

Issue: Group II Written Notice with suspension (failure to follow established written policy); Hearing Date: 06/29/06; Decision Issued: 07/10/06; Agency: DMV; AHO: David J. Latham, Esq.; Case No. 8367; Outcome: Agency upheld in full. **Administrative Review: DHRM Ruling Request received 07/24/06; DHRM Ruling issued 12/18/06; Outcome: HO's decision affirmed.**



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 8367

Hearing Date:	June 29, 2006
Decision Issued:	July 10, 2006

APPEARANCES

Grievant
Attorney for Grievant
Human Resource Manager
Advocate for Agency
Two witnesses for Agency

ISSUES

Was the grievant's conduct such as to warrant disciplinary action under the Standards of Conduct? If so, what was the appropriate level of disciplinary action for the conduct at issue?

FINDINGS OF FACT

Grievant filed a timely grievance from a Group II Written Notice issued for failure to follow established written policy.¹ As part of the disciplinary action, grievant was suspended for ten days. Following failure of the parties to resolve the grievance at the third resolution step, the agency head qualified the grievance for a hearing.² The Virginia Department of Motor Vehicles (DMV) (Hereinafter referred to as “agency”) has employed grievant for 22 years. She is currently employed as a branch manager.

Grievant manages an agency customer service center that provides driver, dealer, motor carrier, vehicle registration, titling, tax collection and other DMV services. Among her responsibilities, grievant is charged with understanding and ensuring compliance with agency accountability procedures for daily processing, inventory control and administrative functions.³ She must also ensure the proper processing, settling and auditing of monies and transactions, and train employees on proper money handling procedures. Employees are not permitted to cash their own personal checks through the DMV cash drawers. In February 2005, the district manager instructed all district employees to comply with written policies on Close-Out Procedures and Daily Processing.⁴ She also directed that two authorized personnel must count and verify funds *in the presence of each other* at any time when money is changing hands.

The small office managed by grievant has an assistant manager and two other employees. The employees have all worked with each other for several years. The assistant manager has worked with grievant for the entire 22 years that grievant has worked for the agency. It was common knowledge in the office that the assistant manager had developed significant personal financial problems.⁵ In June 2005, the assistant manager borrowed \$3,000 from one of her subordinates who was related to her through marriage.⁶ In early fall 2005, the assistant manager had borrowed money from grievant but repaid it the following day.

On October 12, 13 & 14, 2005, the assistant manager placed personal checks in her cash drawer in the amounts of \$125, \$100, and \$50, respectively.⁷ She then took an equivalent amount of cash from the drawer, effectively using the agency as a check cashing conduit. Written policy requires that the manager must verify each teller’s collections and initial verification on the Receipts

¹ Agency Exhibit A. Group II Written Notice, issued December 7, 2005.

² Agency Exhibit S. Grievance Form A, filed January 4, 2006.

³ Agency Exhibit B. Employee Work Profile work description for grievant, February 10, 2005.

⁴ Grievant Exhibit F. Memorandum from district manager to all employees, February 22, 2005.

⁵ Agency Exhibit O. Special Agent’s interview with grievant, Investigation Report, November 10, 2005.

⁶ Agency Exhibit G. Checks from assistant manager to subordinate.

⁷ Agency Exhibit C. Copies of assistant manager’s personal checks, October 12, 13 & 14, 2005.

Verification form (FS54).⁸ At the end of the day, grievant personally reviewed and initialed the assistant manager's FS54 thereby certifying that the amounts and checks matched the form.⁹ However, grievant did not total the checks or review them; she relied on the assistant manager's figures without personally making verification. Subsequently, the three checks were returned by the bank to the agency's central office due to insufficient funds. The central office contacted grievant who promptly sent an e-mail to her supervisor – the district manager.¹⁰ Subsequent investigation revealed that over several months, the assistant manager had been writing personal checks and cashing them through her DMV cash drawer.¹¹

On October 31, 2005, the assistant manager overdosed on medication and was hospitalized. The following morning, grievant met with the two other employees in her office to discuss the personal problems the assistant manager was having. She also told them about the three checks that had been returned for insufficient funds. Because all four employees had known each other and worked together for at least ten or more years, grievant suggested to the two subordinates that they could assist the assistant manager in any way if they chose to do so. Both employees understood from grievant's explanation that they were being asked if they would be willing to voluntarily give money to help cover the bad checks.¹² Both initially volunteered to give money but one later decided not to loan money because she had already loaned money to the assistant manager that had not been repaid.

