

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

IN RE CASE NO.: 12112

DECISION OF HEARING OFFICER

I. INTRODUCTION

This grievant is a former employee of the Virginia Community College System, working at a facility in western Virginia. Because of significant performance issues, the agency terminated her from employment on February 15, 2024, pursuant to a Group III Written Notice issued under Department of Human Resource (“DHRM”) Policy 1.60 (the “Standards of Conduct”). For the reasons set forth herein, I uphold the issuance of the disciplinary action and the termination of the grievant from employment with the agency.

II. PROCEDURAL MATTERS

The subject Written Notice was issued by the agency on February 15, 2024. The grievant commenced this matter by filling her Form A on March 15, 2024. The Department of Human Resource Management appointed me as hearing officer effective April 1, 2024. I conducted a prehearing conference with the grievant and the advocate for the agency on April 18. I scheduled the hearing for June 14. I issued a prehearing order also on April 18.

In accordance with the timeline set forth in the prehearing order, the agency submitted its list of witnesses and proposed exhibits. The grievant submitted neither a list of witnesses nor exhibits and did not request the appearance of any witnesses for the hearing. On June 7, I sent an email to the grievant and agency advocate, notifying the grievant that I had not received any materials from her and asking her to confirm that she was still planning to represent herself at the hearing. Having received no response from the grievant, I sent a follow-up email on June 10 asking for confirmation that the prior email had been received. No response was forthcoming from the grievant. On June 13, I again emailed the grievant, asking her to immediately confirm in writing if she did not plan to follow through with the grievance and wished to withdraw it.

I arrived at the hearing site the following morning at approximately 9:20 a.m. the agency advocate apprised me that the grievant had sent an email that morning, which I read for the first time at approximately 9:24 a.m.

The email stated that the grievant would not be appearing for the deposition [sic] and gave three reasons. The first was that the grievant had been barred from the agency property upon her termination from employment. Next, she indicated that she

was pursuing other legal avenues. She did not specify what are the avenues. Also, she raised the question of whether I could fairly hear and decide the matter out of fear that I would lose additional work from the agency if I ruled in her favor. She gave no examples of any possible conflict of interest that would preclude me from hearing her case.

At 9:27 a.m., in the presence of the agency advocate I called the phone number available for the grievant. The call was not answered; I left a voice message for the grievant, identifying myself and requesting that she call me back by 9:45 a.m. to discuss her concerns. She did not return the call, respond by email, or otherwise attempt to communicate with me that morning. I commenced the hearing at 9:50 a.m.

The agency was represented by an employee serving as its advocate. It called two witnesses. The proffered exhibits, totaling 782 pages, were accepted into evidence. The hearing lasted approximately forty-three minutes.

III. ISSUES

The issues to be decided are whether the agency proved misconduct by the grievant under DHRM Policy 1.60 and acted reasonably in terminating her from employment.

IV. FINDINGS OF FACTS

During the relevant months, the grievant worked for the agency as a buyer specialist. She had approximately five years' experience. Her position had core responsibilities of procurement and customer service. These responsibilities involved processing purchase requests and orders from the customers of the agency, being, among others, the twenty-three community colleges in Virginia.

As a backdrop to this grievance, the agency placed the grievant on a performance improvement plan on February 6, 2023. It deemed the plan necessary due to deficiencies in the work performance in the grievant. When her performance did not improve satisfactorily, the agency issued the grievant a Group I Written Notice on April 21, 2023.

After the issuance of that discipline, the grievant continued her deficient performance. Her body of work contained unreasonable delays in the processing of purchase orders, poor customer service, and an inability to express her thoughts clearly. These issues continued up to her being formally evaluated by her supervisor on October 15, 2023. The formal performance evaluation resulted in findings of "below contributor" on the core responsibilities of procurement and customer service.

As a result of the evaluation, the grievant received a new performance improvement plan pursuant to DHRM Policy 1.40 on November 27, 2023. The plan

called for her to receive two weeks of intensive training from others in her area of responsibility. The plan included eight areas of emphasis for the grievant, those areas being tied to her core responsibilities.

A primary concern was the processing of purchase requests. When the direct supervisor of the grievant reviewed a sample of the requests being managed by the grievant as of February 2, 2024, he found that 41 percent of the requests sampled were deficient. He also found unexpected delays in their processing.

The February evaluation of the grievant also found deficits regarding her handling of purchase orders. On multiple occasions, she failed to attach documents that she indicated were attached. She used improper abbreviations on some of the documents on multiple occasions. One purchase order was improperly processed instead of being denied. The supervisor further noted multiple instances of a lack of diligence in resolving issues or concerns with vendors.

Along with these primary deficits, the supervisor evaluated the grievant in the area of customer service. He noted some improvements but found continued unnecessary or unreasonable delays. He noted only limited improvement in her abilities to express herself clearly, whether orally or in writing. He also found a continuing pattern of a failure to engage with other coworkers during professional meetings, or to exhibit teamwork.

