

Issues: Group II Written Notice (failure to follow policy); Group II Written Notice (failure to follow policy), and Termination (due to accumulation); Hearing Date: 04/07/14; Decision Issued: 04/28/14; Agency: DJJ; AHO: Ternon Galloway Lee, Esq.; Case No. 10305; Outcome: No Relief – Agency Upheld.

## **DECISION OF HEARING OFFICER**

**In the matter of**

**Case Number: 10305**

**Hearing Date: April 7, 2014**

**Decision Issued: April 26, 2014**

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### **SUMMARY OF DECISION**

The Agency had found Grievant committed two counts of failure to follow policy and unsatisfactory job performance. The Agency then issued Grievant two Group II Written Notices. The Hearing Officer found Grievant engaged in the conduct alleged and it was misconduct. Thus, the Hearing Officer upheld the discipline.

### **HISTORY**

On February 8, 2014, the Agency issued Grievant two Group II Written Notices for failing to follow instructions and or policy and unsatisfactory job performance. On February 17, 2014, Grievant timely filed her grievance to challenge the Agency's actions. On March 12, 2014, the Office of Employment Dispute Resolution ("EDR") assigned the undersigned as the hearing officer to this appeal. A prehearing conference ("PHC") was held on March 26, 2014.<sup>1</sup> Subsequently, the Hearing Officer issued a scheduling order setting the hearing for April 7, 2014, as agreed to by the parties.

On the date of the hearing and prior to commencing it, the parties were given an opportunity to present matters of concern to the Hearing Office. None were presented. During the hearing the Hearing Officer admitted Agency exhibits 1 through 20, and Grievant's Exhibits 1 through 19. There were no objections to the exhibits.

At the hearing both parties were given the opportunity to make opening and closing statements and to call witnesses. Each party was provided the opportunity to cross examine any witnesses presented by the opposing party.

During the proceeding, the Agency was represented by its advocate, and the Grievant by her advocate.

### **APPEARANCES**

Advocate for Agency  
Witnesses for the Agency (2 witnesses)  
Advocate for Grievant  
Grievant  
Witnesses for Grievant (1, the Grievant)

### **ISSUE**

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<sup>1</sup> This was the first date available for both parties for the PHC.

Was the written notices warranted and appropriate under the 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 Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual (“GPM”) § 5.8(2). 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 all the evidence presented and observing the demeanor of each witness who testified, the Hearing Officer makes the following findings of fact:

1. Grievant began working for the Agency on November 10, 2011. Specifically, prior to her termination, Grievant was the program director at a residential half-way house for adolescents and young adults. This agency program was located in Norfolk, Virginia. Under Grievant’s management, the program received 100 percent compliance with state mandates and a three year certification. Prior to Grievant’s employment with the Agency, the program had lost its certification. (G Exh. 4, p. 1; Testimony of Grievant).
2. In Fall 2013, at the direction of the Agency, its senior internal auditor (Auditor) conducted an audit of the small purchase charge card (SPCC) program of the Agency. (Testimony of Auditor).
3. The audit covered the period July 2012 to June 2013. Auditor randomly selected 33 cardholders in the SPCC program for auditing. Grievant and Grievant’s Assistant were two of the randomly selected card holders. (Testimony of Auditor).
4. To conduct the audit, a transaction listing of credit card uses was obtained for fiscal year 2013 (July 2012 to June 2013) on each of the 33 card holders. This listing contained the name of the employee assigned the credit card, charges made using the credit card, dates of the charges, the amount of the charges, and the vendors. (Testimony of Auditor).

### **AUDIT OF GREIVANT**

5. With regard to the audit on the usage of Grievant’s credit card, the Auditor discovered that six (6) Payment Cover Sheets<sup>2</sup> submitted by Grievant or on her behalf to Accounts Payable did not contain a signature by her supervisor- the unit head supervisor- certifying that the credit payments listed on the cover sheet were for services that were received in accordance with all

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<sup>2</sup>The Payment Cover Sheets basically contained a log of payments made using the credit card during a particular month and a statement signed by the cardholder and his/her supervisor attesting that the payments appearing on the log and any attached supporting documentation were for approved state expenditures. The Payment Cover Sheets and any attached supporting documentation were submitted to Accounts Payable.

state regulations. (Testimony of Auditor; A Exhs. 3 and 12, p. 7).

