

DECISION OF HEARING OFFICER

IN RE: CASE NO: 12144

HEARING DATE: 10-2-24

DECISION ISSUED: 11--24

PROCEDURAL HISTORY

Grievant was disciplined for a matter which occurred on May 6, 2024. Grievant received a due process memo on May 9, 2024¹, to which Grievant made a lengthy written response². A Written Notice³ was issued on May 24, 2024. The Hearing Officer was assigned to the case on June 24, 2024. A pre-hearing conference was scheduled for July 8, 2024. The hearing was scheduled for September 9, 2024, and rescheduled to October 2, 2024.

APPEARANCES

Agency Advocate
Agency Representative as Witness
Four additional Agency Witnesses
Grievance Advocate
Grievant as Witness

ISSUES

- 1) Whether Grievant exhibited conduct that was unacceptable and unbecoming of a leader.
- 2) Whether Grievant violated Offense Codes 13, 36, 37, 39⁴, and Standards of Conduct 1.60⁵, Civility in the Workplace Policy 2.35.⁶
- 3) Whether Grievant's actions were appropriate to maintain and enhance the workplace efficiency.
- 4) Whether mitigating circumstances were considered.
- 5) Whether a Group III discipline was appropriate.

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)

¹ Agency Exhibit 11

² Agency Exhibit 12

³ Agency Exhibit 13

⁴ Grievant Exhibit 5, Written Notice

⁵ Grievant Exhibit 21, Operational Policy 1.60

⁶ Agency Exhibit 18, Operational Policy 2.35

§ 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. Grievant has the burden of proving any affirmative defenses raised by Grievant. GPM §5.8.

APPLICABLE POLICY

This hearing is held in compliance with Virginia Code § 2.2-3000 et seq the Rules for Conducting Grievances effective July 1, 2012, and the Grievance Procedure Manual (GPM) effective July 1, 2017.

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “includes 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 requires formal disciplinary action.” Group III offenses “include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.” More than one (1) active Group II offense may be combined to warrant termination.

FINDING OF FACTS

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

Grievant was employed by Agency as a Nutritionist Supervisor. She supervised twenty-six employee positions of which approximately twenty people were actually employed during her term as supervisor. Grievant began employment with the Agency in May of 2012, however, she left the Agency and was rehired in January of 2023 in her position as Nutritionist Supervisor Senior until her dismissal in May of 2024.

During Grievant’s supervisory position, Grievant believed she upgraded the facility by remodeling workspace and worked to enhance efficiency amongst staff. During this time, several staff members believed they experienced Grievant’s behavior as offensive rather than promoting a positive workplace environment.

The Grievant testified on her behalf at the hearing and called no other witnesses. The Agency elicited testimony from two of Grievant’s supervisors and three of Grievant’s subordinates.

DISCUSSION

Agency Employee One (E1)⁷ stated Grievant started out as a good supervisor but gradually became a bully. Grievant shredded E1’s papers that were important to the Agency. E1 stated she heard yelling coming from Grievant’s office and an employee left crying. E1 stated that staff was more comfortable now that Grievant is no longer employed.

⁷ Agency Witness Testimony

Employee Two (E2)⁸ stated she hired Grievant, and things went very well at first but later became very hostile. Grievant yelled at staff. Grievant used vulgar language. Grievant mocked employees and they felt humiliated. Grievant no longer being in employment is “like a breath of fresh air.”

Employee Three (E3)⁹ felt Grievant would retaliate if you crossed her. For instance, Grievant rearranged one employee’s schedule so the employee would never have Fridays off. Grievant cause stress and anxiety and uses vulgar, demeaning language. E3 said she would leave employment if Grievant was reinstated.

Employee Four (E4)¹⁰ was a supervisor to Grievant. She had many occasions to hear Grievant’s complaints and those of Grievant’s staff. E4 tried to help Grievant improve her leadership skills but felt Grievant was not accepting to E4’s suggestions. E4 felt there was a much more functional team with Grievant no longer supervising them.

Employee Five (E5)¹¹ was the immediate supervisor to Grievant. She believed Grievant’s employment started out well with open communication and improvements to the work environment. About December of 2023, E5 started to become aware of problems. E5 tried to support Grievant and suggested stress counseling and extra training. Grievant only attended the first of three training classes. Other tactics were being implemented when the May 6th incident happened. Grievant was put on leave and due process notices were given. Grievant did make response. E5 believes the workplace is much better now that Grievant is gone. The staff help each other and have an enjoyable environment.

Although Grievant’s Advocate cross examined each of the above Agency witnesses, the Advocate was unable to elicit any positive traits the employees noticed other than the initial reports. Witnesses did report that the Agency was understaffed. Grievant was expected to do more than the job description she had expected to be her assignment.

Grievant then testified on her own behalf.¹² Grievant negated many of the allegations made by the employees. Grievant stated she was passionate about her job and did tend to have a loud voice. Grievant denied using vulgar language. Grievant stated it was an employee, not herself, who yelled at Grievant. Grievant spoke of employees misplacing documents, employees making fun of Grievant’s clothing, bothering Grievant with non-issues, and taking their issues to Grievant’s superior rather than Grievant. Grievant never caused an employee to cry but did suggest stress therapy for her. Employees created documents they were not authorized to do. One employee was overly aggressive, but she did send Grievant an apology.¹³ Another employee often left work early. Grievant stated she did not exhibit negative racial or economic status bias regarding Agency clients.

⁸ Agency Exhibit 4 and Agency Witness Testimony

⁹ Agency Exhibit 7 and Agency Witness Testimony

¹⁰ Agency Exhibit 2 and Agency Witness Testimony

¹¹ Agency Exhibit 3 and Agency Witness Testimony

¹² Grievant’s testimony

¹³ Grievant Exhibit 17

Grievant stated typing memos in all caps was not “yelling.” Grievant bought snacks for employees and scheduled a luncheon at Olive Garden. She also had group meetings. Grievant felt her superiors did nothing to help her manage any of the problems.

