

Issue: Group II Written Notice with termination (due to accumulation) (failure to report to work without proper notice); Hearing Date: 05/24/06; Decision Issued: 05/25/06; Agency: JMU; AHO: John R. Hooe, III, Esq.; Case No. 8343; Outcome: Agency upheld in full.

COMMONWEALTH OF VIRGINIA  
Department of Employee Dispute Resolutions

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No: 8343

Hearing Date: May 24, 2006  
Decision Issued: May 25, 2006

APPEARANCES

Grievant  
Representative for Agency  
One Witness for Agency

ISSUE

Was the grievant's conduct such as to warrant termination of employment under the Standards of Conduct?

FINDINGS OF FACTS

The grievant filed a timely appeal from a Group II Written Notice issued on March 1, 2006, because she arrived at work late without first calling her supervisor and upon arriving at work, left work without permission. The discipline in the Group II Written Notice was termination of employment effective March 1, 2006. Following failure to resolve the matter at the resolution steps, the grievance was qualified for a hearing.

The Agency had employed the grievant for a number of years in the area of Copy Services. Beginning in August of 2004, the grievant supervisor began discussing with the grievant her unacceptable routine of reporting late to work. The discussions along this line continued through the fall of 2004. (Exhibit 5, JMU) On January 26, 2005 the grievant and her supervisor signed a memo of understanding establishing the grievant's working hours as 9:00 a.m. until 5:30 p.m. (Exhibit 1, JMU) On July 7, 2005, the grievant's supervisor issued an "Improvement Needed" notification form in which it is noted that the grievant continued to report late to work. The improvement plan set out in the Notification Form included the following:

- Work Schedule changed to 9:30 a.m. to 6:00 p.m.
- Must report all absences to director by 8:00 a.m. if sick or unable to report to work as scheduled.
- Unreported absences will be treated as absence without permission.

Must call director upon arrival to work each day.

Despite the requirements set out in the July 7, 2005 Notification Form, the record reflected that throughout July 2005 the grievant continued to violate the rules established by her supervisor. (Exhibit 3, JMU)

On July 19, 2005, the grievant did not report to work and did not call, resulting in a Group II Written Notice being issued on July 21, 2005, in which Written Notice the grievant's supervisor stated that if one more offense occurs then termination will be immediate. (Exhibit 4, JMU)

During the month of August 2005, the grievant was frequently late but called her supervisor to let her know she was going to be late.

In September, 2005 the grievant was late several times but called her supervisor to let her know she was going to be late. On October 28, 2005 the grievant's supervisor issued another warning because the grievant did not arrive at work until 11:50 a.m. The grievant's supervisor told her at that time she was giving her her last warning. In January 2006, the grievant was, according to the supervisor, constantly late by a few minutes and began leaving the office during the day without permission. The grievant turned in leave cards after the fact and was warned that her supervisor needed to know when she was going to be gone for more than her allocated one-half hour for lunch.

During the week of February 20, 2005 the grievant was late at least one hour each day, took off one-half day on February 23, 2006 and the entire day on February 24, 2006. The grievant called her supervisor and advised that she was sick and that she was going to find a dentist but would check in with the office to let her supervisor know what was going on. The grievant's supervisor called the grievant around 4:45 that afternoon and got no answer. The grievant did not check in with the office that day. On Monday, February 27, the grievant told her supervisor she did not go to the dentist because she could not afford the cost of having the tooth fixed. (Exhibit 5, JMU)

On March 1, 2006, the grievant arrived at work late and then left work without permission, resulting in the Group II Written Notice and termination on March 1, 2006.

The grievant did not dispute the accuracy of the evidence presented by the Agency. However, she indicated that during the past two years she has had a number of physical and emotional issues which contributed to her unacceptable conduct. (Grievant's Exhibit A and Grievant's Exhibit B) The grievant testified that she believed her physical and emotional problems were improving at the time she was terminated, that she loved her job at the Copy Center and that it had been the better part of her life for 13 years.

The Exhibits introduced at Hearing included Exhibits 1-8 by the Agency and Exhibits

A and B by the Grievant.

### APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code Section 2.1-110 et seq., establishing the procedures and policies applicable to employment within 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 employees' 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 workplace. Murray v. Stokes, 237 VA. 653, 656 (1989).

Code Section 2.1-116.05(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

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 dispute which may arise between state agencies and those employees who have access to the procedure under Section 2.1-116.09.

In disciplinary actions, the agency must show by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances.

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Section 2.1-114.5 of the Code of Virginia, the Department of Personnel and Training promulgated Standards of Conduct Policy No. 1.60 effective September 16, 1993. 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 V.B.2 of the Commonwealth of Virginia's Department of Personnel and Training Manual Standards of Conduct Policy No. 1.60 provides that Group II offenses include acts and behavior which are more severe in nature and are such that accumulation of two Group II offenses normally should warrant removal from employment. Some examples of Group II offenses are: failure to follow a supervisor's instructions, leaving the work site during work hours without permission and failure to report to work as scheduled without proper notice to supervisor.

In January, 2005 the grievant was first put on notice that her conduct, particularly her failure to report to work on time and her failure to give proper notice of tardiness or leaving

the work area, was not acceptable. (Exhibit 1, JMU) Her need to improve was again addressed on July 7, 2005. (Exhibit 3, JMU) The first Group II Written Notice was issued on July 21, 2005 when the grievant failed to report to work or call her supervisor. The Written Notice stated that one more offense would result in termination. (Exhibit 4, JMU) The grievant's continued violations resulted in a written warning from her supervisor dated October 28, 2005 in which the supervisor stated it was the final warning before dismissal. (Exhibit 7, JMU) However, the record set out above noted the grievant's continued violations of the rules and policy of which she was aware, resulting in her termination.

The Agency has demonstrated by a preponderance of the evidence that the grievant did arrive late to work on March 1, 2006 without first calling her supervisor and then left the work area without permission, constituting a Group II Offense. The Hearing Officer finds no circumstances that would warrant mitigation of the Agency's disciplinary action, in this case termination of the grievant's employment.

### DECISION

The disciplinary action of the Agency is affirmed.

### APPEAL RIGHTS

As the Grievance 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 four 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 a 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** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy.
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.

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 10 calendar**

**days of the date of the original hearing decision.** (Note; the 10-day period, in which the appeal must occur, begins with the date of issuance of the decision, not receipt of the decision. However, the date the decision is rendered does not count as one of the 10 days; the day following the issuance of the decision is the first of the 10 days). 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 10 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 agency shall request and receive prior approval of the Director before filing a notice of appeal.

John R. Hooe, III  
Hearing Officer