Written policy requires that employees must maintain the confidentiality of their own passwords and should not communicate verbally their passwords to others.¹³ Two subordinates asserted that, on occasion, grievant had processed transactions on computers that were logged on by employees under their own passwords. Thus, from the computer records, it would appear that the other employees rather than grievant had processed the transactions. Grievant stressed with her employees the need for password security and did not know anyone else's password. She has assisted employees at their computers when a problem arose but only with the employee present. On occasion she finished processing a customer transaction for the assistant manager when the assistant manager was called away from her window.¹⁴

⁸ Grievant Exhibit F, p.3. CSCOM-706, *Customer Service Center Operations Manual Volume I*, revised March 15, 2005.

⁹ Agency Exhibit C. FS54 forms, October 12 & 13, 2005.

¹⁰ Grievant Exhibit E. E-mail from grievant to district manager, October 31, 2005.

¹¹ Agency Exhibit O. Investigation Report, November 10, 2005.

¹² Agency Exhibits F & H. Written statements of two employees, November 8, 2005.

¹³ Agency Exhibit I. CSCOM-201, *Customer Service Center Operations Manual Volume I*, revised June 2000.

¹⁴ Agency Exhibit Q. Memorandum from grievant to district manager, November 14, 2005.

Written policy mandates that vehicle documents are not to be “pre-audited” by the local office preparer.¹⁵ Instead, all relevant documents are to be bundled and forwarded to Quality Control Review in the central office. The purpose of this is to allow central office to more accurately assess the quality of work being performed by each employee.

The district manager placed grievant on administrative leave on November 9, 2005 by giving her a due process letter advising her of allegations and giving her five days within which to provide a response.¹⁶

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 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 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 workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Code § 2.2-3000 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 disputes which may arise between state agencies and those employees who have access to the procedure under § 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 her evidence first and must prove her claim by a preponderance of the evidence.¹⁷

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Va. Code § 2.2-

¹⁵ Grievant Exhibit G. CSCOM-802, *Customer Service Center Operations Manual Volume I*, revised July 1, 2005.

¹⁶ Agency Exhibit P. Letter from district manager to grievant, November 9, 2005.

¹⁷ § 5.8, Department of Employment Dispute Resolution (EDR), *Grievance Procedure Manual*, Effective August 30, 2004.

1201, the Department of Human Resource Management promulgated *Standards of Conduct* Policy No. 1.60. 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. Policy No. 1.60 provides that Group II offenses include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally should warrant removal from employment.¹⁸ Failure to follow established written policy is a Group II offense.

The agency charged grievant with allowing the assistant manager to place personal checks in her cash drawer and then withdraw cash. Grievant acknowledges that she knew the assistant manager was having personal financial problems. Grievant asserts that she never had any indication that the assistant manager would do anything inappropriate at work. She did not know that the assistant manager was kiting personal checks through the DMV system. The agency has failed to prove, by a preponderance of evidence that grievant knew what the assistant manager was doing. In fact, the assistant manager has stated in writing that grievant did not know what the assistant manager was doing.¹⁹ However, the evidence is sufficient to conclude that grievant should have known that the assistant manager was violating policy. By her own admission,²⁰ if grievant had personally verified the FS54 forms and reviewed the checks that were supposed to be attached, she would have noticed the checks in the assistant manager's name. Policy CSCOM-706 requires the manager to verify collections; "collections" includes cash, credit card transactions, and checks. Grievant failed to verify the checks and instead allowed the assistant manager to verify her own checks.

Grievant denies that she coerced her subordinates to loan or give money to the assistant manager on November 1, 2005. However, she did tell the subordinates that the assistant manager owed money to DMV which she had committed to pay back that morning but that, due to her hospitalization, she would most likely not meet that commitment.²¹ The two subordinates understood from grievant's discussion that they were being asked if they could help out. The evidence supports a conclusion that grievant did not *directly* pressure her subordinates to make monetary donations. However, when a manager tells subordinates that the assistant manager is having financial difficulties "in case they want to help," grievant should have known that subordinates in such a position feel *indirect* pressure to contribute. It is inappropriate for someone in a

¹⁸ Agency Exhibit R. Department of Human Resource Management (DHRM) Policy 1.60, *Standards of Conduct*, effective September 16, 1993.

¹⁹ Grievant Exhibit H. Letter from assistant manager to special agent, undated.