6. The 6 Payment Cover Sheets were dated January 15, 2013; February 15, 2013; March 15, 2013; April 13, 2013; May 15, 2013; and June 15, 2013. Grievant was listed as the cardholder. Of the 6 cover sheets, Grievant signed the ones dated January 15, 2013, March 15, 2013, and April 15, 2013. Without her permission, Grievant believes her assistant signed the remaining cover sheets for February 15, 2013, May 15, 2013, and June 15, 2013. Grievant believed that after Grievant would sign her cover sheet, it would be sent to the appropriate individual by her assistant. Grievant did not necessarily know who was designated as the appropriate individual to receive the cover sheets as she trusted her assistant was aware of this information. (Testimony of Grievant; G Exhs. 7, pp. 2, 5, and 6).

7. Management determined that the submission of Grievant's cover sheets from January 15, 2013, through June 15, 2013, to Accounts Payable was in violation of its Policy 04-410 as they failed to be countersigned by Grievant's supervisor.

8. In pertinent part, the referenced policy 04-401 reads as follows:

#### Billing and Payment

a. By the tenth calendar day of the month, cardholders must send to Accounts Payable (i) the previous month's charge card statement; (ii) a signed Payment Cover Sheet certifying that goods and services were received in accordance with law and noting any pertinent purchasing documentation and (iii) a copy of the report titled Purchases by Statement. . . . Failure to send the necessary paperwork to accounting by the 10th of the month will result in a warning for the first infraction; temporary suspension of the card for the second infraction and on the third infraction, the card will be canceled. If there will be a delay in submitting the documents, notify Accounts Payable as soon as possible.

b. The cost center supervisor will verify that each purchase in the log is for official business and will sign the cover sheet. The "Cover Sheet for Payment" must always be signed by two persons – usually the cardholder and the cost center manager. **If the cardholder is also the cost center manager, the cardholder supervisor must sign.**

(A Exh. 11, p. 5).

9. Grievant was considered a cost center manager. And under policy 04-401, Grievant's supervisor was required to sign her Payment Cover Sheets or Cover Sheet for Payment. (Testimony of Auditor; A Exh. 11, p. 5).

10. Because management determined Grievant had violated the above-referenced provision(s) of Policy 04-401, on February 8, 2014, it issued Grievant a Group II Written Notice with termination for failure to follow policy and unsatisfactory performance. The Notice described the offense as noted below:

During this period (1/15 – 6/15, 2013), you submitted 6 SPCC Payment Certification forms for charges you incurred on your small purchase charge card to the Accounting Department for payment. You failed to submit your purchase logs to your supervisor in advance for review and approval. This is a violation of DJJ directive 04-041<sup>3</sup> (sic), Procurement Procedures, which requires the cardholder to submit appropriate documentation to the supervisor for review, and to obtain the supervisor's signature on Payment Certification form.

(A Exh. 1, p. 3, parenthetical added).

11. Grievant was aware or should have been aware of the requirements in Policy 04-401 during her employment with the Agency. (Testimony of Procurement Manager; A Exhs. 5, 6, 7, and 8).

### **AUDIT OF GRIEVANT'S ASSISTANT**

12. With regard to the audit on the usage of the credit card of Grievant's Assistant, the Auditor reviewed certain Payment Cover Sheets that were sent to Accounts Payable. They were dated January 15, 2013; February 15, 2013; March 15, 2013; April 15, 2013; May 15, 2013; and June 15, 2013. These cover sheets indicated the card holder was Grievant's Assistant. In addition to being signed by Grievant's Assistant, each was signed by or purportedly signed by her supervisor, the Grievant. (A Exh. 4, pp. 1 – 7).

The evidence shows Grievant signed as her assistant's supervisor the statements dated January 15, 2013, March 15, 2013, April 15, 2013, and June 15, 2013. The evidence also shows that presumably Grievant's Assistant signed the Grievant's name to the referenced cover sheets dated February 15, 2013, and May 15, 2013. (Testimony of Grievant; G Exhs. 10 and 13). As referenced above, the purpose of the signatures was to certify that the credit payments listed on the cover sheets were for services that were received in accordance with all state regulations. (A Exh. 4, certification statements).

