

Issue: Administrative Review of Case #8120/grievant claims hearing officer should have mitigated action; Ruling Date: March 27, 2006; Ruling #2006-1314; Agency: University of Virginia Health System; Outcome: this department will not disturb the hearing officer's decision/hearing decision in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of the University of Virginia Health System
Ruling Number 2006-1314
March 27, 2006

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8210. The grievant asserts that the hearing officer should have mitigated the action that it took against her: a Formal Performance Improvement Counseling. For the reasons set forth below, this Department will not disturb the hearing officer's decision.

FACTS

The facts of this case, as set forth in the hearing decision in Case Number 8210, are as follows:

The UVA Health System employs Grievant as a Certified Ophthalmic Medical Technician. She has been employed by the Agency for approximately 16 years.

For several years, Grievant worked as an operations manager with administrative duties such as scheduling employees. Because of budget considerations, the Agency changed Grievant's role. Her duties changed from primarily working in an office with an assigned computer and telephone to primarily providing patient care in the clinic. She did not desire the change and believed Agency managers should have done a better job of enabling her to transition to her new role. Grievant viewed the role change as a demotion. Grievant began expressing her concerns including sending emails to various employees within the Agency.

On November 5, 2004, Grievant began a series of emails with her Supervisor regarding her work duties and the Agency's operations. She sent copies of her emails to a faculty member, Dr. C. The Supervisor replied to Grievant's emails. In a reply sent at 4:22 p.m., the Supervisor tells Grievant, "I do not know why you copy [Dr. C] and [another doctor]. The chain of command is me first, then the medical directors, The volume of emails is overwhelming and bogs down the system. My expectation is that the faculty will not be burdened with emails that do not

directly involve them.” Grievant responded with an email she sent at 4:35 p.m. She sent a copy of that email to Dr. C. At 5:08 p.m., the Supervisor sent another email to Grievant stating, in part, “I see you copied [Dr. C] and [another doctor] on this and that was inappropriate. My expectation is that you follow the proper chain of command ... and refrain from including, and copying people who are not directly involved in the issue (this applies to any emails, not just this one). The volume of emails is burdensome. Faculty do not need to be included.”

On November 9, 2004, Grievant’s Supervisor presented Grievant with memorandum regarding work expectations for Grievant. Grievant and the Supervisor discussed the memorandum. The memorandum stated, in part:

Since your transition to the new role of COMT, you have raised some questions about your job duties, and we would like to take this opportunity to address these as well as to clarify expectations so that you can continue to successfully apply your talents to your new role.

Your primary job function is patient care, and therefore in the clinic, not behind a desk or at a computer. We have eliminated all administrative activities that interfere with your current clinical obligations, with the exception of scheduling. The scheduling will continue as long as it does not interfere with patient care.

Since this transition, some behaviors have been observed in which professional communication was not being used. Examples of this include spending an inappropriate amount of time composing lengthy e-mails, copying inappropriate people on these communications, and sharing your frustrations about your new role with the faculty and staff. As you are a senior member of this staff, professional communication is expected at all times, not only with patients, but also with the staff and faculty in the clinic, through both verbal and e-mail communication.

Our expectations are:

E-mail: Be judicious in your use of e-mail. E-mail should be used for communications related to your direct job responsibilities, and then only when face-to-face communication is not possible or practical, and when

writing e-mail is not done during your time dedicated to patient care. You have many suggestions about how to improve things in the clinic, but often the length of these e-mails does not reflect good judgment about time management. A good general rule of thumb is that if the e-mail needs to be more than 2 paragraphs or 6 sentences long, there may be a better way to communicate your message. Finally, e-mails not related to a specific patient care situation should not be copied to staff or faculty other than your supervisor, your manager and the medical director(s).

On April 26, 2005 at 7:05 a.m., Grievant sent the Supervisor an email stating, in part:

I found out when I tried to check my messages yesterday that [telephone number] is now a non-working number at UVA.

It would have been appropriate for someone to give me at least a couple of days notice that this would no longer be my phone number. I don't have a problem with not having the number, it is just the lack of thought or respect about what affect it would have.

The email did not relate to specific patient care. Grievant sent a copy to Dr. C, a member of the medical faculty. Dr. C was not within Grievant's chain of command for administrative matters.

The hearing officer upheld the Formal Performance Improvement Counseling issued to the grievant finding that:

Grievant was instructed by her Supervisor not to send emails to faculty unless those emails related to a specific patient care situation. On April 26, 2005, Grievant sent a copy of an email to a faculty member. The email did not concern care for a specific patient. Grievant acted contrary to her Supervisor's instructions. Grievant previously received an informal coaching on November 9, 2004. Thus, it was appropriate for the Agency to issue a Formal Performance Improvement Counseling.

DISCUSSION

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final

decisions...on all matters related to procedural compliance with the grievance procedure.”¹ If the hearing officer’s exercise of authority is not in compliance with the grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.²

In this case, the grievant asserts that the hearing officer improperly failed to mitigate the action taken against her. She asserts that he should have considered her “excellent work performance over the years,” and management’s mishandling of her job role reassignment. Under the *Rules for Conducting Grievance Hearings*, a hearing officer is required to consider mitigating circumstances in determining whether a disciplinary action was “warranted and appropriate under the circumstances.”³ Where the hearing officer finds that mitigating circumstances justifying a reduction or removal of the grieved disciplinary action exist, he must then consider whether there are also aggravating circumstances which would “overcome the mitigating circumstances.”⁴ A hearing officer may not mitigate a disciplinary action unless, under the record evidence, he finds that the discipline exceeds the limits of reasonableness.⁵ Moreover, this Department will find that a hearing officer failed to comply with the grievance procedure with respect to mitigation of disciplinary action only where the hearing officer’s action constituted an abuse of discretion.

In his reconsideration decision the hearing officer stated that “no mitigating circumstances exist to reduce the disciplinary action.” Accordingly, the hearing officer appears to have properly considered mitigating circumstances but determined the circumstances did not warrant mitigation of the disciplinary action. According to the hearing decision and record evidence, the grievant had received two warnings on e-mail usage on November 5, 2006. She was told not to copy e-mails to individuals who are “are not directly involved in the issue,” and not to burden faculty “with e-mails that do not directly involve them.”⁶ According to the hearing decision and record evidence, the grievant was also told that “e-mails not related to a specific patient care situation should not be copied to staff or faculty other than your supervisor, your manager and the medical director(s).”⁷ The hearing officer found that by copying Doctor C on her April 26, 2005 e-mail, the grievant acted contrary to her Supervisor’s instructions. Under the facts presented by this case, we cannot find that the hearing officer abused his discretion in finding that the discipline imposed on the grievant was within the limits of reasonableness.

¹ Va. Code § 2.2-1001(2), (3), and (5).

² See *Grievance Procedure Manual* § 6.4(3).

³ See *Rules for Conducting Grievance Hearings*, § VI.B.

⁴ *Id.*

⁵ *Id.*

⁶ Agency Exhibit 3.

⁷ Agency Exhibit 4.

APPEAL RIGHTS AND OTHER INFORMATION

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided.⁸ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁰ This Department's rulings on matters of procedural compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

⁸ *Grievance Procedure Manual*, § 7.2(d).

⁹ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

¹⁰ *Id.* See also Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 573 S.E. 2d 319 (2002).

¹¹ Va. Code § 2.2-1001 (5).