

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case Nos: 12412

Hearing Date: April 7, 2026
Decision Issued: April 12, 2026

PROCEDURAL HISTORY

On November 17, 2025, Grievant was issued two Group II Written Notices with termination¹ On December 15, 2025, Grievant filed a grievance challenging the Agency's action.² The grievance was assigned to this Hearing Officer on January 20, 2026. A hearing was held on April 7, 2026.

APPEARANCES

Agency Advocate
Agency Representative
Grievant Advocate
Grievant
Witnesses

ISSUES

Did Grievant violate DHRM Policies 1.60, 2.35?

AUTHORITY OF HEARING OFFICER

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.³ Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the employee's alleged conduct, if otherwise properly before the Hearing Officer, justified termination. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs.*, 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

While the Hearing Officer is not a "super personnel officer" and shall give appropriate deference to actions in Agency management that are consistent with law and policy...the Hearing Officer reviews the facts *de novo*...as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify he disciplinary action. Thus, the Hearing Officer may decide as to the appropriate sanction, independent of the Agency's decision.

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. The employee has the burden of proof for establishing any affirmative defenses to discipline such as retaliation, discrimination, hostile work environment and others, and any evidence of mitigating

¹ A Ex. at 69-72

² A Ex. at 73-82

³ See Va. Code § 2.2-3004(B)

circumstances related to discipline.⁴ A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than not; evidence that is more convincing than the opposing evidence.⁵ It is sometimes characterized as requiring that facts to be established that more probably than not occurred, or that they were more likely than not to have happened.⁶ By definition, a preponderance of evidence requires only evidence, which shows that what is intended to be proved, is more likely than not, or evidence that is more convincing than the opposing evidence.⁷ However, proof must go beyond conjecture.⁸ In other words, there must be more than a possibility or a mere speculation.⁹

FINDINGS OF FACT

After reviewing the evidence and observing the demeanor of each witness, considering their motive, potential bias, and corroborating or contradictory evidence, I make the following findings of fact. The Agency submitted a notebook containing pages 1 through 122. The Grievant objected to all pages referencing prior issues regarding this Grievant that were not part of the Written Notices before me. I overruled that objection and provided Grievant's Advocate the opportunity to further object as and if that documentary evidence became a part of the evidence through witness testimony. He objected again and I overruled his objection. The notebook, in its entirety, was accepted as Agency Exhibit 1 (A Ex.). Grievant submitted a notebook containing pages 1 through 60. It was accepted as Grievant Exhibit 1 (G Ex.) The record closed at the conclusion of the hearing.

The following people testified at the hearing:

Nurse Manager, Sr. = NM

HR Analyst = HR

District Nurse Supervisor = DNS

Grievant's sister-in-law = GSL

Grievant

Definitions:

LW = nurse often mentioned in testimony

NOD = nurse of the day

DHRM Policy 1.60: Conduct Expectations of Employees, states in part:.. The following list is not all-inclusive but is intended to illustrate the minimum expectations for acceptable workplace conduct and performance:

- Demonstrate respect for the Agency and behave in a civil and professional manner toward Agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers...
- Support efforts that ensure a safe and healthy work environment...
- Resolve work-related issues and disputes in a professional manner and through established Agency processes.¹⁰

DHRM Policy 1.60: Formal Written Notices, states in part: When corrective actions or performance improvement plans have failed to correct misconduct and/or documented performance

⁴ Grievance Procedure Manual § 5.8

⁵ Grievance Procedure Manual § 9

⁶ *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991

⁷ Administrative Review Ruling Number 2024-5660, March 8, 2024, at 5

⁸ Southall, Adm'r v. Reams, Inc., 198 Va. 545, 95 S.E. 2d 145 (1956)

⁹ *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)

¹⁰ A Ex. at 87 (This version is dated 1/1/25 and the current version is 8/22/2025. The language is the same)

problems, or when an employee commits a more serious offense, management should address the matter by issuing a Written Notice.¹¹

ATTACHMENT A: POLICY 1.60 STANDARDS OF CONDUCT states in part:

