

Issue: Group III Written Notice with Termination (falsifying records); Hearing Date: 01/30/14; Decision Issued: 01/31/14; Agency: DOC; AHO: Frank G. Aschmann, Esq.; Case No. 10255; Outcome: No Relief – Agency Upheld;
Administrative Review: EDR Ruling Request received 02/12/14; EDR Ruling No. 2014-3815 issued 03/05/14; Outcome: AHO's decision affirmed.

COMMONWEALTH OF VIRGINIA
OFFICE OF EMPLOYMENT DISPUTE RESOLUTION
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No. 10255

Hearing Date: January 30, 2014
Decision Issued: January 31 , 2014

PROCEDURAL ISSUE

No procedural issues raised.

APPEARANCES

Grievant
Grievant's Wife
Agency Representative
Two Agency Witnesses

ISSUE

Did the Grievant violate Agency policy by falsifying records and failure to follow instructions and/or policy such as to warrant the issuance of a Group III Written Notice with employment termination?

FINDINGS OF FACT

The Grievant was employed by the Agency for over ten years as a Probation and Parole Officer. The Grievant has no prior disciplinary record with the Agency. The Grievant's job duties included supervising individuals with court ordered terms of probation. The Grievant was also required to maintain and update official agency records on the CORIS system. Probationers are permitted to transfer their probation supervision to a foreign jurisdiction upon compliance with the requirements of a federal interstate compact agreement and agency policies. One requirement of the compact and the agency policy is that the receiving jurisdiction must grant permission for the transfer.

The Grievant supervised a case load of approximately one hundred probationers. One of the Grievant's probationers was convicted of illegal drug possession. This probationer wanted to transfer her probation supervision to Nevada because her mother and daughter were moving to Las Vegas. The probationer was known to have mental health issues and would no longer have any family support in Virginia once her mother and daughter left the state. The Grievant felt sympathy for the probationer because of the difficulty her circumstances would cause her. The

Grievant began the process to transfer the probationer's supervision. A transfer request was begun but never completed. Nevada eventually requested Virginia complete the request or withdraw it so that it could clear up its files. Subsequently, the agency withdrew the request for transfer. In July 2012, the Grievant requested reporting instructions from Nevada on the case. Nevada denied the request immediately. The probationer never received permission to move out of the jurisdiction or transfer her supervision to Nevada.

The Grievant consulted with his team and it was agreed that a solution would be to remove the probationer from supervision and place her on a term of uniform good behavior. In October 2013, the Grievant drafted a letter for the court making such a request. The letter was not sent to the court because additional drug testing of the probationer was required prior to any release from the terms of probation.

The probationer moved to Las Vegas without permission in July 2012. The Grievant was aware the probationer had moved to Nevada and stayed in contact with her and her mother. The Grievant followed up on the case, checking to see that the probationer was getting therapy, making payments on court costs and making contact with the Las Vegas Community Services Board. The probationer had been in Las Vegas for approximately one year when the Grievant began instructing her that she must return to Virginia to comply with the terms of her probation. The probationer became upset with the Grievant's demand that she return to Virginia. On November 13, 2013, the probationer contacted the Grievant's supervisor and complained that she was being harassed by the Grievant and that his demand to return to Virginia was unreasonable since she had been in Las Vegas for over a year and was doing well. The Grievant's supervisor was unaware of the probationer's move to Las Vegas. The Grievant's supervisor notified his supervisor and an investigation of the case began.

A review of the case notes in the CORIS system revealed that there was never any notation that the probationer had moved to Las Vegas. Further, it was discovered that the Grievant had knowingly and intentionally entered notations which were false. The Grievant had made notations which stated the probationer had appeared in person for office visits on 9/11/12 and 3/19/13. Office logs showed that the probationer had not appeared in the office on those days. Additionally, the probationer, stated she had not returned to Virginia since leaving in July of 2012. The probationer stated she had no funds to travel and no where to stay in Virginia and thus had been unable to return. When questioned about the office visit notations the Grievant lied to his supervisors and stated the probationer had come to the office and had just failed to sign the log.

The Grievant further falsified the case notes in the CORIS system by entering notations that he had performed home visits with the probationer on 11/14/12, 1/10/13 and 7/19/13 at her residence in [town], Virginia. The Grievant knowingly and intentionally made these false notations as he had the knowledge, at the time the notes were made, that the probationer was in Las Vegas at the time of the alleged home visits in Virginia. The agency investigation verified that the probationer did not live at the address listed in the CORIS system at the time of the alleged home visits. The probationer's mother also verified that the probationer had been living in Las Vegas since July 2012.

Agency policy prohibits probationers from moving out of state without permission. The Grievant failed to enforce the agency's policy on this issue by not requesting a bench warrant for the probationer's violation. Additional agency policy requires a probation officer to consult with his supervisors on difficult cases when he is unsure what to do or if there is a question as to what action should be taken on a particular case. The Grievant failed to consult his supervisors on this difficult case and avoided their scrutiny by entering false and deceptive notations in the CORIS system.

