

Issue: Group III Written Notice with termination (falsification of official documents);
Hearing Date: 08/24/05; Decision Issued: 08/30/05; Agency: ODU; AHO: Carl
Wilson Schmidt, Esq.; Case No. 8157



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8157

Hearing Date: August 24, 2005
Decision Issued: August 30, 2005

PROCEDURAL HISTORY

On July 7, 2005, Grievant was issued a Group III Written Notice of disciplinary action with removal for:

Employee was sent to Las Vegas, Nevada June 7-11 to attend the Infocomm conference on June 8, 9, and 10. Instead of attending the conference on June 10, the employee elected to leave the work site to visit the Grand Canyon. While returning from the Grand Canyon to the conference location the employee was involved in an accident that resulted in an extended stay in Las Vegas through June 14. The employee was attempting to gain reimbursement, as business expenses, from the University through submittal of signed expense reimbursement vouchers for hotel, per diem, and cab fare or expenses incurred as a direct result of his unapproved travel away from the conference site and visit to the Grand Canyon. Employee was not authorized to leave work site on June 10 for visit to the Grand Canyon. Employee has been inconsistent and misleading in verbal and written communication with management about the reason for going to Arizona and willfully misrepresented the Arizona trip on workers compensation, expense reimbursement vouchers, and leave activity reporting forms.

The above actions are a violation of the Commonwealth of Virginia Standards of Conduct specifically, falsifying any records, including but not limited to, vouchers, reports, insurance claims, time records, leave records or other official state documents; failure to report to work as scheduled without proper notice to supervisors and leaving the work site during work hours without permission.

On July 7, 2005, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On August 2, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On August 24, 2005, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency's Counsel
Witnesses

ISSUE

Whether Grievant's actions warrant disciplinary action under the Standards of Conduct? If so, what is the appropriate level of disciplinary action?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") § 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.

FINDINGS OF FACT

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

Old Dominion University employed Grievant as a Manager, Satellite Network Technical Support Services until his removal effective July 7, 2005. Grievant had been employed by the Agency for approximately 13 years. He supervised four employees.

His work performance prior to the events giving rise to this disciplinary matter was satisfactory to the Agency.

Old Dominion University sent Grievant to the Infocomm conference held in Las Vegas, Nevada. The conference exhibit area was open from 9 a.m. to 5 p.m. on Wednesday, June 8 and Thursday, June 9, 2005. On Friday, June 10, the exhibit area was open from 9 a.m. to 4 p.m.¹ Grievant was scheduled to return to Virginia on Saturday, June 11, 2005.

On June 7, 2005, Grievant, accompanied by his wife, traveled to Las Vegas. On June 8 and June 9, Grievant attended the conference. On June 10, 2005, Grievant and his wife arose early in the morning and drove their rental car to the Grand Canyon. They spent the morning sightseeing. In the early afternoon, they began driving back towards Las Vegas. At the 80 mile marker of Interstate 40 in Arizona at approximately 2:00 p.m., Grievant's vehicle was run off the road by tractor-trailer. Grievant's vehicle flipped several times before landing. Grievant's wife was transported by ambulance to a hospital in Kingman, Arizona. Grievant was transported by helicopter to a hospital in Las Vegas, Nevada.

Grievant's wife was released from the hospital and returned to Las Vegas. She extended the hotel room reservation to permit her to stay in Las Vegas on Saturday, June 11 and Sunday, June 12.

On June 23, 2005, Grievant submitted a Traveled Expense Reimbursement Voucher to the Agency to obtain reimbursement of expenses he claimed as part of his trip to Las Vegas. For June 10, 2005, Grievant claimed a per diem amount of \$43 and \$159 for lodging. For June 11, 2005, Grievant claimed a per diem amount of \$43 and \$159 for lodging. For June 12, 2005, Grievant claimed a per diem amount of \$43 and \$97.01 for lodging. For June 13, 2005, Grievant claimed a per diem amount of \$32.25 and \$97.01 for lodging.²

On June 27, 2005, Grievant submitted a Leave Activity Reporting Form to the Agency. Grievant reported 24 hours of Annual Leave Taken from June 15, 2005 through June 17, 2005. He also reported four hours of Personal/Family Leave Taken on June 23, 2005.³

On June 27, 2005, Grievant submitted to the Agency a form to describe the accident regarding a work-related accident or injury.

¹ Grievant's usual work schedule when he was working at ODU was from 7:30 a.m. to 4 p.m. Monday through Friday.

² Agency Exhibit 1.

³ Agency Exhibit 11.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “include types of behavior least severe in nature but which require correction in the interest of maintaining a productive and well-managed work force.” DHRM § 1.60(V)(B).⁴ Group II offenses “include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally warrant removal.” DHRM § 1.60(V)(B)(2). Group III offenses “include acts and behavior of such a serious nature that a first occurrence should normally warrant removal.” DHRM § 1.60(V)(B)(3).

“Falsifying any records, including, but not limited to, vouchers, reports, insurance claims, time records, leave records, or other official state documents” constitutes a Group III offense. DHRM § 1.60(V)(B)(3)(b). “Falsifying” is not defined by DHRM § 1.60(V)(B)(3)(b) or DHRM § 2.10, but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee in order for the falsification to rise to the level justifying termination. This interpretation is less rigorous but is consistent with the definition of “Falsify” found in Blacks Law Dictionary (6th Edition) as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. ***

The Hearing Officer’s interpretation is also consistent with the New Webster’s Dictionary and Thesaurus which defines “falsify” as:

to alter with intent to defraud, *to falsify accounts* || to misrepresent, *to falsify an issue* || to pervert, *to falsify the course of justice*.