Group I Level Offenses includes acts of misconduct, violations of policy, or **unsatisfactory performance** that have a **minor impact** on agency business operations but still require intervention. Examples may include but are not limited to: Tardiness; poor attendance; abuse of state time; use of obscene or **disrespectful language; disruptive behavior; ...**

Group II Level Offenses includes acts of misconduct, violations of policy, or **unsatisfactory performance** of a more serious nature that has a **considerable impact** on the agency's ability to provide services and meet business needs. Examples may include but are not limited to: Failure to follow supervisor's instructions; comply with written policy or agency procedures; violation of safety/health rule(s) where no threat to bodily harm exists; leaving work without permission;...¹² (Emphasis added)

Policy Guide - Civility in the Workplace states in part that Prohibited Conduct/Behaviors may include, but are not limited to:

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest
- Behaving in a manner that displays a lack of regard for others and **significantly** distresses, disturbs, and/or offends others
- Making disparaging remarks, spreading rumors, or making innuendos about others in the workplace¹³ (Emphasis added)

Policy Guide - Civility in the Workplace states in part: Disciplinary actions to address prohibited behaviors may be taken on a progressive basis or actions may be taken upon the first occurrence, depending upon the nature and seriousness of the conduct. The **context** of the behaviors, nature of the relationship between the parties, **frequency** of associated behaviors, and the **specific circumstances must be considered** in determining if the behavior is prohibited. A "reasonable person" standard is applied when assessing if behaviors should be considered offensive or inappropriate.¹⁴ (Emphasis added)

Policy Leave Guide – Leave Policies – Employee Requests for Leave states in part:..

- Employees should request leaves of absence as far in advance of the desired leave as practicable...
- If an employee could not have anticipated the need for a leave of absence, the employee should request approval for the leave as soon as possible after leave begins. In reviewing the request for approval, the Agency should consider, among other things, the **circumstances necessitating leave** and whether **the employee could have anticipated** the need.¹⁵ (Emphasis added)

Part V. Delegation of Nursing Tasks and Procedures 18VAC90-19-230. Disciplinary provisions state in part: The board has the authority to deny, revoke, or suspend a license or multistate licensure privilege issued, or to otherwise discipline a licensee or holder of a multistate licensure privilege upon proof that the licensee or holder of a multistate licensure privilege has violated any of the provisions of § 54.1-3007 of the Code of Virginia...

2. Unprofessional conduct means but shall not be limited to:..
 - b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained...
 - d. Employing or assigning unqualified persons to perform functions that require a **licensed** practitioner of nursing; ...
 - f. Abusing, neglecting, or abandoning patients or clients;

¹¹ Id. at 91

¹² G Ex. at 44,45

¹³ G Ex. at 42

¹⁴ Id. at 42

¹⁵ G Ex. at 39

g. Delegating nursing tasks to an **unlicensed** person in violation of the provisions of this part;¹⁶ (Emphasis added)

The first Written Notice at Nature of Offense stated: It was discovered that on September 12, 2025, after your phone conversation with [DNS], you proceeded to burst into the lunch/conference room in a **loud and frantic state** where employees were having lunch. You interrupted [NM], and asked, "Who are you talking to?" and "Are you talking to [DNS]?" You displayed **emotional outbursts** and stated, ("I can't deal with this right now") in a public and professional setting. You informed [DNS], that [NM] "hung up on you." You further said, "My supervisor [NM] **hung up on me**, and I just cannot believe it." You became defensive about the task you were assigned to and stated you were **not supported** by [NM]," and you were leaving. The fact is that [DNS] did not hang up the phone on you there was a long silence, and it **seemed** that you had hung up the phone on [DNS]. This created a **disruptive and unprofessional atmosphere** in the common area where other employees were taking their scheduled breaks. You made **loud disparaging remarks** in front of your colleagues in an attempt to undermine [DNS's] authority and professionalism, and you demonstrated **disruptive behavior**. You have failed to comply with agency policies & procedures, failed to follow supervisor's instructions, demonstrated disruptive behavior, and unsatisfactory performance. This is in clear violation of DHRM Standards of Conduct policy 1.60, and DHRM Civility in the Workplace 2.35.¹⁷ (Emphasis added)