13. The audit determined that some of the charges reflected on the credit card statements/supporting documentation submitted with the Payment Cover Sheets for Grievant's Assistant were unrelated to the assistant's job or for personal use.

In particular, there were charges for gift cards which employees were not permitted to purchase with their issued credit cards. Those purchases totaled \$6,071.05 and were fraudulent. (Testimonies of Auditor and Grievant; A Exh. 12, p. 5; A Exh. 20).

Additionally, credit card purchases for state expenditures for this Agency program were

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<sup>3</sup> The Hearing Officer notes that in the description of the offense, the policy is identified as "Policy 04-041," She is also cognizant of Grievant's assertion that she was not aware of policy 04-401 until she was disciplined. But, Grievant does not argue that, when management disciplined her, she had no knowledge that the policy she is charged with violating is "Policy 04-401." Thus, the Hearing Officer finds Grievant has received timely notice that she violated Policy 04-401.

normally made in the geographical area where the Agency program was located. In this case, Grievant's assistant worked in Norfolk, Virginia. So credit card purchases for the state would have been made in the Norfolk geographical area. But the documentation submitted with her Payment Cover Sheets indicated she had made purchases with the credit card in Newport News, Virginia, and Hampton, Virginia. Nothing was submitted by Grievant's assistant to justify that the purchases she made in those foreign jurisdictions were state related and it was determined that those charges were for the personal use of Grievant's Assistant. (Testimony of Auditor; A Exh. 20, p. 2-6).

Also, in addition to the gift card purchases and purchases in foreign jurisdictions, the bank statements and receipts for purchases indicated other purchases were for the assistant's personal use. (Testimony of Auditor; A Exhs. 13, 20).

14. Further, the audit revealed that submissions by Grievant's Assistant regarding her credit card purchases lacked 189 receipts, and the purchases related to these missing receipts totaled \$30,198.15. Some of the 189 purchases were determined to be non-related to state expenditures. Because fraudulent use of the credit card was suspected, the assistant's credit card usage information was turned over to the Office of Inspector General for a fraud investigation. (Testimony of Auditor; A Exh. 12, p. 4).

15. Management expected Grievant, as her assistant's supervisor, to review monthly the Payment Cover Sheet, with supporting documentations, to include Payment Certification, credit card transactions, and receipts to determine if the purchases were approved and the information on the log is accurate. (Testimonies of Auditor and Procurement Manager; A Exh. 11, p. 5; A Exhs 6, 7, and 8).

16. Grievant trusted her assistant and throughout her employment with the Agency, she often did not review the log or documentation provided by her subordinate. (Testimonies of Auditor and Grievant).

17. Grievant was in contact with the Auditor during the audit. She cooperated with the Auditor and provided information about whether some of the assistant's purchases were approved or not. (Testimonies of Auditor and Grievant).

18. Once Grievant learned that her assistant improperly purchased gift cards with assistant's credit card, Grievant issued her assistant 6 Group III Written Notices with termination for violating the Department of Accounts CAPP Manual policy 20355 (policy 20355). (A Exh. 18).

19. Under policy 20355, the Agency is responsible for maintaining documentation on purchases made by credit card holders and reconciling them. Because of this requirement, under the policy cardholders are required to forward their monthly credit card statements to their supervisors, along with the log of their transactions which has a written certification that the monthly statement has been reconciled with the purchasing log and supporting documentation, such a receipts. (A Exh. 9, p. 30).

20. Also, to meet it reconciliation responsibility, Policy 20355 requires supervisors

to “[r]eview and approve, **by signing and dating**, the reconciled statement before forwarding it to the accounting department.... (A Exh. 9, p. 30). By following the above-referenced process, the supervisor is agreeing that all information provided on the log and its attachments are correct and valid state expenditures. (A Exh. 9, 30).

21. Grievant was her assistant’s supervisor. Grievant failed to review her assistant’s Payment Cover Sheets that were the subject of the audit. Fraudulent charges were found in these Payment Cover Sheets submitted on behalf of the assistant. (Testimony of Grievant and Auditor).

