

Issues: Group II Written Notice (failure to follow policy), Group II Written Notice (failure to follow policy) and Termination (due to accumulation); Hearing Date: 09/25/13; Decision Issued: 09/30/13; Agency: VDOT; AHO: Sandra K. Alan, Esq.; Case No. 10156; Outcome: No Relief – Agency Upheld.

DECISION OF HEARING OFFICER
IN RE: CASE NO. 10156
HEARING DATE: 9/25/2013
DECISION ISSUED: 9/30/2013

PROCEDURAL HISTORY

Due to an incident that occurred on April 26, 2013 an investigation commenced regarding Grievant. Pre-discipline, due process meetings were held by Agency with Grievant on April 29, 2013, May 7, 2013 and May 13, 2013. Grievant was issued two Group II disciplinary notices with termination on June 3, 2013. This matter was disputed and a Hearing Officer was appointed on August 14, 2013. The pre-hearing conference was held on August 28, 2013.¹ At that time the matter was scheduled for hearing on September 25, 2013 at 9:30 am at the [] District Office of Virginia Department of Transportation.

APPEARANCES

Agency Advocate

Agency Representative

ISSUES

1. Whether Grievant's conduct violated Virginia Department of Transportation policies numbers 38, 14 and 31.²
2. Whether Grievant was appropriately issued two Group II Written Notices with termination.³

¹At the time of the pre-hearing conference, Grievant, although notice by letter that Grievant's attorney should be available for the pre-hearing conference, did not have her attorney available. Grievant was requested by the hearing officer to have her attorney contact the hearing officer and the Agency as soon as possible. No phone call, email, or letter was ever received from an attorney verifying his/her representation of Grievant.

²Agency Exhibit A, tabs 2&3 Policy 38, conviction of moving traffic violation while using a state vehicle. Policy 14, safety rule violation. Policy 31, violation of policy related to alcohol and drugs.

BURDEN OF PROOF

In disciplinary actions, the burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against the Grievant were 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. Grievant has the burden of proving any affirmative defenses raised by Grievant. GPM §5.8.

CONCLUSION 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." 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."⁴ More than one (1) active Group II offense may be combined to warrant termination.⁵

FINDING OF FACTS

Grievant was an Inspector for Agency for 28 years prior to termination.⁶ Grievant failed to pursue her cause in this matter. No prior notice was given to the Hearing Officer or the Agency that Grievant was unable to attend the hearing. Agency and Hearing Officer waited twenty (20) minutes for Grievant to appear for the scheduled hearing. No

³ Agency Exhibit A, tabs 2 and 3.

⁴ The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees. Agency Exhibit A, tab 13.

⁵ Agency Exhibit A, tab 13, page 9.

⁶ Agency Exhibit A, tab 4.

defense to Agency's claims was made. Agency's Advocate presented his notebook of exhibits as evidence. No further testimony was taken.⁷

The uncontroverted, demonstrative evidence supplied in Agency's Exhibit A, tabs 1-13 would support the claims of the Agency. Grievant had vehicle accidents in state vehicles on May 17, 2011 and August 6, 2012 for which she received a moving traffic violation.⁸ Grievant was stopped by the local police on April 26, 2013 for erratic driving. On April 26, 2013 Grievant was charged with having no valid driver's license in her possession.⁹ On the date of the stop Grievant had been assigned to a project in Tazewell County. At the time Grievant was stopped she was in Abingdon, Virginia. Subsequent to the stop on April 26, 2013, Agency obtained a driving history record of Grievant. The record indicated a DUI conviction which resulted in a suspended driver's license.¹⁰

During the April 29th, May 7th and May 13th meetings between Agency and Grievant, Grievant stated that she had not been to the Tazewell County project site since April 23, 2013. Grievant did admit that she had a DUI and had not reported her conviction to her employer.¹¹ Grievant admitted she was having issues with prescription drug medications.¹²

Grievant was issued two Group II disciplinary notices for violations of VDOT policies number 38, 14 and 31 in compliance with the policies of Standard of Conduct for state employees.¹³ Grievant's two (2) Group II notices combined warrant her termination.

OPINION

⁷ Agency Exhibit A, tabs 1-13.

⁸ Agency Exhibit A, tabs 6 and 7.

⁹ Agency Exhibit A, tab 5 page 13.

¹⁰ Agency Exhibit A, tab 10.

¹¹ Agency Exhibit A, tab 5 page 17.

¹² Agency Exhibit A, tab 5 page 18.

¹³ The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees. Agency Exhibit A, tab 13.

Based on the uncontested, demonstrative evidence submitted by Agency, Grievant did violate the policy standards for which she was cited in two (2) Group II Written Notices. The combination of the two (2) Group II notices did warrant a discipline of termination.

DECISION

For the above reason the two (2) Group II disciplines and termination of Grievant 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.¹⁴

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

Sondra K. Alan, Hearing Officer

¹⁴ 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.