²⁰ Agency Exhibit O, p.3. Grievant's interview with investigator.

²¹ Agency Exhibit Q. Memorandum from grievant to district manager, November 14, 2005.

management position to put even indirect pressure on employees to give financial assistance to another member of management.

The agency has not shown, by a preponderance of evidence, that grievant regularly processed transactions under another employee's password. Grievant has provided a detailed explanation of limited instances when she either assisted employees with problems while the employee is present, or completed transactions for waiting customers when the assistant manager was called away from her window. The agency did not offer the testimony of the only employee who made a brief reference to this issue in her statement to the investigator. Therefore, grievant's sworn denial of any inappropriate activity outweighs the hearsay comment made by a subordinate.

Grievant denies pre-auditing vehicle work. She has instructed her staff to follow the audit procedures and to verify only those items specified by policy. On one occasion she corrected the assistant manager, and on another occasion corrected one of the subordinates, for inappropriately pre-auditing vehicle work. The agency alleged that grievant instructed subordinates to go to a customer's residence to correct transactions. However, the agency failed to present any firsthand witnesses, affidavits, or other evidence to support the allegation. Without such evidence, grievant's sworn denial outweighs the hearsay allegation.

Summary

The agency has not carried the burden of proof to show either that grievant inappropriately processed transactions under other employees' logon IDs, or that she directed employees to pre-audit vehicle work. However, the agency has demonstrated by a preponderance of evidence that grievant did not follow daily close-out procedures. Had grievant followed the district manager's written instruction to have two people count and verify all collections in the presence of each other, the assistant manager would have been unable to kite bad checks through the DMV system. Given grievant's admitted knowledge that the assistant manager was having personal financial difficulties, grievant should have closely monitored all agency financial matters. Grievant's decision to allow the assistant manager to do the daily verification without grievant's oversight was a significant error in judgment. Additionally, grievant's meeting with two subordinates to suggest that they could help the assistant manager with her financial problem was inappropriate for a manager. Even though grievant did not intend to pressure her subordinates, she knew, or reasonably should have known, that subordinates might feel pressured in such a situation.

Mitigation

The normal disciplinary action for a Group II offense is a Written Notice, or a Written Notice and up to 10 days suspension. The *Standards of Conduct* policy provides for the reduction of discipline if there are mitigating circumstances such as (1) conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or (2) an employee's long

service or otherwise satisfactory work performance. In this case, grievant has both long state service and a satisfactory work performance record with no previous disciplinary action. The agency considered these factors to be mitigating but felt that grievant's length of service was also an aggravating circumstance because with her long experience, grievant should have been more alert and detected some of the problems sooner. After carefully reviewing the circumstances of this case, it is concluded that the agency appropriately applied the mitigation provision.

DECISION

The disciplinary action of the agency is affirmed.

The Group II Written Notice and suspension are hereby UPHELD.

APPEAL RIGHTS

You may file an administrative review request within **15 calendar days** from the date this 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 St, 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 St, 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 one copy of any appeal to the other party and one copy to the Director of the Department of Employment Dispute Resolution. 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.²² 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.²³ You must give a copy of your notice of appeal to the Director of the Department of Employment Dispute Resolution.

[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]

S/David J. Latham

David J. Latham, Esq.
Hearing Officer

²² An appeal to circuit court may be made only on the basis that the decision was contradictory to law, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. *Virginia Department of State Police v. Barton*, 39 Va. App. 439, 573 S.E.2d 319 (2002).

²³ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

POLICY RULING OF THE DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT

In the Matter of the
Department of Motor Vehicles
December 18, 2006

The grievant, through her representative, has requested an administrative review by the Department of Human Resource Management of the hearing officer's decision in Case Number 8367. The grievant objects to the hearing officer's decision because she contends that the hearing officer made basically two errors in making his decision. More specifically, the grievant states, "The first error concerns the offense charged "as allowing the Assistant Manager to place her personal checks in her cash drawer" by not following procedures related to the processing of FS54s. The Hearing Officer concluded Grievant did not follow policies in place for closing out end of day financial transactions, and if she had followed these procedures, the actions of the Assistant manager would have been uncovered. There is no evidence proffered by the agency supporting this conclusion." Concerning the second error, the grievant stated, "The second error concerns the offense charged as "having a meeting with staff and attempting to coerce them to loan/give money to the Assistant Manager." The agency head, Ms. Sara Redding Wilson, has requested that I respond to this administrative review request.