On May 6th¹⁴ Grievant arrived at the workplace to find the staff eating and chatting while work was piled up on a desk. When Grievant spoke, an employee talked over her. Grievant did admonish this behavior. Grievant stated she did not use vulgar words. Grievant stated she was frustrated and left the area.

Grievant stated she was shocked by the staff statements made at the hearing. Grievant believed herself to be a good employee and the discipline of Grievant was uncalled for. Grievant did not call any witnesses to collaborate her testimony.

OPINION

A Hearing Officer is a neutral person who is expected to listen in an unbiased manner to both parties’ opinions. While the Hearing Officer may agree that a matter feels unfair to the Grievant, the Hearing Officer is bound by the rules created for the Hearing Officer’s decision. The Agency is given deference to be able to manage its operations and employees.

Hearing Officers may order appropriate remedies but may not grant relief that is inconsistent with law, policy, or the grievance procedure.

In hearings contesting formal discipline, if the Hearing Officer finds that (1) the employee engaged in the behavior described in the Written Notice, (ii) the behavior constituted misconduct, and (iii) the Agency’s discipline was consistent with law and policy, the Agency’s discipline must be upheld and may not be mitigated, unless under the record evidence, the agency’s discipline exceeds the limits of reasonableness.¹⁵

Further, a Hearing Officer is not a super-personnel officer, therefore in providing any remedy, the Hearing Officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.¹⁶

In every matter before a Hearing Officer, all who speak take an oath of honesty. This Hearing Officer believes the Agency’s testifying witnesses honestly presented evidence of their opinion of Grievant’s behavior. The Hearing Officer also believes the

¹⁴ Collective Exhibits 1-10 and testimony of Witnesses dated May 6th. The May 6th incident was characterized as Grievant becoming very upset telling staff, “You need to come to work, do your fucking job and go home. The end.” Grievant also stated she was, “sick and tired of repeating herself until she was blue in the face” and “You need to stop going to MK about everything.” She told staff to “figure it out for yourself.”

¹⁵ Grievance Procedure Manual, effective July 1, 2020. §5.9 pg 19

¹⁶ Rules for Conducting Grievance Hearings effective July 2020, VI Scope of Relief pg 14. DeJarnette v. Corning, 133 F.3d 293, 299 (4th Cir. 1998)(“Title VII is not a vehicle for substituting the judgement of a court for that of the employer”).

Grievant presented evidence from her perspective of positive changes that she made and defended her personality as useful to the Agency. However, the Hearing Officer is charged with defaulting to an agency's directives or discipline if appropriate under the law and policy. Also, the Hearing Officer considers the weight of the evidence, Agency witnesses present a cogent narrative. Grievant defended herself but produced no witnesses to support her opinion. Also, Grievant's Advocate was unable to elicit collaboration from the Agency's witnesses that Grievant made positive changes given her management style.

Decisions are based on the weight and veracity of the evidence presented. In this matter the Hearing Officer believes every witness described truthfully how they felt or what they perceived happened. However, the Agency provided five (5) witnesses all essentially saying the same thing. The Agency entered exhibits to support their position.

The Grievant self-reported. Grievant entered exhibits to support her position. She presented no other witnesses. Her advocate was unable to elicit any positive statements from the Agency's witnesses in cross examination that collaborated with Grievant's version of events.

The weight of the evidence is clearly with the Agency in this matter.

The Agency, by preponderance of the evidence, proved Grievant violated Policy 13 by not following the suggestions for stress relief or training classes.

The Agency sufficiently proved Grievant violated Policy 36 when she used obscene or abusive language.

The Agency proved Grievant violated Policy 37 by her behavior was disruptive to the team effort.

The Agency proved Grievant violated Policy 39, by not following the spirit of Operational Policy 2.35 regarding civility in the workplace.

While Grievant did initially enhance the workplace, evidence presented indicated Grievant's efficiency and ability decreased.

Grievant's behavior/managing style was so disruptive to the Agency's goals that mitigation did not outweigh the discipline.

A Group III discipline with termination was appropriate to preserve the Agency's goal of following civility in the workplace.

MITIGATION

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 the rules established by the Department of Human Resource Management...” 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 recorded 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:

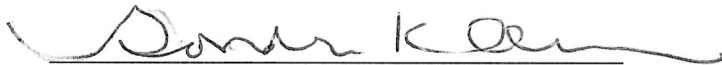
- (1) whether an employee had notice of the rule, how the Agency interprets the rule, and/or the possible consequences of not complying with the rule.
- (2) whether the disciplinary is consistent with the Agency’s treatment of other similarly situated employees or
- (3) whether the penalty otherwise exceeds the limits of reasonableness under all the relevant circumstances.¹⁹

Mitigation was considered. Agency’s witnesses even testified to Grievant’s early effectiveness. Yet Grievant’s later behavior pattern overshadowed the positive contribution made by Grievant to the point that she could no longer be an effective asset to the Agency.

In keeping with Operational Policy 1.06, Grievant’s cumulative behavior does warrant a Group III discipline with termination.

DECISION

For the above reasons, the Group III discipline with termination is UPHELD.



Sondra K. Alan
Hearing Officer

APPEAL RIGHTS

You may request an administrative review by EDR within **fifteen calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within fifteen calendar days of the date the decision was issued.

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 must also provide a copy of your appeal to the other party 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.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

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.^[1]

[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].

^[1] Agencies must request and receive prior approval from EEDR before filing a notice of appeal.