

Issue: Group II Written Notice (failure to follow policy) and Termination (due to accumulation); Hearing Date: 03/06/14; Decision Issued: 03/12/14; Agency: VPI&SU; AHO: Sondra K. Alan, Esq.; Case No. 10277; Outcome: No Relief – Agency Upheld.

DECISION OF HEARING OFFICER  
IN RE: CASE NO. 10277  
HEARING DATE: 3/6/2014  
DECISION ISSUED: 3/12/2014

PROCEDURAL HISTORY

Grievant was sent a letter on January 15, 2014 explaining a January 2, 2014 incident of failure to report to work.<sup>1</sup> He was given an opportunity on January 6, 2014 to have a pre-disciplinary conference. Later on January 16, 2014 Grievant was issued a Group II Written Notice based on Policy 13: Failure to follow instructions and/or policy<sup>2</sup>. This was due to his absence from work without notice. Grievant was terminated based on an accumulation of other written notices. Grievant had three (3) previous notices for unauthorized absences from work on November 9, 2012, resulting in counseling, June 26, 2013, resulting in a Group I Written Notice and October 29, 2013, resulting in a Group II Written Notice. Grievant appealed and a Hearing Officer was appointed on February 10, 2014, a pre-hearing conference was scheduled February 19, 2014 and at that time the matter was scheduled for March 6, 2014 in the president's conference room at the Agency.

APPEARANCES

Agency Advocate

Agency Representative

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<sup>1</sup> Agency collective Exhibit A tab E

<sup>2</sup> Agency collective Exhibit A front page

## ISSUES

1. Whether Grievant's conduct violated Virginia Polytechnical Institute and State University policy number 13<sup>3</sup> <sup>4</sup>.

2. Whether Grievant was appropriately issued a Group II Written Notice with termination.<sup>5</sup>

## BURDEN OF PROOF

In disciplinary actions, the burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against the Grievant were 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. Grievant has the burden of proving any affirmative defenses raised by Grievant. GPM §5.8.

## CONCLUSION 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." 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

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<sup>3</sup> Agency collective Exhibit A front page

<sup>4</sup> Agency collective Exhibit A tab I page 7

<sup>5</sup> Agency collective Exhibit A tab G page 33

termination." More than one (1) active Group II offense may be combined to warrant termination.<sup>6</sup>

### FINDING OF FACTS

Grievant was hired July 12, 2005 and served the Agency for eight and a half (8 1/2 ) years. During his employment he received four (4) disciplines for absences from work without giving notice to his employer. The most recent prior to the present January 16, 2014 Group II Written Notice was another Group II Written Notice for the same infraction which was issued on October 29, 2013. Combined with two (2) active accumulated Group II Written Notices Grievant was terminated on January 16, 2014. Although Grievant participated in the pre-hearing conference call and was aware of a hearing date, Grievant failed to pursue his cause in this matter. No prior notice was given to the Hearing Officer or the Agency that Grievant was unable to attend the hearing. Agency and Hearing Officer waited thirty-five (35) minutes for Grievant to appear for the scheduled hearing. No defense to Agency's claim was made. Agency's Advocate made an opening statement and presented his notebook of exhibits as evidence.<sup>7</sup> No further testimony was taken.

The uncontroverted demonstrative evidence supplied by Agency in Exhibit A tabs A-M would support the claim of the Agency. Grievant did have three (3) prior warnings for improper absences from his work.<sup>8</sup> In October of 2013 Grievant was issued a Group II Written Notice for failure to appear to work with a resulting Group II action. Grievant

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<sup>6</sup> Agency collective Exhibit A tab G page 33

<sup>7</sup> Agency collective Exhibit A

<sup>8</sup> Agency collective Exhibit A tabs A section IV, C, D

received an additional Group II Written Notice on January 16, 2014. The combination of the two (2) active Group II Written Notices resulted in termination.

#### OPINION

Based on the uncontested demonstrative evidence submitted by the Agency, Grievant did violate the Policy Standard for which he was cited which combined with a previous active Group II to warrant termination as a disciplinary action.

#### DECISION

For the above reason the Group II discipline with termination as combined with a previous Group II 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 14<sup>th</sup> St., 12<sup>th</sup> 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 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto: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.<sup>9</sup>

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

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Sondra K. Alan, Hearing Officer

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<sup>9</sup> 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.