FACTS

The Department of Motor Vehicles employs the grievant as a Manager in a small branch office (4 employees) of the Department of Motor Vehicles (DMV). The services provided by the customer service center of that office includes driver, dealer, motor carrier, vehicle registration, titling, tax collection and other DMV services. The grievant's duties include understanding and ensuring compliance with agency accountability procedures for daily processing, inventory control and administrative functions. She must also ensure the proper processing, settling and auditing of monies and transactions, and train employees on proper money handling procedures. According to the evidence, the district manager had directed that two authorized personnel must count and verify funds in the presence of each other at any time when money is changing hands.

According to the hearing decision,

On October 12, 13 & 14, 2005, the assistant manager placed personal checks in her cash drawer in the amounts of \$125, \$100, and \$50, respectively. She then took an equivalent amount of cash from the drawer, effectively using the agency

as a check cashing conduit. Written policy requires that the manager must verify each teller's

collections and initial verification on the Receipts Verification form (FS54). At the end of the day, grievant personally reviewed and initialed the assistant manager's FS54, thereby certifying that the amounts and checks matched the form. However, grievant did not total the checks or review them; she relied on the assistant manager's figures without personally making verification. Subsequently, the three checks were returned by the bank to the agency's central office due to insufficient funds. The central office contacted grievant who promptly sent an email to her supervisor – the district manager. Subsequent investigation revealed that over several months, the assistant manager has been writing personal checks and cashing them through her DMV cash drawer.

Based on the above, and allegations of other office procedures violations, the agency placed the grievant, the office manager, on administrative leave by giving her a due process letter advising her of the allegations and giving her a five-day period to respond to the allegations. The grievant attempted to justify her actions but the agency did not feel that the justifications were sufficient and issued to her a Group II Written Notice with a ten-day suspension for failure to follow established policy.

The relevant policy, the Department of Human Resource Management's Policy No.1.60, states that it is the Commonwealth's objective to promote the well being of its employees in the workplace and to maintain high standards of professional conduct and work performance. This policy also sets forth (1) standards for professional conduct, (2) behavior that is unacceptable, and (3) corrective actions that agencies may impose to address behavior and employment problems. Section V, Unacceptable Standards of Conduct, of that policy sets forth examples of unacceptable behavior for which specific disciplinary action may be warranted. However, these examples are not all-inclusive.

DISCUSSION

A hearing officer is authorized to make findings of fact as to the material issues in the case and to determine the grievance based on the evidence. In addition, in cases involving discipline, the hearing officer reviews the facts to determine whether the cited actions constitute misconduct and whether there are mitigating circumstances to justify reduction or removal of the disciplinary action. If misconduct is found but the hearing officer determines that the disciplinary action is too severe, he may reduce the discipline. By statute, this Department has the authority to determine whether the hearing officer's decision is consistent with policy as promulgated by DHRM or the agency in which the grievance is

filed. The challenge must cite a particular mandate or provision in policy. This Department's authority, however, is limited to directing the hearing officer to revise the decision to conform to the specific provision or mandate in policy. This Department has no authority to rule on the merits of a case or to review the hearing officer's assessment of the evidence unless that assessment results in a decision that is in violation of policy and procedure.

In the present case, the hearing officer determined that there was sufficient evidence to support the allegations the agency made against the grievant and to take the resulting disciplinary action. There is indisputable evidence that on three occasions, October 12, 13 & 14, 2005, the assistant manager placed personal checks in her cash drawer in the amounts of \$125, \$100, and \$50, respectively. She then took an equivalent amount of cash from the drawer, effectively using the agency as a check cashing conduit. Written policy requires that the manager must verify each teller's collections and initial verification on the

Receipts Verification form. The evidence supports that the grievant initialed the form without personally verifying that the totals were correct. She did not total the checks or review the totals but took the word of the assistant manager that everything was in order. Even though she had nothing to do with putting the checks in the drawer, it was her responsibility to ensure that the financial transactions of the branch office were carried out according to agency policy and procedure.

The Department of Human Resource Management agrees with the hearing officer's interpretation and application of DHRM Policy 1.60. The challenge to the hearing officer's decision appears to be based on how the hearing officer assessed the data rather than incorrect interpretation and application of DHRM policy. Therefore, we have no basis to interfere with the application of this decision.

Ernest G. Spratley
Manager, Employment
Equity Services