

Issue: Step 2 Formal Performance Improvement Counseling Form (unprofessional behavior towards a patient); Hearing Date: 08/17/15; Decision Issued: 09/11/15; Agency: UVA Medical Center; AHO: Carl Wilson Schmidt, Esq.; Case No.10633; 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: 10633

Hearing Date: August 17, 2015
Decision Issued: September 11, 2015

PROCEDURAL HISTORY

On April 21, 2015, Grievant was issued a Step 2 Formal Performance Improvement Counseling Form for unprofessional behavior towards a patient.

On April 28, 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 July 7, 2015, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On August 17, 2015, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Party Designee
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 University of Virginia Medical Center employs Grievant as an Access Associate. Her duties included scheduling patient medical appointments. Grievant's Essential Duties and Responsibilities included:

Demonstrated exceptional customer service both for in-person and telephone activities.

Patients and visitors as well as other customers are greeted pleasantly and courteously in person and/or via phone call.

Demonstrates ownership of own role in the patient/family experience.

Tasks are prioritized to meet customer needs promptly.

Demonstrates good listening skills.

Grievant's Organizational Duties included:

Communicates appropriately using good interpersonal skills.

Information for patients and staff is delivered in a manner that is supportive, timely, and understanding.¹

Grievant received a Step 1 Informal Counseling on March 4, 2015.

¹ Agency Exhibit 5.

On April 17, 2015, the Patient had an appointment with her Physician. After the appointment, she checked her blood test results using the Agency's online system. She became upset because the results showed her health had worsened. She went to Grievant's Unit to schedule an appointment with her Physician so she could understand her blood work results. The Patient asked Grievant to schedule an appointment for her. Grievant told the Patient she could not schedule an appointment at that time because no follow up appointment was annotated in the Patient's After Visit Summary sheet. Grievant said she would have to check with the Patient's physician about scheduling an appointment.

The Patient left the Unit believing that she would not be allowed to schedule a follow up appointment. She was upset and crying as she walked to the Second Unit. Staff in the Second Unit notified the Administrative Fellow, Ms. G, that the Patient was upset. The Administrative Fellow met with the Patient to calm her down and understand her concerns.

Ms. G walked with the Patient back to the Unit. Since Grievant was assisting another patient, they sat and waited until Grievant could see them. When Grievant was finished assisting the other patient, Ms. G and the Patient walked towards Grievant. Grievant looked at the Patient and pointed to the door. Grievant said, "I already told you!" Grievant's tone of voice was defensive, abrupt, and indicating she did not intend to help the Patient. Ms. G was surprised and told Grievant she was there to help the Patient understand about scheduling an appointment. Ms. G told Grievant that the Patient believed she could not schedule an appointment at all. Grievant explained that she was following a process. Ms. G said she understood Grievant was following a process but that there may have been some confusion because the Patient believed she could not get an appointment. The Patient said she did not understand that Grievant was following a process. Grievant repeated her statements in a defensive manner without listening to Ms. G or the Patient. Eventually, Ms. G and the Patient spoke with a nurse coordinator for the Physician and they were able to schedule a follow up appointment for the Patient.

CONCLUSIONS OF POLICY

Medical Center Human Resources Policy 701 governs Employee Standard of Performance and Conduct. Under this policy:

The Medical Center expects each employee to perform his/her duties and conduct himself/herself in a manner which enables all employees to work together in achieving Medical Center goals. To this end, all individuals working in the Medical Center shall treat others with respect, courtesy, and dignity, and shall conduct themselves in a professional and cooperative manner. ***

If an employee is being progressively counseled pursuant to this or any Medical Center policy at the time a new performance issue arises or act of misconduct occurs, the new issue/act may be addressed at a higher level of performance improvement counseling.

Grievant was often professional in her dealing with patients and medical staff. On April 17, 2015, however, Grievant did not show respect and courtesy towards the Patient. As the Patient and Ms. G approached Grievant, Grievant looked at the Patient, pointed in the direction of the exit and indicated she did not intend to provide additional assistance to the Patient at that time. The Agency has presented sufficient evidence to support the issuance of a Step 1 Informal Counseling. Because she has already received a Step 1 Informal Counseling, the Agency has presented sufficient evidence to support the issuance of a Step 2 Formal Counseling.

Grievant argued that she was following policy and informed the Patient that she was doing so. She argued that other workers near her observed her properly helping the Patient. Grievant had two interactions with the Patient. During several portions of her interactions she was helpful and acted appropriately. When she initially interacted with the Patient and Ms. G, Grievant's behavior was not appropriate thereby justifying the issuance of disciplinary action.

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"² 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.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Step 2 Formal Performance Improvement Counseling Form is **upheld**.

² Va. Code § 2.2-3005.

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.³

³ Agencies must request and receive prior approval from EDR before filing a notice of appeal.

[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