

VIRGINIA: DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION

Virginia State University, a Public Institution (the “University”)

In Re: Appellant (the “Grievant”)

Case Number: 12211

Hearing Date: February 14, 2025

Decision Issued: February 27, 2025

I. PROCEDURAL HISTORY

On October 29, 2024, the Grievant was issued a Group III written notice of disciplinary action (the “Written Notice”), with termination, for a substantial violation of The Department of Human Resource Management’s Policy entitled “Standards of Conduct Policy, No. 1.60” and for violating the University’s Administrative Policy No. 32-01 entitled “Acceptable Use of Technological Resources” which resulted in a breach in the privacy and security of the University’s information technology (“IT”).

On October 29, 2024, the Grievant timely filed a grievance to challenge the University’s action and he requested a hearing from The Virginia Department of Human Resource Management (“DHRM”), in the Office of Employment Dispute Resolution (“EDR”).

On December 23, 2024, EDR assigned the Grievant’s termination appeal to the Hearing Officer.

On February 14, 2025, the Hearing Officer conducted an in-person hearing for the Grievant in a conference room at the University.

II. APPEARANCES

1. Grievant
2. Grievant’s Representation Assistant
3. University Witnesses:

Associate Director of Technical Services

Director of University Technology Services (University Information Systems)

University Human Resource Officer

III. EXHIBITS

1. For the University: University Exhibit Book containing:

A1 – Administrative action by Grievant

A2 – Transmittal of Employee Password Via Microsoft Teams

B – Charges against Grievant

C – Policy: Acceptable Use of Technological Resources

D – Due Process Letter Proposing Disciplinary Action

E – Written Response to Charges from the Grievant

F – Termination Letter

G – Job Description

H – Original Contract between the Grievant and the University

2. For the Grievant:

The Grievant did not offer any exhibits.

IV. ISSUES

1. Did the Grievant engage in the conduct described in the Written Notice?

Yes. The evidence presented at the hearing substantiated the Written Notice by a preponderance of the evidence.

2. Did the conduct constitute misconduct?

Yes.

3. Did the University's discipline comply with the law and policy?

Yes, because the evidence presented at the hearing substantiated termination by a preponderance of the evidence.

4. Were there mitigating circumstances justifying a reduction or removal of the disciplinary action?

No.

5. Did the Hearing Officer consider mitigating circumstances?

Yes.

V. BURDEN OF PROOF

The University bears the burden of proof to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. *See* Grievance Procedure Manual (“GPM”), Sec. 5.8. A preponderance of the evidence shows that what is sought to be proved is more probable than not.

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

The University is a respected public institution in the Commonwealth of Virginia. The University implemented an IT system in which students, professors and members of the public confidentially interact with the University in a private setting. The University strives to ensure that its internal IT safeguards actively protect the University from security lapses and that its IT operative use regulations guarantee confidentiality to all who use the University’s computer system. The University considers seriously any security breach, if the same occur, in the University’s IT system. The University’s IT Director (the “IT Director”) and Assistant IT Director, the latter being the Grievant’s immediate supervisor (hereinafter referred to as the “Immediate Supervisor”), both testified credibly regarding the University’s urgency in maintaining its security regulations within the University’s IT system.

The Grievant functioned as the University’s Customer Care Manager for 6 to 9 months though he originally began working for the University in 2016. The Grievant’s job for the University was to operate, manage and oversee IT for the University’s “Help Desk.” The University’s Help Desk manages all IT communications between students, professors, contractors, and invitees within the University’s IT network. As the Customer Care Manager, the Grievant’s job was also a supervisory role in which the Grievant was required to lead other University IT employees whom the University also employed to oversee operations at the University’s Help Desk.

The Grievant has a Bachelor of Science in computer science from the University.

