

Issues: Group II Written Notice (failure to follow instructions/policy), and Termination (due to accumulation); Hearing Date: 09/04/14; Decision Issued: 10/09/14; Agency: VPI&SU; AHO: Sondra K. Alan, Esq.; Case No. 10411; Outcome: No Relief - Agency Upheld.

DECISION OF HEARING OFFICER  
IN RE: CASE NO. 10411  
HEARING DATE: September 4, 2014  
DECISION ISSUED: October 9, 2014

PROCEDURAL HISTORY

A complaint was made against Grievant based on multiple offenses dated between May 8, 2014 and May 27, 2014 regarding Grievant's failure to follow instructions and/or policy. Grievant was issued a Group II Written Notice with termination for violation of Standards of Conduct and Offense Code #13. Grievant had two previous active Group II Notices. Grievant filed for the matter to be heard by a Hearing Officer.

A Hearing Officer was appointed on July 14 2014 and a pre-hearing conference was scheduled on July 29, 2014. During the prehearing conference a Hearing was scheduled for September 4, 2014 at the facility where Grievant was employed.

APPEARANCES

Agency advocate  
Agency representative as witness  
One additional Agency witness  
Grievant as witness

ISSUES

- 1) Whether Grievant failed to follow Agency policy on May 8, 15, 16, 21 and 27<sup>th</sup>.
- 2) Whether a Group II discipline was warranted.
- 3) Whether termination was appropriate discipline.
- 4) Whether mitigating factors were considered.

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 is 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.

APPLICABLE LAW and POLICY

The Agency relies on Standards of Conduct policy 1.60 and Offense Code #13 failure to follow instructions and/or policy.<sup>1</sup>

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<sup>1</sup> Agency Exhibit 10

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."<sup>2</sup>

### FINDING OF FACTS

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

Grievant worked as an animal care technician with animals in controlled experimental environments. Many experiments required a high level of security due to the potentially dangerous nature of the experiment. Agency's witness explained a series of rooms and clothing in protective gear was necessary to proceed through to the room where the animals were housed. The Agency witness explained detailed charts were kept by the employees.<sup>3</sup> Agency's witness also explained that a special chart was created to assist Grievant in completing her tasks.<sup>4</sup> The witness explained the policy of no food in the experimental area.<sup>5</sup>

The witnesses described the reasons for the present discipline and introduced letters describing two previous Group II infractions.<sup>6</sup> Agency's witness introduced a written detailed description of each infraction they believe Grievant had committed causing the present Group II action.<sup>7</sup> Agency's witness further orally described Grievant's:

- 1) failure to complete work,
- 2) failure to notify a superior of failure to complete tasks,
- 3) failure to wear proper gear,
- 4) failure to make proper notification of a late arrival, and
- 5) disregarding policy about bringing food products into the quarantined area.

Agency's witness stressed that strictly following procedure was extremely important to the integrity of the program as well as safety of the public.

Grievant's testimony refuted that she has brought food into a quarantine area but rather has discarded a wrapping from a sucker she had previously eaten outside the area. Grievant admitted to late arrivals but contended because of poor phone service she had done the best she could by calling the office number instead of the number she was requested to call.

Grievant admitted to forgetting to wear her face mask in the quarantine area on the occasion of May 16, 2014. Grievant testified that all technicians worked as a team

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<sup>2</sup> The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

<sup>3</sup> Agency Exhibit 2

<sup>4</sup> Agency Exhibit 3

<sup>5</sup> Agency Exhibit 4

<sup>6</sup> Agency Exhibit 5 and 6

<sup>7</sup> Agency Exhibit 1

and that she sometimes completed their tasks and they sometimes completed hers. She also stated she had been having anxiety issues and had ADHD. Grievant admitted she did not notify her superior on every occasion that she failed to complete work.

Grievant stated she thought the special chart created to help her stay on task was not intended to help her but rather a ploy to make her look worse and single her out. Grievant had no witnesses to testify on her behalf and presented no exhibits.

### OPINION

Agency provided evidence both orally and by exhibit that showed Grievant previously had been given extraordinary opportunities to improve her performance. There is nothing to mitigate Grievant's repeated negligence.

Grievant's testimony did convince the hearing officer that the Agency could not prove she had actually taken food into the quarantined area. However, as for the rest of the allegations, Grievant offered excuses for her behavior, not evidence that the misconduct had not happened. The instructions to Grievant were specific. She had previously been counseled regarding the rules. A chart was even created for her alone to help her follow procedure. Grievant failed to follow policy instructions when the instructions were very important to be followed with no deviation.

A Group II discipline for Grievant's many instances of failure to follow instructions and/or policy is appropriate. Grievant has two active Group II disciplines added to this third Group II discipline. Since two active Group II disciplines normally result in termination it holds to reason three active Group II disciplines would call for termination.

### DECISION

For the above reasons, Agency's Group II discipline with termination based on two additional active Group II actions 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>8</sup>

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

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Sondra K. Alan, Hearing Officer

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<sup>8</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.