

Issue: Group III Written Notice with termination (falsifying records, failure to keep the security doors to medical unit closed and locked properly); Hearing Date: August 16, 2005; Decision Date: September 1, 2005; Agency: Department of Corrections; Hearing Officer: Thomas J. McCarthy, Jr., Esquire; Case Number: 8150

DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re: Case Number 8150

Hearing Date: August 16, 2005
Decision Issued: September 1, 2005

APPEARANCES

Grievant
Grievant Representative
Agency Representative
3 Witnesses for Agency

ISSUE

“Was Grievant’s termination proper for falsifying records and failure to keep the security doors to the medical unit closed and locked?”

FINDINGS OF FACTS

The Grievant filed a timely grievance from a Group III Written Notice with Termination issued for falsifying records and failure to keep the security doors to the medical unit closed and locked. Following failure of the parties to resolve the grievance, the agency head qualified the grievance for a hearing.

The Department of Corrections (hereinafter referred to as “agency”) employed the Grievant from 2001 until her termination effective April 26, 2005, which is the subject of this grievance.

On April 15, 2005, Grievant was assigned as Medical Control Officer in the medical unit of the agency facility. Her shift began at 6:00 p.m. on April 14, 2005, and was scheduled to end at 6:00 a.m. on April 15, 2005. Her duty station was the control room in the facility’s medical unit. At the same time, Corrections Officer II was assigned to the facility’s medical unit as Medical Patrol Officer.

The Medical Control Officer is assigned to a control room within the medical facility.

The Medical Patrol Officer’s post is located in the infirmary cell block at a desk not visible from the medical control room.

The infirmary cell block is accessed through two sliding locked doors, the "security doors" controlled by the Medical Control Officer.

On the April 14, 2005 - April 15, 2005 shift, the Medical Patrol Officer was supposed to make visual checks on the inmate in Infirmary Cell 2 every fifteen (15) minutes.

Between 2:00 a.m. and 3:30 a.m., on April 15, 2005, the inmate in Infirmary Cell 2 committed suicide by hanging himself with his bed sheet. In the investigation that ensued, the Medical Patrol Officer admitted that he had been away from his post visiting in the Medical Office for approximately one (1) hour and had not made the ordered fifteen (15) minute checks on the inmate in Infirmary Cell 2.

Grievant signed a statement that, "I have not observed [Officer II] staying in the Medical Office for a long period of time. I know [Officer II] was in the Medical Patrol area after he released me, and I made the security check. I closed both security doors and did not let him out until time for the 3:30 a.m. [check]."

The charge nurse on the night of April 14-15, 2005, stated that the Medical Patrol Officer on the night of the incident spent "about one (1) hour in my work area".

Grievant told the Special Agent who interviewed her about the happenings after midnight on April 15, 2005, that she, "... did not leave the two security doors open for any extended time, only to let staff in or out." Video tapes of the infirmary area introduced at the hearing clearly show a security door open from 2:35 a.m. to 2:59 a.m. on April 15, 2005. Correction Officer II admitted in a statement to the Special Agent investigating the death that he may have stayed in the medical office area from fifteen minutes to one hour on the early morning of April 15, 2005. He also stated that Grievant left the security door between the infirmary cells and the medical office open for him.

Grievant's statement that she did not leave the security door between the infirmary and the medical office area open for extended periods was false. Her contention that the security door could be opened by hand from the infirmary side, thus allowing the Medical Patrol Officer to leave the medical patrol area without the Medical Control Officer knowing, was investigated. The Warden testified he had had the matter checked and the security door could not be opened by hand.

Grievant's statement that she had not observed Correction Officer II, "staying in the medical office for a long period of time." Was refuted by Correction Officer II's statement and the statement of the Charge Nurse.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code Section 2.2-2900 et seq., establishing the procedures and policies applicable to the employment with the Commonwealth. "This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging, and training state employees. It also provides

for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and the workplace." Murray v. Stokes, 387 S. E. 2d 834, 836 (1989), 237 Va. 653, 656 (1989).

Code Section 2.2-3000 et seq. sets forth the Commonwealth's grievance procedure and provides, in 2.2-3000A:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints ... To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure under Section 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. In all other actions, the employee must present his/her evidence first and must prove his/her claim by a preponderance of the evidence.

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Va. Code Section 2.2-1201, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60. The agency to establish procedures on Standards of Conduct for Performance for agency employees consistent with the Department of Human Resource Management promulgated Chapter 5 "Standards of Conduct" in its procedures manual. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action. Section 5-10.17B of the agency's Procedures Manual provides that Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant removal from employment. Grievant received training on the Standards of Conduct when she was hired.

The Agency Procedures Manual in Chapter Five: Human Resources contains the "Standards of Conduct". Grievant was issued a Group III Written Notice with termination. Section 5-10.17B of the Agency's Standards of Conduct provide that Group III offenses include "2. falsifying any records, including but are not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents."

The agency has shown by a preponderance of the evidence that Grievant provided a false report to an agency investigator and the facility warden concerning the actions of a Corrections Officer II for a period when she said he was locked in the Infirmary area since his own testimony and that of another agency employee placed him

out of the Infirmary area for approximately one hour. Grievant's assertions that that she did not leave security doors open for extended periods were contradicted by both verbal and video tape evidence. Grievant's report was false on two (2) issues. Grievant's false report, was a Group III Standards of Conduct offense. The agency's action was appropriate and reasonable.

DECISION

The disciplinary action of the agency is affirmed.

The Group III Written Notice with termination issued on April 26, 2005, is hereby 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. Address your request to:

Director
Department of Human Resource Management
101 N 14th Street, 12th Floor
Richmond, VA 23219

3. If you believe 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. Address your request to:

Director
Department of Employment Dispute Resolution
830 E Main Street, Suite 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 expires, 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.

[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]

Thomas J. McCarthy, Jr.
Hearing Officer