

Issue: Group I Written Notice (unsatisfactory performance); Hearing Date: 04/14/14;
Decision Issued: 04/14/14; Agency: VDH; AHO: Frank G. Aschmann, Esq.;
Case No. 10295; Outcome: Full Relief.

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

DECISION OF HEARING OFFICER

In the matter of: Case No. 10295

Hearing Date: April 14, 2014
Decision Issued: April 14, 2014

PROCEDURAL ISSUE

No procedural issues raised.

APPEARANCES

Grievant
Two witnesses for Grievant
Agency Representative

ISSUE

Did the Grievant violate Agency policy by failing to perform his duties satisfactorily such as to warrant the issuance of a Group I Written Notice?

FINDINGS OF FACT

The Grievant objected to the exhibits offered by the Agency Representative. The Agency Representative called no witnesses. The Agency Representative had no personnel available with any knowledge of the matter. The Agency Representative made no motions in the matter. The Agency Representative was unable to authenticate or introduce his exhibits. The Grievant made a motion to strike the Agency's case. The Grievant's motion was granted.

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).

The Agency failed to meet its burden of proof in this matter when it did not call any witnesses and was unable to authenticate or introduce its exhibits.

DECISION AND ORDER

The Agency has failed to meet its burden of proof to demonstrate the Grievant performed his job duties unsatisfactorily. It is hereby ordered that the Agency remove the Group I Written Notice from the Grievant's file and restore any employment benefits lost as a result of the disciplinary action.

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