The Grievant's supervisors determined that the seriousness of the offense warranted employment termination. The agency determined that there were no mitigating factors which would justify a lesser sanction. The agency issued a Group III Written Notice with employment termination. The Grievant timely appealed the decision of management and requested a due process hearing.

The Grievant states that his relationship with his supervisors changed after he successfully challenged a disciplinary action in July of 2013. The disciplinary action had been brought by the Grievant's second-line supervisor and had been over turned by upper management. The Grievant states his work was scrutinized more closely than before and differently from other staff. The Grievant states he was no longer greeted or treated in a friendly manner and was subjected to inappropriate gestures by his second-line supervisor. The Grievant states that policies which had never been enforced before in his tenure were now enforced, such as not being allowed to take an agency laptop computer home to do work off site. The Grievant states this created a hostile working environment.

APPLICABLE LAW AND OPINION

The General assembly enacted the Virginia Personnel Act, Code of Virginia §2.2-2900 et seq., establishing the procedures and policies applicable to employment with 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 (1989).

Code of Virginia §2.2-3000 et seq. sets forth the Commonwealth's grievance procedure. State employees are covered by this procedure unless otherwise exempt. Code of Virginia §2.2-3001A. In disciplinary actions, the Agency must show by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. Department of Employment Dispute Resolution Grievance Procedure Manual, §5.8 (2).

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Code of Virginia §2.2-1201, the Department of

Human Resource Management promulgated Standards of Conduct Policy number 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 of Conduct 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. The Agency has established Operating Procedure 135.1 which creates Standards of Conduct in accord with the mandated procedures and policy of the Department of Human Resource Management.

The Standards of Conduct define a Group III offense to include acts of misconduct of such a severe nature that a first occurrence normally should warrant employment termination. Falsifying records is listed as an example of a Group III violation under the Standards of Conduct.

The Grievant acknowledges he made mistakes in the handling of the probationer's case and further specified that he should have requested a bench warrant at the time the probationer left Virginia without permission. Thus the Grievant admits and confirms the violations of policy alleged by the agency.

The agency submitted evidence which unequivocally shows the Grievant knowingly and intentionally made false entries into the CORIS system. The entries related to home visits could not have been true as the probationer was no longer occupying that address. The Grievant lied about home and office visits to cover up his false entries demonstrating his intent to falsify the records and prevent his supervisors from being aware of his breaches of policy in regard to the probationer leaving the state. The Grievant failed to follow policy by not requesting the bench warrant and not consulting his supervisors on the difficult case.

The Grievant argues that he should not be judged by the one case because he has handled thousands of cases successfully over his tenure which exceeds ten years. Unfortunately for the Grievant, this is exactly what the Standards of Conduct contemplate and permit. While, the Standards of Conduct advocate the use of progressive discipline, they specifically authorize employment termination in egregious cases. One offense of an egregious nature is sufficient to warrant employment termination. The Standards of Conduct specifically list falsifying records as such an offense. To be a sufficiently egregious offense to meet the standard of a Group III level offense the offense must have a significant impact on the agency operation. The Grievant's action did have a major impact on the agency. The Commonwealth of Virginia must work with other jurisdictions in matters of probation transfers. The working relationship with Nevada was strained by the acts of the Grievant and the agency was embarrassed by the failure of one of its employees to follow the policies which govern probation transfers. Additionally, the Grievant created a risk to the citizens of Nevada by allowing a mentally ill probationer to move into its jurisdiction without its knowledge or permission. This denied Nevada the opportunity to supervise the probationer and fulfill its duty to safeguard its citizens. Creating false records which other agency personnel and court officials rely upon is a significant breach of trust by the Grievant. In addition to creating the false records to cover up his malfeasance the Grievant lied about his actions creating an even greater breach of trust. The agency's decision that there was no lesser sanction than employment termination was reasonable because the Grievant created a

situation where he could no longer be trusted to fulfill his duties in accord with agency policy.

The Grievant's actions rise to the level of a Group III Written Notice and while the agency could have elected to impose a lesser sanction its action is authorized by the Standards of Conduct and is not unreasonable.

The Grievant also argues that the action was taken against him as a reprisal for his successful defense of a prior disciplinary action. The Grievant brought forth no evidence which would corroborate his allegations. He stated he feared reprisal against those who would testify on the issue. This Hearing Officer is bound to make a decision based upon the evidence presented and a mere allegation by a biased party to an action is insufficient evidence to make a finding of reprisal.

Wherefore, it is found that the agency has met its burden of proof establishing violations of agency policy which justify a Group III Written Notice with employment termination.

DECISION AND ORDER

The disciplinary action of the Agency is affirmed.

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 email.

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 email 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. 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.

Frank G. Aschmann
Hearing Officer