On October 8, 2024, a former professor, who had recently left the University, contacted the University’s Human Resource Department to inquire about returning the laptop provided to her by the University. The University’s Human Resource Department directed the former professor to contact the Grievant for guidance on laptop return. When he received the request, the Grievant communicated with the former professor about the laptop return. At the hearing, the Grievant asserted that he thought the laptop return was an urgent matter which he had to immediately resolve. In order to expedite the request, the Grievant circumvented the University’s IT system security and obtained the former professor’s personal password onto her University IT account. Then, the Grievant transmitted the former professor’s private log-in information to a third party. The Grievant and the third party continued to use the former professor’s private log-in details to accomplish the laptop return. In so doing, the Grievant bypassed accessing the University’s written IT policy and procedure for securely accessing the University’s IT system. University Ex. A & B.

Per the Grievant’s original employment agreement with the University, the Grievant was strictly forbidden to bypass the University’s internal IT safeguards. The Grievant, and his supervisors

who testified, correctly noted that the brief intrusion into the University's IT security system, did not cause a mass interference with the University's existing technology. However, the IT Director and the Grievant's Immediate Supervisor correctly feared that the Grievant's action, bypassing the IT system's safety precautions, could have resulted in a massive IT breakdown in the University's computer network system. Moreover, as a consequence, innumerable many private student accounts might have been compromised.

The University described the incident in greater detail as follows:

"On 10/8/24 [the Grievant] asked a [University] staff member for their [University] account credentials so that he could test their ability to log into a PC that we were sending to a remote worker. He then sent the credentials over Microsoft Teams to a subordinate OIT staff member to have the staff member log onto the account as the [University] employee to test the account. Once the OIT employee logged into the account, he asked the University employee to accept the DUO push. After further investigation, the DUO push was bypassed on 10/8/24 at 2:10 pm by [the Grievant]. This violates our administrative policy 32-01 (Acceptable Use of Technological Resources)." University Ex. B.

At all times, the University noted in the Grievant's misconduct notice that the University expected the Grievant to responsibly use administrative privileges (for computer use within the University). The University defines "responsible use" as refraining from bypassing the University's security system. Specifically, the University's administrative policy 32-01 also states under the heading "Computer Network Accounts" as follows:

"Users are responsible for maintaining the privacy and security of their computer network account user IDs and passwords and for the computer information systems accessed through the network. Users are also responsible for the activities carried out under their user accounts. Users are granted access to computing, networks, telecommunications, and electronically stored information contingent upon their prudent and responsible use. Access is granted to the individual only. Individuals are not authorized to transfer or share access with another." University Ex. C.

Further, the University regards the following activities as employee interference with its computer IT system and defines prohibited employee conduct as follows:

"Tampering, defeating or attempting to defeat security systems (locks, surveillance cameras, alarms, firewalls, networks, etc.), attempting or gaining unauthorized access to University information, information technology, facilities, systems, and/or other IT based resources, and/or using proxies, encryption, covert channels, or other software and measures to bypass information and physical security controls." University Ex. C, Policy 32-01(15).

In his defense to the termination action for a University IT security and privacy breach, the Grievant stated that he felt intense pressure to quickly resolve the former professor's laptop issue. The Grievant deeply regrets the security breach he caused. Nonetheless, the Hearing Officer must respect the University's assertion that the brief security breach might have intruded upon the University's many student IT accounts. In this one narrow instance, the Grievant is correct in stating that no intrusion into student records actually occurred. But, as the Immediate Supervisor testified, the University has an overriding duty to continually protect student confidentiality. The potential for harm caused by an IT

privacy break is not negotiable for an IT Manager. The Immediate Supervisor strenuously asserted in his testimony that the University's IT staff must strictly adhere to the University's written regulations to ensure the University's continued IT privacy for all University IT participants.