22. On February 8, 2014, management issued Grievant a Group II Written Notice for failure to follow policy and unsatisfactory work performance. This was because of the audit on payments/transactions referenced on the assistant’s Payment Cover Sheets and accompanying documentation. The notice described the offence as follows:

During this period (1/15 – 6/15, 2013), you submitted 6 SPCC Payment Certification forms certifying that credit card purchases made by an employee were appropriate and used for official business. A DJJ audit found numerous inappropriate personal purchases made by the employee during this period. As her supervisor, it was your responsibility to verify on a monthly basis that each charge in the log was for official purposes, as required by DJJ directive 04-041, Procurement Procedures.

(A Exh. 1, p. 1, parenthetical added).

## **OTHER**

23. Grievant’s orientation checklist does not indicate she received policy 04-401. (Testimony of Grievant; A Exh. 10).

24. During Grievant’s probationary periods and on her last performance evaluation, she was rated a contributor. (G Exhs. 4 and 6; G Exh. 14, p. 10).

25. On June 28, 2011, Grievant’s Assistant signed a Commonwealth of Virginia Bank of America Purchasing Card Employee Agreement. Grievant had knowledge of this agreement as she also signed it as her assistant’s supervisor. Paragraph 5 of this agreement states “[I] I will follow the established procedures for the use of the (credit) card. Failure to do so may result in either revocation of my privileges or other disciplinary actions, up to and including termination of employment.” (A Exh. 15, parenthetical added).

Since Grievant was her assistant’s supervisor and had knowledge of the agreement and its content, it is reasonable to find that Grievant would be management personnel to take discipline action against her assistant for violation of standards of conduct, to include failing to follow established procedures for using the credit card. And further, in order for Grievant to be able to discipline her subordinate for such violation, Grievant would be familiar with applicable policy regarding the SPCC program. (A Exh. 15)

26. Grievant had on-line training in 2012 and 2013 regarding procedures for usage of the Small Purchase Charge Card. As a consequence, she should have been familiar with the CAPP Manual Topic 20355 policy which relates to requirements under policy 04-401. (Testimony of Grievant; A Exh. 6, p. 3).

The training informed Grievant that regarding audits:

By signing and dating a reconciliation, you are agreeing that every item on the log is accurate and complete and for official state business only. If a transaction appears to be invalid, consult cardholder and program administrator immediately.

Auditors are very particular about the supervisor/reviewer role in reconciliations. Your signature on the log guarantees that you have reviewed statement, log, and receipts for validity.

(Agency Exhibit 7, p. 10).

Further, training materials noted that a supervisor/reviewer is required to contact the cardholder if he/she does not receive the reconciliation by the Agency's due date. Grievant did not do this (A Exh. 7, p. 11; Testimony of Grievant).

27. Grievant was not provided with supporting documentation from her assistant when she received her assistant's Payment Cover Sheets. Neither did Grievant request such. Had Grievant done so it is likely she would have observed several of the assistant's purchases were not state expenditures and thus unapproved. (Testimony of Grievant).

28. Grievant's Employee Work Profile (EWP) provides in pertinent part in the "Administrative Duties" section the following:

- (i) promptly submits invoices with appropriate documentation to comply with Commonwealth's Prompt Pay laws;
- (ii) periodically reviews, controls, and reports expenditures to remain within budgeted allocations; ensures that all funds (state, federal, Grant, etc.) are expended appropriately and within permissible parameters

(G Exh. 3, p. 2).

29. Each of Grievant's Probationary Reviews and Interim Evaluation indicated that she was responsible for becoming more familiar with "budgeting and purchasing procedures." (G Exhs. 4, 5, and 6). Her EWP required Grievant to "promptly submit invoices with appropriate documentation complying with the commonwealth's pay laws." Further this EWP required Grievant as a supervisor to adhere to procurement and contracting procedures to include appropriate use of small purchase credit card.... (G Exh. 14, p. 2).



30. The audit did not reveal that Grievant engaged in fraudulent activity. (Testimonies of Auditor and Grievant).

31. The audit revealed that Grievant's supervisor also had some work performance deficiencies regarding following the SPCC procedures. But it did not demonstrate they were at the same level of seriousness as Grievant. For example, submissions to Accounts Payable for Grievant's supervisor did not lack receipts to support \$30,000 of credit card purchases. (Testimony of Auditor).

32. Grievant's supervisor was not terminated. Since the audit Grievant's supervisor has retired. (Testimonies of Auditor and Grievant).

