

Issue: Group I Written Notice (disruptive behavior); Hearing Date: 03/18/15;
Decision Issued: 03/26/15; Agency: DJJ; AHO: Carl Wilson Schmidt, Esq.; Case
No. 10545; Outcome: No Relief – Agency Upheld.



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 10545

Hearing Date: March 18, 2015
Decision Issued: March 26, 2015

PROCEDURAL HISTORY

On September 12, 2014, Grievant was issued a Group I Written Notice of disciplinary action for failure to follow instructions and disruptive behavior.

On October 6, 2014, 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 he requested a hearing. On January 5, 2015, the Office of Employment Dispute Resolution issued Ruling Number 2015-4068. On February 10, 2015, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On March 18, 2015, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Party Designee
Agency 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:

The Department of Juvenile Justice employs Grievant as a Probation Officer at one of its Facilities. No evidence of prior active disciplinary action was introduced during the hearing.

A court date was scheduled on July 28, 2014 at a local Court for a 17-year-old Juvenile. Grievant was responsible for providing services with respect to the Juvenile's case. Grievant formed an opinion regarding how problems regarding the Juvenile and the Juvenile's Mother should be addressed. Grievant's approach differed from that preferred by the Supervisor. Approximately one day before the court date, the Supervisor went to Grievant's office and discussed the case. The Supervisor told Grievant that regardless of how things turned out in court, please do not "take on" the Mother. The Supervisor believed the Mother was resistant and dysfunctional in dealings with the Juvenile. The Supervisor's comment was intended to inform Grievant of her expectation that he minimize conflict with the Mother.

Following the hearing, the Mother went into the hallway outside of the courtroom and began speaking with other people. Grievant left the courtroom and walked into the hallway. Grievant and the Mother began a loud and confrontational conversation. The Mother accused Grievant of failing to provide adequate services. Grievant was angry. Grievant responded loudly that she had not provided him with needed paperwork. He explained to her how she had failed the Juvenile and provided her with examples. Grievant stood close to the Mother as they argued loudly. Grievant's conflict with the

Mother was noticed by several people standing in the hallway. The Mother complained to the Agency about Grievant's behavior.

When later questioned by the Agency investigator, Grievant admitted that his emotions got the best of him when he began to get loud and defensive with the Mother. He admitted to pointing his finger at the Mother when he told her she was the cause of her child being committed.

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."¹ 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."

Disruptive behavior is a Group I offense.² On July 28, 2014, Grievant confronted the Mother in a hallway outside of a Courtroom and argued loudly with her for several minutes. He stood close to her and pointed his finger at her. His actions were noticed by others in the hallway and resulted in a complaint being filed by the Mother. The Agency has presented sufficient evidence to support the issuance of a Group I Written Notice for disruptive behavior.

Grievant attempted to explain his behavior as emanating from his frustration with the Agency's approach to addressing problems with the Juvenile and his Mother. Grievant explained he was passionate about his work and felt pressure from being away from his family. If the Hearing Officer assumes for the sake of argument that Grievant's method of addressing the Juvenile was materially better than the Supervisor's approach, it would not have been appropriate for Grievant to engage in a conflict with the Mother. Grievant's passion for his work and external pressure he was experiencing were not sufficient reasons to reduce the disciplinary action against him.

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"³ 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

¹ The Department of Human Resource Management ("DHRM") has issued its Policies and Procedures Manual setting forth Standards of Conduct for State employees.

² See, Attachment A, DHRM Policy 1.60.

³ Va. Code § 2.2-3005.

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 I Written Notice of disciplinary action 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 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.⁴

[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

⁴ Agencies must request and receive prior approval from EDR before filing a notice of appeal.