The second Written Notice at Nature of Offense stated: On September 12, 2025, you reached out to me, to tell me about a Tuberculosis case evaluation. During this conversation, **you seemed overwhelmed** stating, "This is just too much for me right now." You then referenced personal concerns regarding your family. I asked for clarification, as it was **difficult to follow your communication** at the time. You then stated that you needed to leave work immediately to take your parents to the hospital. The call then disconnected unexpectedly. **Your decision to leave your assigned/accepted duties prior to notifying or transferring care to your supervisor is unacceptable conduct.** You are aware that when tasks are assigned to the nursing staff, they are not permitted to just hand it over to another nurse as you must get approval from your supervisor. **There is a process in place for assigning and reassigning cases.** The nurse that you handed the assignment to, that assignment is outside of her job description and created an operating disruption in the workflow. According to the Virginia Board of Nursing 18VAC90-19-230 Disciplinary Provisions 2b.-A nurse can violate state laws by assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained. This nurse has not been trained and does not have the competence to perform that assignment. **You failed to follow proper procedures and processes**, and you did not notify your supervisor that you could not do the TB assignment. In your conversation with me there was a lack of communication and clear understanding of your intentions, and you did not ask me if another nurse could be assigned the TB case. You just simply handed the assignment over to another nurse. You have demonstrated unacceptable conduct. You have failed to comply with agency policies & procedures, failed to follow supervisor's instructions, demonstrated disruptive behavior, neglect of duty, and unsatisfactory performance. This is in clear violation of DHRM Standards of Conduct Policy 1.60, and DHRM Civility in the Workplace 2.35.¹⁸ (Emphasis added)

Both Group II Written Notices seem to deal with one event that took place on September 12, 2025 and both are encapsulated in Staff Interaction Documentation dated September 12, 2025 (**SID**). NM's summary stated in part:

"Grievant was assigned as the "nurse of the day" for this day...I was forwarded a telephone call from an Infectious Disease physician at **10:48a** on 9/12 reporting a positive AFB for a patient which is a critical lab requiring report to the local health district for suspected Tuberculosis patient... At **11:30am**, I went to look for Grievant and found her... I then proceeded to tell her that I took this call, gave her the specifics, and asked her to review the case and contact her supervisor, [DNS], with her plan of action. The only thing that needed to be done that day was to contact the patient and tell him he needed to isolate at home until further notice as well as schedule to come out and collect additional sputa...While I spoke to Grievant, she never looked at me but continued to flip through papers. At the end, I asked her if she had any questions or needed any additional

¹⁶ A Ex. at 121

¹⁷ A Ex.at 71

¹⁸ A Ex. 69

assistance from me and she said “no”. At that time, Grievant never mentioned anything about her brother or family issues to me that would interfere with her work or have the potential to. At **11:32p**, I let [DNS] know I handed everything over to Grievant...

At **12:13p**- I was in the lunchroom eating my lunch. [DNS] called me...Before she was able to say anything else, Grievant walked into the lunchroom and **loudly asked me** who I was on the phone with. I did not respond. She then asked me if I was on the phone with [DNS]. I said “no”, as that is not her concern...Grievant then said “I have to go, I can’t deal with the TB case now. My brother is having brain surgery, and I don’t feel good and with my parents’ recent move and issues with my basement, I just cannot now. I have to go. I **gave** the TB case to [LW]. I called [DNS] and told her, and she hung up on me. My **supervisor hung up on** me, and I just cannot believe it. I have to go.” I stated “**ok**” and she left.