In addition, in response to the termination action, the Grievant alluded to a toxic work environment created by the Immediate Supervisor. The Grievant testified that the Immediate Supervisor moved next door to the Grievant's office simply to watch the Grievant as he functioned on-the-job. The Grievant mentioned also that the Immediate Supervisor was extremely critical of the Grievant's job performance and failed to praise him when he did a good job. Further, at the hearing on this matter, the Grievant complained that the Immediate Supervisor joked to others about this incident. The Grievant testified also that the Immediate Supervisor could have treated this singular protocol deviation merely as a learning experience rather than to fire him for this error in judgment. Finally, the Grievant noted that this incident was the only violation he ever accumulated on his unblemished work record.

At the hearing on this matter, the Grievant's reprieve requests did not comport with the Immediate Supervisor or the Human Resource Officer's testimony about the Grievant's work performance. To the contrary, the Immediate Supervisor testified that the Grievant's job performance concerned him. As an example, he mentioned that the Grievant was occasionally tardy and had taken leave, without supervisory assent, on short notice. The Immediate Supervisor credibly testified that the Grievant's tardiness did not cause the Grievant's termination but he admitted that he was not pleased with such tardiness or carelessly planned leave. The Immediate Supervisor testified also, as confirmed by the University's Human Resource Officer, that the Immediate Supervisor had reported the tardiness incidents to the University's Human Resource Officer.

The University's Human Resource Officer testified that the Grievant's tardiness, noted to her by the Immediate Supervisor, would likely have become a less serious work record violation had the termination incident not occurred. But, she testified, the Grievant's termination incident superseded the less serious work record violation and the Grievant was never charged with tardiness.

Also, the Immediate Supervisor freely admitted that he moved closer to the Grievant's office not only to more closely watch him, but also to provide necessary guidance to the Grievant. In retrospect, the Hearing Officer understands how the Grievant likely questioned the Immediate Supervisor's proximity and may have been uncomfortable with the move. Because the Immediate Supervisor was physically nearby the Grievant, he admitted that he became suspicious. The Immediate Supervisor was alarmed when he saw the Grievant, and the Grievant's colleague, deeply discussing something together on October 8, 2024. At this point, the Immediate Supervisor admitted that he had not yet learned of the IT breach. Arguably, the Immediate Supervisor was overly vigilant of the Grievant's work when he lacked cause. But the Hearing Officer does not believe that the Immediate Supervisor's concern was baseless. The Immediate Supervisor had stated that he wished to provide closer assistance to the Grievant to improve his performance. Further, the Immediate Supervisor denied that he ever joked about this incident.

The Hearing Officer finds that the Immediate Supervisor was credible. She believes that the Immediate Supervisor did, as he testified under oath, ponder the seriousness of this single incident for nearly a week. She believes the Immediate Supervisor's testimony that he spent many sleepless nights before concluding that the Grievant's termination for cause was the University's only option. Further, the hearing testimony showed, at most, that the Grievant was genuinely annoyed with the Immediate

Supervisor's accelerated scrutiny over his work. But the Hearing Officer did not opine that the Immediate Supervisor's watchful eye was unjustified or that the Immediate Supervisor's oversight ever escalated to the level of a toxic work environment.

The Hearing Officer also finds the testimony of the University's IT Director and Human Resource Officer credible. The Hearing Officer asked each University employee who testified to consider if he or she had considered an option other than a Group III termination. In the end, the University employees who testified concurred that, in their opinion, the profound seriousness of the violation coupled with the Grievant's managerial role, resulted in their collective judgment that termination was warranted and was the only University option in this factual scenario.

The Hearing Officer therefore supports the University's termination action and finds it warranted. At the same time, the Hearing Officer wholeheartedly recommends that the University re-hire the Grievant in another capacity. He might simply require more vigorous training regarding University IT practices and may not have been up to a managerial role at this juncture. Given another opportunity, the Grievant appears quite capable of doing his job without incident. Perhaps he may be placed, initially, in a non-leadership role. The Hearing Officer believes in this entirely forthright Grievant, who owned up to his judgement call error, accounted for his mistake and represented himself quite convincingly. Finally, the Grievant stated that he had learned enormously from his mistake and the Hearing Officer firmly believes him.