Based on this assessment of the supervisor regarding the performance of the grievant under the performance improvement plan of November 27, 2023, the agency issued the grievant a notice of its intent to discipline her, that notice being dated February 9, 2024. Upon receiving a limited, unsatisfactory response from the grievant, the agency issued her the Group III Written Notice and terminated her from employment on February 15.

V. ANALYSIS

The Commonwealth of Virginia provides protections to its employees in Chapter 30 of Title 2.2 of the Code of Virginia. Among these protections is the right to grieve formal disciplinary actions. The Department of Human Resource Management, Office of Employment Dispute Resolution has developed a Grievance Procedure Manual (GPM) and Rules for Conducting Grievance Hearings (the Rules). The GPM sets the applicable standards for this type of proceeding. Section 5.8 provides that in disciplinary grievance matters (such as this case) the agency has the burden of going forward with the evidence. It has the burden of proving, by a preponderance of evidence, that its actions were warranted and appropriate. The Rules state that in a disciplinary grievance a hearing officer shall review the facts *de novo* and determine:

- I. Whether the employee engaged in the behavior described in the Written Notice?

II. Whether the behavior constituted misconduct?

III. Whether the discipline was consistent with policy? and

IV. Whether there were mitigating circumstances justifying the reduction or removal of the disciplinary action, and, if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

Policy 1.60 promulgated by the DHRM establishes multiple levels of possible discipline, based on the seriousness of the offense. The grievant received a Group III Written Notice. That level of offense is reserved for “acts of misconduct of severe nature that a first occurrence normally should warrant termination.” The level is appropriate for offenses such as a significant neglect of duty or severe violations of policies or procedures.

The Standards of Conduct define unacceptable performance, one of the charges against the grievant, as being the inability to meet the employer’s expectations regarding job duties. The definition gives as examples: frequent mistakes, incomplete or inadequate quality of work product, inability to follow instructions provided, or the inability to cope with a reasonable volume of work, and poor interpersonal skills. The range of options available to an agency to deal with unsatisfactory performance is from counseling to a Group III Written Notice and termination.

The grievant has chosen not to present evidence refuting the evidence of the agency that she had an unsatisfactory work performance after the issuance of the Group I Written Notice in April 2023 for that same issue. Pursuant to DHRM Policy 1.40, the agency placed the grievant under a performance improvement plan on November 27, 2023. The plan was stated to be in effect for 90 days. A review of the performance of the grievant was conducted pursuant to Policy 1.40 prior to the conclusion of the plan. Policy 1.40 of the DHRM allows a review to be conducted “about two weeks” prior to the conclusion of an improvement plan. I find that the evaluation here was conducted within an appropriate period.

The evidence amply supports the conclusion that the grievant showed unacceptable performance as defined by the Standards of Conduct. The agency made her aware of the shortcomings. The agency worked with her to attempt to remedy the situation. Still, they persisted.

Section 5.8 of the Grievance Procedure Manual requires me to grant significant deference to the decisions of an agency in determining the level of discipline, and its consequences. Although here the agency could have simply addressed the performance of the grievant by issuing a Group II Written Notice this being a second offense for the same behavior, I cannot find that it acted unreasonably in issuing the discipline that it did and terminating the grievant from employment. I also find that her failure to show necessary charges under the improvement plan qualifies as a failure to follow established policy or orders by an agency; that would also support a Group III Written Notice.

No possible mitigating evidence was provided. The grievant made no argument that the discipline was inconsistent with law or policy, and I see no evidence that would support such an argument.

VI. DECISION

This case is the unfortunate story of an employee who was given multiple opportunities to improve her performance with the agency and failed substantially to do so. The reasons for this are unclear, given the lack of evidence from the grievant. I hereby uphold the issuance of the Group III Written Notice and her termination of employment.

VII. APPEAL RIGHTS

The parties may file an administrative review request within 15 calendar days from the date this decision is 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 Resources Management to review the decision. You must state the specific policy and explain why you believe the decision is not consistent with that policy.

Please address the request to:

Director, Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or send by facsimile to (804) 371-7401, or by email.

2. If you believe the decision does not comply with the grievance procedure, or you have new evidence that could not have been discovered before the hearing you may request that EDR review the decision. You must state these specific portions of the grievance procedure with which you believe the decision does not comply. Please address your requests to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 N 14th street, 12th floor
Richmond, VA 23219

or send by email to EDR@dhrm.virginia.gov, or by facsimile 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 fifteen calendar days of the date of the issuance of this decision. You must provide a copy of all your appeals to the other party, EDR, and the hearing officer. The 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 contrary to law. You must file a notice of appeal with the clerk of circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or you may call EDR'S toll-free Advice Line at 888-232-3842 to learn more about appeal rights help from an EDR Consultant].

ORDERED this June 23, 2024

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