m., the President of College 1 took the unusual step of sending an email to the Vice Chancellor of Information Technology expressing concern about whether Central Office staff were properly completing tickets submitted by College 1.⁴

On January 4, 2005, Ms. JT, an Information Technology Specialist with College 2 submitted a ticket with 22 permission lists for College 2. Grievant received the ticket but did not properly process it. Grievant applied a generic permission list instead of making the changes as requested. Grievant closed the ticket. Ms. JT sent Grievant an email expressing her concerns. Ms. JT re-submitted the ticket on January 19, 2005. Grievant again failed to properly complete the requested tasks. On February 1, 2005, Ms. JT called Grievant to discuss the permission lists. Only after that discussion did Grievant remove the generic permission lists and properly complete the requested task.⁵ Ms. JT and another employee at College 2 devoted a significant amount of time attempting to have Grievant properly resolve the ticket.

Sometime during the week beginning February 21, 2005, Grievant told her Supervisor that she had completed all of the work orders submitted by colleges through IssueTrak.

During a conference telephone call held February 25, 2005, several college representatives indicated they had submitted work tickets using IssueTrak but the tickets had been closed without the work being completed. College 2, College 3, and College 4 had problems with work Grievant had performed improperly in response to their requests for security changes.

The Supervisor asked Ms. LC to review the ten tickets submitted by College 1. Ms. LC was the Systems Analyst who formerly made security changes to the Central

⁴ Agency Exhibit 5.

⁵ Grievant and Ms. JT had several conversations during the month of February 2005 with Grievant ultimately being able to resolve Ms. JT's concerns.

Office computer system.⁶ On February 26, or 27, 2005, Ms. LC reviewed the ten tickets and concluded that the requested tasks had not been properly completed by Grievant. She also concluded the requests were routine in nature and that Grievant had properly completed in the past like the ones she reviewed. Ms. LC then made the necessary changes within a period of approximately one and a half hours.

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).⁷ 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).

“Inadequate or unsatisfactory work performance” is a Group I offense. In order to prove inadequate or unsatisfactory work performance, the Agency must establish that Grievant was responsible for performing certain duties and that Grievant failed to perform those duties. This is not a difficult standard to meet.

Grievant had been assigned responsibility to receive IssueTrak tickets, analyze the request, and implement security changes to the Central Office computer system as requested by the colleges. When Ms. JT submitted a ticket on behalf of College 2 asking for 22 permission lists to be included in the Central Office’s computer system, Grievant was expected to comply with that specific request. Grievant did not properly make the requested changes. Grievant was not supposed to create a new permission template. She was supposed to complete the tasks as directed by Ms. JT. By failing to properly complete Ms. JT’s request, Grievant’s work performance was unsatisfactory to the Agency thereby justifying issuance of a Group I Written Notice. The Group II Written Notice issued on March 22, 2005 must be reduced to a Group I Written Notice.

When Ms. VC submitted ten tickets on behalf of College 1 asking for changes to the Central Office’s computer system, Grievant was expected to comply with those specific requests. Grievant failed to comply with the initial and repeated requests made by College 1. By failing to properly execute the requested changes, Grievant’s work performance was unsatisfactory to the Agency thereby justifying issuance of a Group I Written Notice. The Group II Written Notice issued on March 4, 2005 must be reduced to a Group I Written Notice.

⁶ Ms. LC began a new position within the Agency in August 2004 but she continued to assist Grievant as needed after beginning her new job.

⁷ The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

The Agency contends Grievant should receive a Group II Written Notice for failure to follow a supervisor's instructions. The Supervisor had instructed Grievant and other employees that security was not to be the reason for the software conversation to fail. The Agency also argues Grievant should receive a Group II Written Notice for failure to perform assigned work.

"Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy" is a Group II offense.⁸ The type of instruction made by Grievant's Supervisor is too general to rise to the level of a Group II offense. The Supervisor's instruction amounts to a general expectation that Grievant perform her job properly. Before an instruction is sufficient to support issuance of a Group II Written Notice, the instruction must be clear and specific to a particular task. Furthermore, Grievant did not fail to perform assigned work. She attempted to perform all of the worked submitted to her from College 1 and College 2; she simply failed to properly complete the tasks. Her behavior was not a failure to perform assigned work but a failure to properly perform assigned work.

Grievant argues that colleges sometimes make requests that do not accurately reflect the results they seek. Because their requests are inaccurate the response they receive appears inaccurate. Grievant's argument fails because no credible evidence was presented suggesting the colleges submitted improper or confusing requests.

Grievant argues that she was not properly trained regarding how to use the IssueTrak system. She contends that had she been properly trained, she would not have made any mistakes. Grievant's argument is untenable because the IssueTrak system does not require any training other than on-the-job training.

Grievant argues she was not properly trained regarding how to use PeopleSoft Version 8.0. Grievant's argument fails because the changes she was requested to make involved Version 7.6 and Grievant received adequate training on migration from Version 7.6 to 8.0.⁹ Grievant confirmed this conclusion by stating in her resume:

PeopleSoft Security – ability to perform **all** security functions for PeopleSoft v7.6 & v8.¹⁰ (Emphasis added.)

Grievant had the educational background and work experience necessary to make any changes necessary to PeopleSoft Version 7.6 and 8.0. To the extent she may have been unsure of some aspect of her position, she should have asked for assistance.

⁸ DHRM § 1.60(V)(B)(2)(a).

⁹ She attended training offered by Peoplesoft and she received on-the-job training from Ms. LC.

¹⁰ Agency Exhibit 7-1.

Grievant had served as backup to Ms. LC for many months and was familiar with how to make security changes.¹¹

Grievant asserts that she is being issued two Written Notices for the same thing. She believes only one Notice should have been issued. Grievant's argument is untenable. Although the type of behavior Grievant displayed is the same in both Written Notices, Grievant engaged in that behavior on more than one occasion. In other words, Grievant received requests from at least two colleges. Each time she failed to comply with those requests, her work performance was unsatisfactory. Grievant mistakenly tried to apply a template permission list; but she repeated that mistake with at least two different colleges on separate occasions. The Agency may issue separate Notices for these distinct events.

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 II Written Notice of disciplinary action on March 22, 2005 is **reduced** to a Group I Written Notice. The Agency's issuance of a Group II Written Notice of disciplinary action on March 4, 2005 is **reduced** to a Group I Written Notice.

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

¹¹ Grievant also argued that repetitive overuse of her right hand and arm may have affected her performance. Grievant's performance, however, was not affected by her ability to enter data. Her performance was affected by the judgments she made.

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.¹²

[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

¹² Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.