

Issue: Group II Written Notice (failure to follow policy); Hearing Date: 07/24/14; Decision Issued: 07/31/14; Agency: DOC; AHO: Thomas P. Walk, Esq.; Case No. 10395; Outcome: No Relief - Agency Upheld.

**VIRGINIA: IN THE DEPARTMENT OF HUMAN RESOURCE MANAGEMENT,  
OFFICE OF EMPLOYMENT DISPUTE RESOLUTION**

**IN RE: CASE NO.: 10395**

**DECISION OF HEARING OFFICER**

**HEARING DATE: JULY 24, 2014**

**DECISION ISSUED: JULY 31, 2014**

**I. PROCEDURAL HISTORY**

The grievant filed her Form A on April 10, 2014 challenging the issuance of a Group II Written Notice on March 13, 2014. The Director of the agency qualified the matter for hearing on May 21. I was appointed as hearing officer on June 16. I conducted a prehearing conference by telephone on July 3. I held the hearing at the subject facility on July 24. The hearing lasted approximately 2.5 hours.

**II. APPEARANCES**

A lay advocate represented the agency. An agency representative and one observer attended the hearing. The agency presented two witnesses and nine exhibits. A portion of the testimony of one of the witnesses was taken in the unit where the underlying event occurred in order for the subject door to be viewed by me. The witness demonstrated the operation of the door and lock. A video of the area at the time of the event was presented but not made an exhibit due to security concerns.

The grievant represented herself with the assistance of a lay advocate. She presented four

witnesses and eight exhibits. She did not testify.

### **III. ISSUE**

Whether the agency acted appropriately in issuing to the grievant a Group II Written Notice on March 13, 2014?

### **IV. FINDINGS OF FACT**

The grievant is a corrections officer and was serving as a control officer for the agency on January 25, 2014. She had the responsibility to control access to a certain unit within the subject facility, among other duties. Her controlling access to the unit required her to allow only authorized individuals to enter and leave the unit. She was expected to keep the main access door closed and locked at all times, except when someone was entering or leaving.

The access door in question is a heavy, metal door. Pins securing the door in place are found at the top and bottom of the door. Those pins are controlled by a knob located on the door itself. The door is locked by use of a deadbolt. The deadbolt is operated only through a key. The key can be inserted on either side of the door. During the standard shift, the control officer for the unit and only one other officer have a key to operate the deadbolt.

On January 25 the Warden of the facility approached the door to the unit. He rang a doorbell to gain the attention of the control officer so that he could enter the unit. While waiting for the grievant to respond, the Warden saw that the door was not closed and secure. The deadbolt on the door was extended and outside the frame, preventing the door from closing. The door opens outwardly from the unit into a hallway in the building. The door is approximately

one inch thick. When the deadbolt is extended and the door open, approximately three-quarters of the door is outside the frame and in the hallway.

When the Warden noticed the door being unlocked and partially open, he started to open the door and enter the unit. At approximately the same time the grievant appeared at the door and opened it for the Warden.

The facility has a Security Post Order 19 that states “main doors to housing unit must remain lock {sic} at all times, with the exception of staff entering and exiting the housing unit.” The grievant had previously been made aware of the Post Order prior to January 25, 2014. The subject of keeping the main housing unit doors locked had also been addressed by a memorandum from the Chief of Security by memorandum dated October 3, 2012. On January 15, 2013, the Warden issued a memorandum dealing with this directive. The memorandum is erroneously dated January 15, 2012, but was issued in 2013. He provided notice that any future violations of the post order would be treated as a Group II offense.

The Warden had the breach of the order investigated. The grievant explained that she had been in the back of the unit and was not aware of the door being open and unlocked. After this investigation, the Warden issued the subject disciplinary action. The action did not include any suspension from employment, but merely the issuance of the Written Notice.

## **V. DISCUSSION AND ANALYSIS**

The Virginia Personnel Act, Chapter 29 of Title 2.2 of the Virginia Code, establishes the procedures and policies governing employment by the Commonwealth of Virginia. The Act provides for a Grievance Procedure. The Office of Employment Dispute Resolution within the

Department of Human Resource Management has promulgated a Grievance Procedural Manual (“GPM”) and Rules for Conducting Grievance Hearings (“the Rules”). These documents govern this proceeding.

Section 5.8 of the GPM places the burden of going forward with the evidence on the agency in disciplinary actions. The burden of proving the allegations is with the agency as well. The standard of proof is by a preponderance of the evidence.

This case involves the disciplinary action taken by the agency against the grievant, namely the issuance of a Group II Written Notice (hereafter “The Notice”). Section VI (B) of the Rules requires a hearing officer reviewing disciplinary actions to make four determinations. Those determinations are:

- I. Whether the employee engaged in the described behavior;
- II. Whether the behavior constituted misconduct;
- III. Whether the discipline was consistent with law and policy; and
- IV. Whether there were any mitigating circumstances to justify a reduction or removal of the disciplinary action and, if so, whether those mitigating circumstances were offset by any aggravating circumstances.

The evidence is clear that the grievant was responsible for controlling the access door to this unit. It is also clear that no one other than the grievant could have put the deadbolt in the position in which it was found by the Warden. A review of the security video confirms this fact. The grievant did not testify or raise any argument that she was not so responsible.

Agency Operating Procedure 135.1 (Section V) (C) (2) (A) specifies that the failure to follow proper instructions or an established written policy shall constitute a Group II written

offense. Facility Post Order 19 was the applicable written policy in this matter. It does not require that a violation of the policy be intentional or willful. A negligent violation, such as is present here, can constitute a sufficient reason for the issuance of the Notice.

I further find that the issuance of the Notice is based on a policy that is appropriate and nondiscriminatory. By his memorandum of January, 2013 the Warden established a presumptive level of discipline for a violation of the Order. No evidence has been presented of an unfair application of this policy. I do not find the policy itself to be unreasonable. The grievant attempted to argue that because the unit houses only offenders of a lesser security risk, the policy is too strict. I am required to defer to the prerogative of management unless the discretion is being used arbitrarily. *Rules*, VI(B)(1) The Warden is experienced in the corrections field. His policy was implemented for good reason, that being an assessment of the security risk being involved with any inmate regardless of classification.

The Warden acted appropriately in issuing the Group II Written Notice. He testified that he considered the good work history of the grievant in his decision, particularly in his decision not to suspend her for any length of time. The grievant presented substantial evidence of problems with the door, both before and after January 25. These problems involve the door sticking and issues with the pins in the door. The grievant did not show, however, that these issues caused the door to be blocked open by the deadbolt as found by the Warden on January 25. It would have been easy for her to have seen that the door was not properly secured and locked. All that needed to be done was for her to exert a minimum amount of pressure outwardly on the door. If she had done so, she would have realized the door was not in the proper setting. A cursory visual inspection would have revealed the deadbolt not being in the

slot in the door frame, as well as a significant portion of the door not being in the frame. The agency has met its burden of persuasion.

## **VI. DECISION**

For the reasons stated above, I affirm the issuance by the agency of the Group II Written Notice to the grievant on March 13, 2014.

## **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 to EDR.

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.

ENTERED this July 31, 2014.

/s/Thomas P. Walk  
Thomas P. Walk, Hearing Officer