

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

IN RE CASE NO.:12241

DECISION OF HEARING OFFICER

I. INTRODUCTION

This case involves the grievance of a former employee at Virginia Polytechnic Institute and State University. The grievant was terminated from employment with the school on January 21, 2025. The basis for the discipline was his sending a personal email through a school email account after having previously been disciplined and warned about such use of school resources. As discussed below in more detail, I find that the action of the school was appropriate, and the termination was warranted.

II. PROCEDURAL BACKGROUND

The grievant commenced this matter by submitting his Form A on January 23, 2025. I was appointed as the Hearing Officer effective February 18, 2025. I conducted a pre-hearing conference call on February 18 with the parties. At the mutual request of the parties, I scheduled the hearing for March 24, 2025. I entered a pre-hearing order establishing a deadline of March 14, 2025 for the exchange of witness lists and proposed exhibits. The school proffered eight (8) exhibits by email and a list of proposed witnesses. The grievant filed neither a witness list nor proposed exhibits. The hearing took place on March 24, 2025. The school confirmed that the eight exhibits submitted in hard copy form at the hearing were identical to those previously submitted by email. The grievant raised no objection to the exhibits and they were accepted into evidence.

III. APPEARANCES

The school was represented at all times by an attorney from the Office of the University Counsel. The supervisor of the grievant testified as the only witness for the school and served as the school's representative present throughout the hearing. The grievant represented himself during the hearing. He testified and presented no additional witnesses. Both the attorney for the school and the grievant presented opening and closing statements. At my request, the attorney for the school sent a post-hearing email on March 24 clarifying on what policies the school was relying. The grievant sent an email on April 5 as additional argument. Both emails have been made part of the case record.

IV. ISSUE PRESENTED

Whether the school was justified in issuing the grievant a Group II Written Notice on January 21, 2025 and terminating him from employment?

V. FINDINGS OF FACT

The school is a large public university in the Commonwealth of Virginia. The grievant was an employee of the school, serving in an information technology role for the Graduate School. He had been an employee of the school for several years.

The school issued the grievant a Group II Written Notice on April 24, 2023 for a violation of University Policy 7000. The basis for the discipline was his sending an unsolicited email to a University employee through his school account. The subject matter of the email was an incident which occurred in approximately 2014. The grievant challenged that discipline through the formal grievance procedures. The discipline was upheld by a Hearing Officer. The grievant appealed that decision, with the decision being further upheld by the Office of Employment Dispute Resolution of the Department of Human Resources in 2023. Under Policy 1.60 of the Department of Human Resource Management, that discipline remained active through January 21, 2025.

The grievant attended a school luncheon on December 13, 2024. At the luncheon he engaged in a discussion with one or more fellow employees about the incident that occurred in 2013 or early 2014. The discussion centered around the problems the grievant had seeking legal recourse. His efforts in that regard included contact with the Virginia Department of Health Professions and the local attorney for the Commonwealth.

At 12:13 p.m. on that date, the grievant sent to the colleagues with whom he had the discussion at the luncheon an email chain, reflecting his efforts. The email string included the correspondence between the grievant and the agency and local official. None of the information contained in the emails was relevant to the work of the grievant at the University. The email to the colleagues was sent through his school account. It had not specifically been requested by any recipient of it.

Along with the formal discipline issued in 2023, the grievant had received multiple oral counselings against using his school email account for personal messages. The number of warnings was at least six (6). A recipient of the December 13, 2024 email forwarded it to another school employee as a way of filing a complaint against the grievant. After a preliminary investigation and initial due process steps, the school issued the grievant an additional Group II Written Notice on January 21, 2025. Because of the active prior Group II Written Notice, the school terminated the grievant from employment.

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?

I answer the first three questions in the affirmative; the last question is answered in the negative.

The grievant has not contested that he sent the email on December 13, 2024. He has not disputed that it is not work-related or that it was sent through his school account. His arguments are that it was sent through that account only through inattention. He stressed that he was not using a university computer but rather a personal cell phone.

Although I appreciate the failure of the grievant to note that he was inadvertently sending the subject email through the university account, the omission was a clear instance of failing to follow the direct instructions he had received to not use university resources for personal reasons. As such, I can only find that it constitutes misconduct by the grievant.

The school is relying on University Policy 7000 for the issuance of this discipline. That policy establishes "Acceptable Use and Administration of Computer and Communication Systems." That policy contains many specific prohibitions for the use of university technology. Section 4.0 of the Policy includes in its definition of misuse or abuse of technology resources acts or omissions that "violate generally accepted ethical norms and principles." Nothing in the policy specifically prohibits the sending of a single personal email such as the one sent by the grievant on December 13, 2024. The email, although dealing with a non-work-related topic, was professional in its tone. It was not

overly lengthy. It was not threatening or harassing. Counsel for the university candidly admitted that occasional personal messages, such as those dealing with basketball results, would typically not be considered as warranting any formal discipline.

The grievant, however, was differently situated than a typical school employee. He had a significant history of previously being instructed to avoid sending personal emails through the university system. The enforcement of University Policy 7000 is through Policy 1.60 of the Department of Human Resource Management (“Standards of Conduct”). Under Policy 1.60 included as Group II offenses are repeat offenses of a relatively serious nature requiring formal discipline. The policy lists as a specific example of a possible Group II offense the failure to follow a supervisor’s instructions or orders.

It is not critical that University Policy 7000 does not contain a specific prohibition on the sending of personal emails without additional aggravating factors being involved. The failure to follow repeated warnings easily qualifies as a violation of the ethical principles contemplated in the definition of “abuse and misuse” of resources found in that policy.

The grievant has presented no evidence or argument that he is being disciplined for reasons that would be in violation of another law or regulation. The record contains no such evidence. The record is also devoid of any mitigating evidence ignored by the University. The repeated instructions given to the grievant arguably qualify as an aggravating factor.

Under Section 5.8 of the Grievance Procedure Manual, I am required to give substantial deference to the decision by an agency in determining the level of discipline imposed. That deference can only be ignored upon a showing of unreasonableness. In this case, I view reasonable possible decisions by the school as ranging from further verbal counseling through a Group II Written Notice. Although the choice by the school is at the upper end of reasonableness, it is still within the bounds of it.

VI. DECISION

The grievant has been dealing with an unfortunate set of circumstances for over ten (10) years. His own inattention on December 13, 2024 exacerbated those circumstances. Nevertheless, the school acted appropriately in its decision to issue to him a second Group II Written Notice and terminate him from employment. I uphold those determinations.

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 April 7, 2025.

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

