

Issue: Group III Written Notice with Termination (falsifying timesheets); Hearing Date: 03/11/13; Decision Issued: 03/15/13; Agency: DOC; AHO: Carl Wilson Schmidt, Esq.; Case No. 10039; Outcome: No Relief – Agency Upheld.



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 10039

Hearing Date: March 11, 2013

Decision Issued: March 15, 2013

PROCEDURAL HISTORY

On January 22, 2013, Grievant was issued a Group III Written Notice of disciplinary action with removal for falsification of documents.

On January 25, 2013, Grievant timely filed a grievance to challenge the Agency's action. The grievance proceeded to hearing. On February 20, 2013, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On March 11, 2013, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Party Designee
Agency Advocate
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. 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 a Training Office Service Assistant at one of its facilities. She began working for the Agency on February 25, 2008.

Grievant's shift was from 8 a.m. until 4:30 p.m. five days per week. Grievant was responsible for submitting time sheets showing her hours worked and leave taken each week.

On January 7, 2013, Grievant submitted four time sheets for the weeks beginning December 10, 2012, December 17, 2012, December 24, 2012, and December 31, 2012.

On the first time sheet, she wrote that she worked from 8 a.m. until 4:30 p.m. on December 10, December 11, December 12, December 13, and December 14, 2012. On the second time sheet, she wrote that she worked from 8 a.m. until 4:30 p.m. on December 17, December 18, December 19, December 20, and December 21, 2012. On the third time sheet, Grievant wrote that she took eight hours of holiday leave on December 24, December 25, and December 26, 2012 and worked from 8 a.m. until 4:30 p.m. on December 27, 2012 and December 28, 2012. On the fourth time sheet, Grievant claimed eight hours of holiday leave on December 31, 2012 and January 1, 2013. She claimed eight hours of annual leave on January 2, 2013. On January 3, 2013, Grievant claimed four hours of annual leave and four hours of sick leave. On January 4, 2013, she claimed eight hours of sick leave.

On January 7, 2013, the Supervisor met with Grievant to discuss the time sheets she was turning in to him. He asked her about the time she claimed and she verified the accuracy of her time sheets.

The Agency had a video recording system from which it could determine employee entry and exit times. Grievant did not report to work on December 10, 2012, December 11, 2012, or December 28, 2012. On December 27, 2012, Grievant arrived at the Facility at 10:13 a.m. and left the Facility at 5:22 p.m.

When the Agency investigated the accuracy of Grievant's time sheets, Grievant stated that she was absent from work on December 10, December 11, and December 28, 2012 due to illness.

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."¹ 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."² Group III offenses "include acts and behavior of such a serious nature that a first occurrence normally should warrant removal."³

Group III offenses include, "[f]alsifying any records, including but not limited to all work and administrative related documents generated in the regular and ordinary course of business, such as count sheets, vouchers, reports, insurance claims, time records, leave records, or other official state documents."⁴

"Falsification" is not defined by DOC Operating Procedure 135.1, but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee in order for the falsification to rise to the level justifying termination. This interpretation is less rigorous but is consistent with the definition of "Falsify" found in Black's Law Dictionary (6th Edition) as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. ***

¹ Virginia Department of Corrections Operating Procedure 135.1(X)(A).

² Virginia Department of Corrections Operating Procedure 135.1(XI)(A).

³ Virginia Department of Corrections Operating Procedure 135.1(XII)(A).

⁴ DOC Operating Procedure 135.1(V)(D)(2)(b).

The Hearing Officer's interpretation is also consistent with the New Webster's Dictionary and Thesaurus which defines "falsify" as:

to alter with intent to defraud, *to falsify accounts* || to misrepresent, *to falsify an issue* || to pervert, *to falsify the course of justice*.

Grievant falsified her time sheets by reporting that she worked on December 10, December 11, and December 28, 2012 when she was absent from work. Grievant knew or should have known that she was obligated to accurately report her work hours and knew or should have known that the time sheets she submitted to the Agency showed her working on days she was not at work. The Agency has presented sufficient evidence to support its issuance of a Group III Written Notice with removal for falsification of time records.

Grievant argued that she did not intend to falsify her time sheets, she merely made mistakes. She did not testify and, thus, the credibility of her denial could not be determined. The Agency established that Grievant knew or should have known that she was falsifying her time sheets. In November 2012, Grievant submitted time sheets showing she worked on November 19 and November 20, 2012. She did not work those days. When the error was identified by the Agency, Grievant was advised of the error and reminded of her obligation to correctly submit time records. When Grievant submitted her time sheets, the Supervisor questioned her time sheets and she confirmed their accuracy. Grievant had the opportunity at that time to correct any errors.

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

⁵ Va. Code § 2.2-3005.

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal is **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 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
Richmond, VA 23219

or, send by fax to (804) 371-7401, or e-mail.

2. If you believe that the hearing decision does not comply with the grievance procedure or if you have new evidence that could not have been discovered before the hearing, you may request that EDR 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:

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 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 provide a copy of all of your appeals to the other party, EDR, 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.

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.⁶

⁶ Agencies must request and receive prior approval from EDR before filing a notice of appeal.

[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