Grievant knew or should have known that the Commonwealth of Virginia was not obligated to pay him for sightseeing during work hours. Grievant knew or should have known that the Commonwealth of Virginia was not obligated to reimburse him for his wife’s expenses.

Grievant should have sought permission from his supervisor to take annual leave on June 10, 2005. If Grievant’s leave request had been approved and Grievant took annual leave on June 10, 2005 he would not have been entitled to reimbursement for lodging and per diem expenses on that date.⁵ The expenses Grievant incurred on June 10, 2005 were not related to official State business.

⁴ The Department of Human Resource Management (“DHRM”) has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

⁵ “The, Commonwealth of Virginia will reimburse individuals traveling on official State business for reasonable and necessary expenses incurred. Travel expense accounts are open to the public and must be able to sustain the test of public review. When planning and paying for travel, economy, prudence and necessity are of primary concern. The use of State funds to accommodate personal comfort,

Grievant submitted a Travel Expense Reimbursement Voucher seeking reimbursement for business expenses of \$43 per diem and \$159 for lodging on June 10, 2005 for expenses while he was not engaged in official State business. In addition, Grievant claimed reimbursement for lodging incurred on June 12, 2005 in the amount of \$97.01. Grievant was in the hospital on that date and not in a hotel. Only his wife was in the hotel. By claiming expenses for June 10, 2005 and for June 12, 2005, Grievant falsified his Travel Expense Reimbursement Voucher thereby justifying the issuance of a Group III Written Notice. Removal from employment is normally warranted when an employee receives a Group III Written Notice.⁶

The Agency contends Grievant falsified his Leave Activity Reporting Form by not claiming personal leave on June 10, 2005. The document as it stands is not false. Grievant took leave on June 15, 16, 17, 23, 2005 and listed those dates on the Leave Activity Reporting Form.

The Agency contends Grievant falsified documents relating to a request for workers' compensation. Grievant testified he knew that he was not eligible for workers' compensation but submitted forms at the insistence of his personal injury attorney. Grievant did not falsify these documents because his intent was to comply with his attorney's request.⁷

The Agency contends Grievant failed to report to work as schedule without proper notice to his supervisor and that he left the worksite during work hours without permission. Grievant's worksite was the convention exhibit area. Grievant failed to report to that worksite without proper notice to his supervisor on June 10, 2005. Grievant did not leave the worksite during work hours without permission because he did not initially report to the worksite.⁸

Grievant contends that he was engaged in official State business on June 10, 2005 because at 1:22 p.m. Grievant used his mobile telephone to speak with a coworker located in Virginia. He also argues that he was driving near two community colleges receiving satellite services from ODU and he might have stopped by those

convenience, and taste is not permitted." Office of the Comptroller, State Travel Regulations, Topic No. 20335.

⁶ No credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.

⁷ Although the Agency has not established that Grievant falsified his Leave Activity Reporting Form and workers' compensation request documents, there remains sufficient evidence to support the Agency's issuance of a Group III Written Notice.

⁸ Even though the Agency has not established that Grievant left the worksite during work hours without permission, there remains sufficient evidence to support the Agency's issuance of a Group III Written Notice.

colleges. Grievant's arguments fail. Speaking to a coworker for a few minutes is not a sufficient reason to overlook Grievant's sightseeing for most of the workday. Grievant had not contacted the community colleges prior to his trip to Las Vegas. He did not obtain directions to enable him to travel to the colleges. There is no reason to believe Grievant had any actual intent to visit the community colleges on June 10, 2005.

Grievant asserts that he was given permission by his Supervisor to travel to the Grand Canyon because the Supervisor told Grievant to treat the trip as a honeymoon.⁹ In addition, on June 11, 2005, Grievant's Supervisor spoke with Grievant's wife and told his wife "not to worry about it" and that the Supervisor "would take care of everything." Grievant's argument is untenable. Nothing in the Supervisor's statement authorizes Grievant to disregard his work duties. Grievant was free to "honeymoon" after working hours. The Supervisor's statement not to worry and that he would take care of everything was not an authorization for Grievant to claim personal expenses as business expenses. The Supervisor was expressing concern and was offering to assist in coordinating their remaining days in Las Vegas.

Grievant believes sightseeing to the Grand Canyon had been the practice of other Agency employees visiting Las Vegas. Several years ago, an Agency manager and several employees traveled to Arizona. Once in Arizona, the manager took a small group of employees in a rented van to see the Grand Canyon. Grievant drove the van. Grievant's sightseeing trip and the trip that occurred several years ago are clearly different. The earlier trip occurred on Saturday when none of the employees were working or expected to work. The employees had meetings scheduled for the following Monday morning and attended those meetings as planned. They traveled to Arizona and arrived on a Saturday in order to obtain lower airfare. In Grievant's case, he was sightseeing during work hours. The other employees were sightseeing during their personal time.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal is **upheld**.

APPEAL RIGHTS

You may file an administrative review request within **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 the hearing officer either to reopen the hearing or to reconsider the decision.

⁹ Grievant married in March 2005.

2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request 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
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR 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:

Director
Department of Employment Dispute Resolution
830 East Main St. STE 400
Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when administrative requests for review have been decided.

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.¹⁰

[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].

Carl Wilson Schmidt, Esq.
Hearing Officer

¹⁰ Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.