VI. CONCLUSIONS OF LAW AND POLICY

The Commonwealth of Virginia establishes procedures and policies that apply to state employment matters in the hiring, promoting, compensating, discharging, and disciplining of state employees in Virginia.¹ The *Grievance Procedure Manual*, Sec. 5.8, requires a state agency to show by a preponderance of evidence that the disciplinary action is warranted and appropriate under the circumstances.

The procedural standards for disciplinary actions in employment are set forth in the *The Code of Virginia*, Sec. 2.2-1201, as established and set forth by The Department of Resource Management, Standards of Conduct, Policy No. 1.60 (the "SOC"). The SOC provides criteria by which state agencies may consider employee misconduct ranging in seriousness from least severe (a Group I offense) to most serious and warranting the employee's removal (a Group III offense).

The purpose of the SOC's underlying policy is for state agencies to apply "a progressive course of discipline that fairly and consistently addresses employee behavior, conduct, or performance that is incompatible with the state's SOC for employees and/or related University policies."² The SOC's stated objective is grounded in due process which requires the hearing officer to consider a vast range of disciplinary alternatives applicable to the employee's misconduct charged by the University. If the offense fits the discipline, the hearing officer is not at liberty to dismiss the seriousness of the charge(s) and to insert his or her own subjective thoughts and apply the sensibilities of a human resource officer.

Regarding the SOC's applicability to state employees, as stated therein, the SOC's legislative intent is to "help employees to become fully contributing members of the organization."³ But when

¹ See generally *DHRM Department of Human Resource Management, Policy 1.60, Standards of Conduct*.

² *Id.* at p. 5.

³ *Id.*, at p. 5.

employees deviate from the University's standards, and employees commit misconduct, the SOC describes penalties for the employee's converse behavior and provide the hearing officer with available options for the hearing officer to consider in assessing the employee's misconduct charges.

In this instant case, the University reasonably assessed the Grievant's offense as a Group III offense because the SOC describes Group III Level Offenses as "acts of misconduct of such severe nature that a first occurrence normally should warrant termination."⁴

VII. MITIGATION

Under the *Rules For Conducting Grievance Hearings*, a hearing officer must give deference to the University'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 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 the above standard, the Grievant was not entitled to mitigation.

VIII. DECISION

The University has met its evidentiary burden of proving by a preponderance of the evidence that the Grievant violated University policies, including Policy No 1.60, and that the violation rose to the level of a Group III offense as charged in the Written Notice. The Hearing Officer UPHOLDS the Written Notice in its entirety.

IX. APPEAL RIGHTS

You may file an administrative review request within fifteen (15) calendar days from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request that the hearing officer either reopen the hearing or reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request that 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 of Human Resource Management, 101 North 14th Street, 12th Floor, 22219 or send by fax to (804) 371-7401, or email.
3. 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 the Office of Employment Dispute Resolution to 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, Office of Employment Dispute Resolution, Department of Human resource Management, 101 North 14th Street, 12th

⁴ *Id.*, at p. 11.

Floor, Richmond, VA 23219 or send by email to EDR@dhrm.va.gov, or by fax to (804) 786-1606.

4. You may request more than one type of review. Your request must be in writing and must be received by the reviewer within fifteen (15) calendar days of the date when the decision was issued. You must provide a copy of all your appeals to the other party and to the EDR. The hearing officer's decision becomes final when the 15 calendar days has expired, or when the administrative review has been decided.
5. You may file a request for judicial review if you believe the decision is contrary 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.

[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].

- Signature Page to Follow -

Entered: March 3, 2025

Sarah Smith Freeman Hearing Officer
Sarah Smith Freeman, Hearing Officer

CERTIFICATE

I certify that I have emailed/mailed the above Decision to all parties on this 3rd day of
March, 2025.

Sarah Smith Freeman Hearing Officer
Sarah Smith Freeman, Hearing Officer

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