33. Prior to her termination, Grievant's disciplinary history included a Group II Written Notice for failing to follow policy/instructions. (A Exh. 17).

### **DETERMINATIONS AND OPINION**

The General Assembly enacted the *Virginia Personnel Act*, VA. Code §2.2-2900 et seq., establishing the procedures and policies applicable to employment within 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/her 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, 656 (1989).

*Va. Code* § 2.2-3000 (A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints... To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances.<sup>4</sup>

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (Policy 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 serve to

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<sup>4</sup> Grievance Procedural Manual §5.8

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.

Under the Standards of Conduct, Group I offenses are categorized as those that are less severe in nature, but warrant formal discipline; Group II offenses are more than minor in nature or repeat offenses. Further an offense is appropriately identified as a Group II offense when it significantly impacts business operations/constitute neglect of duty or violation of a policy/procedure. Group III offenses are the most severe and normally warrant termination. *See* Standards of Conduct Policy 1.60.

On February 8, 2014, management issued Grievant two Group II Written Notices for the reasons stated in the above section. The Hearing Officer examines the evidence to determine if the Agency has met its burden.

## **I. Analysis of Issue before the Hearing Officer**

**Issue: Whether the discipline was warranted and appropriate under the circumstances?**

### **A. Did the employee engage in the behavior described in the Group II Written Notices and did that behavior constitute misconduct?**

The group notices asserted that Grievant's work performance was not satisfactory in essence because Grievant failed to follow Agency policy 04-401. Particularly, the notices indicated that Grievant:

- (i) failed to obtain her supervisor's signature on Grievant's SPCC Payment Cover Sheets prior to those sheets being submitted to Accounts Payable for payment of credit card purchases; and
- (ii) failed to review her assistant's Payment Cover Sheets and supporting documentation to determine whether the charges listed were for approved state expenditures. And as a result of Grievant not performing this task, fraudulent charges for personal use were made.

The evidence shows that policy 04-401 addresses billing and payment under the SPCC program. As such, the policy requires credit card holders to submit monthly Payment Cover Sheets certifying that the purchases made are for official state expenditures. Further, under the policy the Payment Cover Sheets are required to be accompanied with documentation supporting the purchases. Both the cardholder and his/her supervisor are expected to sign the certification statement on the Payment Cover Sheet before it is submitted to Accounts Payable.

Grievant claims to have not been aware of the policy. A review of evidence pertinent to this claim shows that Grievant received training on the SPCC program on several occasions from 2011 to 2013. What is more, the Payment Cover Sheets regarding purchases made by Grievant

or her assistant explicitly set forth the expectation that both the cardholder and the cardholder's supervisor must sign the Payment Cover Sheet attesting that the purchases made on the card were for valid state expenditures. Also, each of Grievant's Probationary Reviews and her Interim Evaluation indicated that she was responsible for becoming more familiar with "budgeting and purchasing procedures." Her EWP required Grievant to "promptly submit invoices with appropriate documentation complying with the commonwealth's pay laws." Further this EWP requires Grievant as a supervisor to adhere to procurement and contracting procedures to include the appropriate use of small purchase credit card. Accordingly, the Hearing Officer finds Grievant knew or should have known of policy 04-401.

Regarding the Payment Cover Sheets that listed Grievant as the cardholder, Grievant does acknowledge that she signed the certification statement on three of them acknowledging that purchases she made were for official state expenditures. Below each of her signatures is a line for her supervisor to sign attesting to the same. Grievant testified that after she signed the sheets, she let her assistant handle the rest. At no time did Grievant take action to obtain her supervisor's signature on the sheets or verify they were obtained by her assistant. The evidence shows that Grievant's supervisor never signed the sheets. Yet, contrary to agency policy 04-401, they were submitted to Accounts Payable for payment.

Accordingly, the Hearing Officer finds Grievant engaged in the behavior alleged with respect to three of the Payment Cover Sheets listing Grievant as the cardholder and that the behavior was in violation of policy 04-401.

