



COMMONWEALTH of VIRGINIA
Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 11673

Hearing Date: June 11, 2021

Decision Issued: June 29, 2021

PROCEDURAL HISTORY

On March 3, 2021, Grievant was issued a Group II Written Notice of disciplinary action with removal for failure to follow policy.

On March 4, 2021 Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On March 22, 2021, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 11, 2021, a hearing was held by remote conference.

APPEARANCES

Grievant
Agency Party Designee
Agency Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

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. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. 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 employed Grievant as Probation and Parole Officer at one of its locations. He began working for the Agency in March 2018. His duties changed to being an Intake Officer beginning in March 2020.

Grievant was well-liked by his co-workers because of his positive personality and willingness to help others.

Grievant had prior active disciplinary action. On July 23, 2019, Grievant received a Group I Written Notice. On December 30, 2020, Grievant received a Group II Written Notice with a five workday suspension for failure to follow policy.

VACORIS (or CORIS) is the Agency's electronic database used by employees to enter information about offenders and probationers. Grievant received training regarding how to enter notes into VACORIS. If Grievant met with a probationer, Grievant was supposed to enter a case note into VACORIS documenting the meeting.

On March 17, 2020, Grievant signed a telework agreement informing him, "All case notes are to be entered daily and up to date."¹

¹ Agency Exhibit p. 19.

The Senior Probation Officer instructed Grievant to enter notes in a timely manner. He told Grievant this at least three times. Grievant's work caseload was lower than employees holding similar positions at the Agency's location.

On September 29, 2020, Grievant received a Counseling Memorandum stating:

Another area of concern is your failure to enter CORIS notes in a timely manner. According to ... Operating Procedure (50.1, III-4) note are to be entered into CORIS no later than 7 days after the contact occurs. *** You are expected to follow District policy and enter notes no later than 7 days after contact occurs.²

On January 11, 2021, Probationer J met with Grievant. As of February 3, 2021, Grievant had not entered a note in VACORIS to reflect that meeting.

On January 27, 2021, Probationer W met with Grievant. Grievant did not enter a note reflecting that meeting into VACORIS as of February 4, 2021.

Probationer P was scheduled to report to the Agency's office on December 10, 2020. He failed to report. Grievant entered a note about Probationer P in VACORIS on January 27, 2021.

On December 22, 2020, Grievant scheduled an appointment to meet with Probationer Wi on January 15, 2021. As of February 4, 2021, Grievant had not entered a note in VACORIS indicating whether Probationer Wi reported to the office to meet with Grievant.

Probationer T failed to report to the office for a meeting scheduled for December 17, 2020. On January 27, 2021, Grievant entered a note into VACORS indicating the Probationer failed to report.

Probationer D failed to report to the office for a scheduled meeting on December 15, 2020. On January 21, 2021, Grievant entered a note in VACORIS indicating the Probationer failed to report.

On December 9, 2020, Grievant instructed Probationer P to report to the office on December 11, 2020 for an appointment. As of February 2, 2021, Grievant had not entered a note in VACORIS regarding the Probationer.

On October 22, 2020, Grievant instructed Probationer A to report to the office on December 18, 2020. Probationer A did not report as scheduled. Grievant entered a note in VACORIS on January 21, 2021 to document that Probationer A did not report as scheduled.

² Agency Exhibit p. 38.

On November 5, 2020, Grievant contacted Probationer H by telephone. Grievant did not document the telephone call in VACORIS until January 15, 2021.

On October 22, 2020, Grievant instructed Probationer Hu to report to the office on December 15, 2020. As of February 4, 2021, Grievant had not entered a note in VACORIS to document the contact.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three groups, according to the severity of the behavior. Group I offenses “include types of behavior less severe in nature, but [which] require correction in the interest of maintaining a productive and well-managed work force.” 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.” Group III offenses “include acts and behavior of such a serious nature that a first occurrence normally should warrant removal.”³

Section III(3) of the Agency’s Implementation Memorandum for Operating Procedure 50.1, Offender Records Management, provides:

Case notes must be entered no later than the required 7 days.

“Failure to follow a supervisor’s instructions, perform assigned work, or otherwise comply with applicable established written policy” is a Group II offense.⁴ Grievant was obligated to document in VACORIS his interaction with probationers. He was obligated to complete the documentation within seven days of the contact. Grievant failed to timely document at least ten contacts he had with probationers within the seven day requirement. Grievant failed to comply with policy thereby justifying the issuance of a Group II Written Notice.

Upon the accumulation of two Group II Written Notices, an agency may remove an employee. Grievant has accumulated two Group II Written Notices thereby justifying the Agency’s decision to remove him from employment.

Grievant confirmed he made mistakes but argued that the Agency could have taken action other than removal. He felt he was treated unfairly. Although the Agency could have taken lesser disciplinary action, the Agency’s discipline was consistent with the Standards of Conduct.

³ See, Virginia Department of Corrections Operating Procedure 135.1.

⁴ See, Virginia Department of Corrections Operating Procedure 135.1.

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resource Management”⁵ Under the *Rules for Conducting Grievance Hearings*, “[a] hearing officer must give deference to the agency’s consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency’s discipline, the hearing officer shall state in the hearing decision the basis for mitigation.” A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Group II Written Notice of disciplinary action with removal is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer’s **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a

⁵ Va. Code § 2.2-3005.

specific requirement of the grievance procedure with which the hearing decision is not in compliance.

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.^[1]

[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/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

^[1] Agencies must request and receive prior approval from EDR before filing a notice of appeal.