

Issue: Group I Written Notice (disruptive behavior); Hearing Date: 06/18/15;  
Decision Issued: 06/22/15; Agency: UVA; AHO: Carl Wilson Schmidt, Esq.; Case  
No. 10600; 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: 10600**

Hearing Date: June 18, 2015

Decision Issued: June 22, 2015

#### **PROCEDURAL HISTORY**

On January 26, 2015, Grievant was issued a Group I Written Notice of disciplinary action for disruptive behavior.

On February 6, 2015, 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 she requested a hearing. On May 18, 2015, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On June 18, 2015, a hearing was held at the Agency's office.

#### **APPEARANCES**

Grievant  
Grievant's Counsel  
Agency Party Designee  
Agency's 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 University of Virginia employs Grievant as a Senior Medical Coordinator. She has worked for the Agency for approximately 22 years. Grievant had prior active disciplinary action consisting of a Group II Written Notice issued September 17, 2012.

For at least a decade, Grievant served as the administrative assistant to Dr. S. She enjoyed working for Dr. S. She was actively involved in assisting him and furthering the advancement of his career. She valued her relationship with Dr. S.

In July 2014, the Chair and Mr. B decided to reassign numerous staff who provided services to the Department's doctors. Changes were made in response to reduction in the Department's budget and the need for operating efficiencies. As part of the re-organization, Grievant was removed from providing support to Dr. S. This upset her and diminished the value with which she viewed her job. Ms. S was assigned responsibility to provide support services to Dr. S.

Grievant worked in an office cube with five foot tall panels. Ms. F's office cube was located next to Grievant's office cube. Their cubes were on one side of a hallway across from offices including the office of Dr. S. The Research Administrator worked in an office approximately 40 feet down a hallway from Grievant's office.

On Friday December 19, 2014, Grievant, Ms. F, and Ms. S were having a friendly lighthearted conversation. Someone sent Dr. S a gift basket. A delivery man walked

down the hall to give the gift to Dr. S. Grievant mentioned to Ms. S how great it was to work for Dr. S. Ms. S said, "He is mine now and you ain't never getting him back." Ms. S left Grievant's office. Grievant became upset. She began slamming cabinets in her office. She slammed the copy machine and began crying. Ms. F could hear Grievant's crying. Ms. F got up from her chair and walked to the entrance of Grievant's office. Ms. F asked Grievant what was going on. Grievant responded that she used to be "family" with Dr. S when she worked for him and that this had been taken away from her and given to Ms. S who made more money than Grievant did. Ms. F could see that Grievant's face was reddened and she was sobbing uncontrollably. Ms. F was frightened by Grievant's behavior. Ms. S heard Grievant crying and came to Grievant's office. Ms. F returned to her desk. Ms. S tried to calm down Grievant. Ms. S asked Grievant to let Ms. S know if there was anything that Ms. S said to upset Grievant. Ms. S stepped away to close Dr. S's door and returned. Grievant was crying. Grievant complained about what Mr. B and Dr. C had done to her. Grievant said she had nothing to live for. Ms. S replied that yes she did and said they should go to the restroom. Ms. S became concerned for Grievant's safety. Grievant followed Ms. S into the restroom. Several minutes later, Grievant returned to her desk. Grievant left the building at the end of her shift.

The Research Administrator was working at her desk at approximately 3:30 p.m. She heard a commotion from down the hallway. She heard Grievant's loud voice and crying. She heard Grievant yell, "I will never forgive [Dr. C]. The Research Administrator got up from her desk and looked out of the doorway in the direction of the talking. She heard Grievant says that "I don't even make enough money to live on." The Research Administrator closed the door to her office suite because she did not want to be involved in the disruption. She returned to her desk and called Mr. B to report the incident. Mr. B was not at his telephone so she left a voice message. As she sat at her desk, she thought about the inappropriateness of the disturbance. She was concerned for other staff who might not have doors to close as she had done to remove herself from the commotion.

Mr. B was in another building during Grievant's outburst and was unaware of Grievant's behavior when he approached Ms. F in her office. At approximately 5 p.m., he observed Ms. F seated in her office. He said to her, "You look upset." Ms. F said "I am."

## **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."<sup>1</sup> Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action." Group III offenses "include

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

acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.”

Disruptive behavior is a Group I offense.<sup>2</sup> On December 19, 2014, Grievant engaged in disruptive behavior. She became upset and began crying. She yelled loud enough for the Research Administrator to hear her over 40 feet away. Grievant told Ms. S she had nothing to live for. Ms. S became concerned for Grievant’s safety. Ms. F remained upset until at least 5 p.m. when Mr. B observed her. Grievant interrupted the work of Ms. F, Ms. S, and the Research Administrator. The Agency has presented sufficient evidence to support the issuance of a Group I Written Notice for disruptive behavior.

Grievant argued that her behavior did not rise to the level of disciplinary action. The evidence, however, showed that her outburst distracted several employees and prevented them from performing their duties. By doing so, Grievant disrupted the Agency’s workplace thereby justifying the issuance of disciplinary action.

Grievant argued that Ms. F over-stated her testimony because of a bias against Grievant. The Hearing Officer can disregard Ms. F’s testimony and the outcome of this case will remain unchanged. Grievant’s behavior disrupted the work of Ms. S and the Research Administrator. The Agency presented ample evidence to sustain its allegation.

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 ....”<sup>3</sup> 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 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.

Grievant alleged that Mr. B and Dr. C retaliated against her. No credible evidence was presented to support this allegation.

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<sup>2</sup> See, Attachment A, DHRM Policy 1.60.

<sup>3</sup> Va. Code § 2.2-3005.

## 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 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>4</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].

*/s/ Carl Wilson Schmidt*

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Carl Wilson Schmidt, Esq.  
Hearing Officer

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