Regarding the Payment Cover Sheets that listed Grievant's Assistant as the cardholder, Grievant does acknowledge that she signed the certification statement on four of them acknowledging that the purchases were made for goods and/or services that were approved by the Agency. Yet, Grievant testified that she did not review any documentation nor did she ask for any documentation to support the expenditures appearing on the Payment Cover Sheet were for valid state reason. The evidence demonstrates that it was later determined by the audit that Grievant's assistant had made at least \$6,000.00 of fraudulent charges. Further, the audit revealed that at least 189 purchases were made by the assistant for which no receipts were obtained. Some were determined to not be valid purchases. The evidence also showed that had Grievant asked for documentation from her assistant and reviewed it before signing the certifications --as policy and Grievant's responsibility require -- some of the fraud likely would have been detected and avoided.

Thus, the Hearing Officer finds Grievant engaged in the behavior alleged regarding the Payment Cover Sheets listing her assistant as the cardholder in that Grievant signed the certification statement on at least four of those sheets without reviewing any documentation to determine if her assistant's purchases were for state approved expenditures. The Hearing Officer further finds this behavior violated policy 04-401.

Having made the findings that Grievant engaged in the conduct noted in the two group notices and that the behaviors were misconduct, the Hearing Officer has considered each of Grievant's claims, to include the assertion that Grievant was not aware of the policy, that she trusted her assistant, and that some of the Payment Cover Sheets were not signed by Grievant,

but someone else.

## **B. Was the discipline consistent with policy and law?**

The evidence shows that Grievant engaged in the misconduct noted above. Under Policy 1.60, failure to comply with instructions/policy is a group II offense. In this case, Grievant committed two such offenses. In addition, Grievant's active disciplinary history consists of another Group II Offense for failure to comply with policy. Policy 1.60 also indicates that a normal discipline for the second Group II Offense can be discharge. In this case, Grievant now has, not only two, but three Group II Offenses. Thus, the Hearing Officer finds Grievant's discipline is consistent with policy and law.

That said, the Hearing Officer has considered Grievant's contention that her supervisor was not terminated; however, the evidence presented was not sufficient to show that Grievant's supervisor was similarly situated as Grievant. Accordingly, the Hearing Officer does not find that just because Grievant's supervisor was not terminated her group notices and/or termination should be rescinded.

## **II. Mitigation.**

Under statute, hearing officers have the power and duty to “[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with the rules established by the Office of Employment Dispute Resolution [“EDR”].”<sup>5</sup> EDR's *Rules for Conducting Grievance Hearings* provides that “a hearing officer is not a super-personnel officer” therefore, “in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.”<sup>6</sup> More specifically, the *Rules* provide that in disciplinary, grievances, if the hearing officer finds that;

- (i) the employee engaged in the behavior described in the Written Notice.
- (ii) the behavior constituted misconduct, and
- (iii) the agency's discipline was consistent with law and policy, the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.<sup>7</sup>

Thus, the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above. Further, if those findings are made, a hearing officer must uphold the discipline if it is within the limits of reasonableness.

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<sup>5</sup> Va. Code § 2.2-3005 and (c)(6)

<sup>6</sup> *Rules for Conducting Grievance Hearings* VI(A)

<sup>7</sup> *Rules for Conducting Grievance Hearings* VI(B)

The Hearing Officer has found that Grievant engaged in the conduct described in the group notices and that the behaviors were misconduct. Further, the Hearing Officer has found, the Agency's discipline was consistent with policy and law.

Next, the Hearing Officer considers whether the discipline was unreasonable. The Hearing Officer has carefully deliberated. This has included considering all the evidence, to include (but not limited) testimony of all witnesses, Grievant's work history, Grievant's prior disciplinary record, Grievant's claim that she was not aware of the policy and trusted her assistant. She has also considered that Grievant obtained certification for the program, that her supervisor was not terminated, and that Grievant did not engage in fraudulent activity. Having taken all evidence into account, the Hearing Officer cannot find the Agency acted unreasonable. The Hearing Officer also finds Grievant's behavior aggravating because fraud was committed on the Agency.

### **DECISION**

Hence for the reasons stated here, the Hearing Officer upholds the Agency's discipline.

### **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 N. 14th 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 N. 14th 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>8</sup>

Entered this 26<sup>th</sup> day of April, 2014

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Ternon Galloway Lee, Hearing Officer  
cc: Agency Advocate/Agency Representative  
Grievant's Advocate/ Grievant  
EDR's Director of Hearings Program

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<sup>8</sup> Agencies must request and receive prior approval from EDR before filing a notice of appeal.