

Issue: Group II Written Notice (falsifying documents); Hearing Date: 05/15/13;
Decision Issued: 05/20/13; Agency: VPI&SU; AHO: Carl Wilson Schmidt, Esq.;
Case No. 10054; Outcome: No Relief – Agency Upheld; **Administrative Review:**
EDR Ruling Request received 06/03/13; EDR Ruling No. 2013-3629 issued
06/10/13; Outcome: AHO's decision affirmed; Administrative Review: DHRM
Ruling Request received 06/03/13; DHRM Ruling issued 06/12/13; Outcome:
AHO's decision affirmed.



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 10054

Hearing Date: May 15, 2013

Decision Issued: May 20, 2013

PROCEDURAL HISTORY

On September 12, 2012, Grievant was issued a Group II Written Notice of disciplinary action for falsification of documents.

On October 11, 2012, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On April 10, 2012, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 15, 2013, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency's Counsel
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:

Virginia Tech employs Grievant as a Surgery Technician at one of its schools. She has been employed since December 10, 2010. No evidence of prior active disciplinary action was introduced during the hearing.

Grievant wanted to become a licensed veterinary technician (LVT) to obtain a higher paying position with the Agency. A Second University offered a distance learning program enabling students to become LVTs. Grievant took courses that required her to demonstrate she had learned how to complete certain medical procedures. The Second University provided Grievant with preprinted forms called "Task Verification" forms which she was to complete as she performed patient procedures and treatments using the University's facilities and patients. The Agency employed staff to serve as mentors for employees studying to become LVTs. Grievant's Mentor was a licensed veterinary technician whose job duties included reviewing the preprinted forms submitted by Grievant. The Mentor was to review, approve, and sign the form and return it to Grievant so that Grievant could send it to the Second University.

On August 1, 2012, Grievant submitted four Task Verification forms to the Mentor for the Mentor to approve and sign. The Mentor reviewed the forms and noticed that several procedures appeared to have been witnessed by an employee who was not working on the dates of the procedures. The Mentor made a copy of the forms and returned them to Grievant without her signature. The Mentor asked Grievant to verify the accuracy of the documents submitted. On August 2, 2012, Grievant re-submitted

the forms but the forms contained several different patient names and services on dates were not rendered for those patients.

The Agency concluded that Grievant had submitted forms on August 1, 2012 and August 2, 2012 that contained the name of patients who had never received services from the hospital.¹ For those who were actually patients, Grievant had not rendered services to them on the dates claimed. During a due process meeting, Grievant was asked about the source of the patient names. Grievant responded, "I made them up."

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include acts of minor misconduct that require formal disciplinary action."² Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action." Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."

"[F]alsification of records" is a Group III offense.³ Falsification is not defined by the Standards of Conduct 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 Blacks 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. ***

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*.

On August 1, 2012 and August 2, 2012, Grievant submitted Task Verification forms to the Mentor. Grievant wrote patient names, dates and tasks performed that were untrue. She knew at the time she wrote the information that it was untrue. When Grievant was challenged regarding the accuracy of the information she presented,

¹ For example, Grievant wrote the names of six patients on the Task Verification for Cephalic Catheter Placement even though the University had not provided services to them.

² The Department of Human Resource Management ("DHRM") has issued its Policies and Procedures Manual setting forth Standards of Conduct for State employees.

³ See, Attachment A, DHRM Policy 1.60.

Grievant admitted that “I made it up.” The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice for falsification of records. The Agency mitigated the disciplinary action to a Group II Written Notice and that Notice must be upheld.

Grievant argued that completion of the forms was not part of her work duties and, thus, there was no basis to take disciplinary action. Grievant pointed out that the forms were required by the Second University and were to be submitted to the Second University as part of becoming an LVT. She argued that if she had not completed any of the tasks, none of the terms or expectations of her employment would have been affected. She argued that the Agency’s only remedies were to notify Second University and to deny Grievant’s request for tuition reimbursement.

The Agency has established a sufficient nexus between Grievant’s behavior and her position with the Agency. Grievant took the courses in order to obtain a higher paying position with the Agency. The tasks she claimed to have performed were tasks that she would have performed during her work hours using the Agency’s facilities and patients. Grievant was working on several days she claimed to have performed procedures. She submitted the document to her Mentor during working hours. Part of the Mentor’s job duties included reviewing documents submitted by students as part of their LVT studies. The Agency has presented sufficient evidence to show that Grievant’s behavior was within the context of her work duties.

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”⁴ 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 is **upheld**.

⁴ Va. Code § 2.2-3005.

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.⁵

⁵ 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