

Issue: Group III Written Notice with Termination (falsifying timesheets); Hearing Date: 05/04/15; Decision Issued: 05/14/15; Agency: VDACS; AHO: Carl Wilson Schmidt, Esq.; Case No. 10588; 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: 10588

Hearing Date: May 4, 2015
Decision Issued: May 14, 2015

PROCEDURAL HISTORY

On March 9, 2015, Grievant was issued a Group III Written Notice of disciplinary action with removal for falsifying records.

On March 12, 2015, Grievant timely filed a grievance to challenge the Agency's action. The matter proceeded to hearing. On April 6, 2015, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 4, 2015, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Representative
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 Agriculture and Consumer Services employed Grievant as a Program Support Technician. She had been employed by the Commonwealth for more than five years.

Grievant's regular work shift began at 9 a.m. on Mondays, Wednesdays, and Thursdays. Her shift ended at 5:45 p.m. on those days. Grievant's regular work shift began at 8:15 a.m. on Tuesdays and Fridays. Her shift ended at 5 p.m. on those days. Grievant took a 45 minute lunch break every work day.

Agency employees are assigned identification badges that they can "swipe" to unlock doors and gain entry. Each time a badge is swiped, a record of the employee's action is recorded in the Agency's data base. By reviewing the data base, the Agency can determine when an employee was at a particular location at a particular time of day. The Agency evaluated the data regarding Grievant's use of her badge to determine her locations and concluded that she was not always working 8 hours a day even though she reported having worked 8 hours.

On January 15, 2015, Grievant reported to the Agency's office building at 9:32 a.m. She left the parking deck at 6:03 p.m. She was 32 minutes late to work. She worked approximately 18 minutes beyond her shift. She submitted a time sheet showing she worked 8 hours but she worked only approximately 7:46 hours.

On January 28, 2015, Grievant reported to the building at 9:32 a.m. She was at the parking deck at 5:27 p.m. She reported to work 32 minutes late and left approximately 18 minutes early. She submitted a time sheet showing she worked 8 hours but she worked only approximately 7:10 hours.

On January 29, 2015, Grievant arrived at the parking deck at 8:58 a.m. She left the parking deck at 9:41 a.m. She returned to the parking deck at 12:03 p.m. and entered the building at 12:25 p.m. She left the parking deck at 5:34 p.m. Grievant submitted a time sheet showing she worked 8 hours but she worked only approximately 5:52 hours.

On January 30, 2015, Grievant arrived at the parking deck at 10:37 a.m. She entered the building at 11:42 a.m. She left the parking deck at 5:30 a.m. Grievant submitted a time sheet showing she worked 8 hours but she worked only approximately 5:48 hours.

On February 9, 2015, Grievant arrived at the building at 9:28 a.m. She entered the parking deck at 5:52 p.m. Grievant submitted a time sheet showing she worked 8 hours but she worked only approximately 7:39 hours.

On February 11, 2015, Grievant arrived at the parking deck at 9:03 am. She entered the building at 9:44 a.m. She left the parking deck at 4:36 p.m. Grievant submitted a time sheet showing she worked 7 hours and took one hour of annual leave but she worked only 6:07 hours.

On February 13, 2015, Grievant arrived at the parking deck at 8:21 a.m. and at the building at 8:34 a.m. She left the parking deck at 5:05 p.m. She submitted a time sheet showing she worked 8 hours but only worked approximately 7:46 hours.

On February 18, 2015, State Offices had a delayed opening of 2 hours. Grievant arrived at the parking deck at 10:58 a.m. She entered the building at 11:18 a.m. She left the parking deck at 5:31 p.m. Grievant submitted time sheet showing she worked 6 hours but she actually worked approximately 5:28 hours.

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.”

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

"[F]alsification of records" is a Group III offense.² Falsification is not defined by the Standards of Conduct but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee in order for the falsification to rise to the level justifying termination. This interpretation is less rigorous but is consistent with the definition of "Falsify" found in Blacks Law Dictionary (6th Edition) as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. ***

The Hearing Officer's interpretation is also consistent with the New Webster's Dictionary and Thesaurus which defines "falsify" as:

to alter with intent to defraud, *to falsify accounts* || to misrepresent, *to falsify an issue* || to pervert, *to falsify the course of justice*.

Grievant falsified several time sheets she submitted to Agency managers to account for the number of hours she was supposed to work in a day. When Grievant submitted several time sheets in January and February 2015, she knew or should have known that she was reporting she had worked more hours than she actually worked. The Agency has established that Grievant falsified time sheets based on Grievant's pattern of over reporting the amount of time she worked on several days. The Agency has established that Grievant falsified time sheets based on the amount of time (over 2 hours) overstated for January 29, 2015 and January 30, 2015. The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice. Upon the issuance of a Group III Written Notice, an agency may remove an employee. Accordingly, Grievant's removal must be upheld.

Grievant argued that the Agency could have taken lesser disciplinary action than removal. Although it is true that the Agency could have taken lesser disciplinary action, its action was consistent with the Standards of Conduct which makes falsification of records a Group III offense.

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 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

² See, Attachment A, DHRM Policy 1.60.

³ Va. Code § 2.2-3005.

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.

Grievant argued that she had filed a request for short term disability and that her request should serve as a mitigating circumstance. The Agency asserted that Grievant’s request had been denied by the Third Party Administrator. No credible evidence was presented to show the nature of any illness suffered by Grievant and that it cause her to falsify records. In light of the standard set forth in the Rules, 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 III Written Notice of disciplinary action with removal 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.