I then took the phone call with [DNS] to my office. I asked [DNS] about her account of the conversation and did she hang up on Grievant. [DNS] stated “No, I absolutely did not hang up on Grievant. Grievant was **so upset**, and the phone went silent, **so I didn’t know if she hung up or the line cut out**. Grievant called me stating **she thinks the only thing that needs to be done is to call the patient and tell him to isolate**. She then said, I have to go, my stomach hurts. I then asked her if she was going to take care of the suspect TB case. She said, “No I have to go, **my brother is in brain surgery now.**” [DNS] learned while listening to Grievant in the lunchroom that Grievant took it upon herself to **assign the case** to [LW] and then she called [DNS] to tell her she was leaving. The time it took for Grievant to take it upon herself to assign a case to [LW], she could have called the patient and told him to isolate and set up additional sputa collection date/time. [DNS] then called [LW] and reviewed the case with her. Grievant left the office at 12:20p. At **3:06pm** on her work computer after leaving for an emergency, Grievant sent an email to [DNS]...and me to say she had to leave on a family emergency where she stated **she had hoped for support and empathy from [DNS] while accusing her of hanging up the phone on her.**”¹⁹ (Emphasis added)

Agency alleges that Grievant violated Policy 2.35 with her utterances in the workroom and violated policy when she gave/assigned the TB case to LW. In the second Written Notice, Agency cites 18VAC90-19-230 Disciplinary Provisions 2b which seems to deal with the issue of assigning unqualified persons to perform functions that require a **licensed** practitioner of nursing, delegating nursing tasks to an **unlicensed** person or assuming duties and responsibilities within the practice of nursing **without adequate training** or when competency has not been maintained. Agency evidence was LW was without adequate training and competency to deal with TB cases. There was no evidence that she was **unlicensed**. Because LW did not have the proper training to deal with a TB patient, Agency argues Grievant violated policy by assigning LW this patient. It would seem that this is not what this VAC is saying. LW, because she was not adequately trained for TB matters, should not accept the case. Agency offered no written policy regarding who could or could not assign matters, but all, including Grievant, agreed that Grievant did not have the authority to assign cases.

A perceived violation of 18VAC90-19-23 Disciplinary Provisions 2b should be addressed to the Nursing Board, particularly where here, assuming both Grievant and LW are licensed, the issue seems to be whether or not either should have accepted this TB matter if they were not properly trained.

In her testimony, NM stated: My personal cell phone rang, and I saw that it was DNS, and I answered it... And right at that time Grievant **came stomping** into the lunchroom...with other people in this room and said, “I cannot do this.” I have to leave. I’m having issues with my basement, and I’ve got to get my parents and my brother is having surgery and DNS just hung up on me...and then she said some things about her supervisor...and how **she had no empathy**...she said she had to leave and I said okay...and she walked out.²⁰ (Emphasis added)

NM testified: I said “okay.” I cannot step in front of Grievant and keep her from leaving. I did not say yes you are permitted to leave or no you are not permitted to leave. I acknowledged her.²¹ NM also testified that LW said the TB matter was assigned to her by Grievant.²²

¹⁹ A Ex. at 37,38

²⁰ Hearing Record at approximately 17:45 – 18:55 (NM testimony)

²¹ Hearing Record at approximately 44:15 – 44:55 (NM testimony)

²² Hearing Record at approximately 52:00 – 52:30 (NM testimony)

NM stated that Grievant had, in the past, had some issues regarding TB cases.²³

HR was in the lunchroom when the conversation before me took place. There were other in the lunchroom, perhaps four total, but no one else who was present testified. He testified Grievant was **visibly overwhelmed**; stated her brother was having brain surgery; I need to leave; are you on the phone with DNS; **she hung up on me**; I have handed the case over to LW; I need to leave right now; NM kind of said okay.²⁴ He also described **her mental state as one of extreme stress, anxiety and lack of focus**.²⁵ (Emphasis added)

HR's SID summary stated in part:

Between 12:00 and 12:15, [Grievant] entered the breakroom **visibly overwhelmed**. She stated, "I cannot work on the case at this time as my brother is having brain surgery and my parents are very upset. I need to take them to the hospital." Other staff members were present in the room at that time. [NM] was on the phone when [Grievant] asked who she was speaking with, specifically if it was [DNS]. [Grievant] then stated, "I was talking to [DNS] on the phone, and she just hung up on me." She added that she had already **handed over the case** to another nurse and needed to leave. [NM] **granted** her request to leave. When I later discussed the incident with [NM], she explained that she had not been aware of [Grievant]'s brother's surgery. She stated that she had earlier received a call regarding a TB case, which is typically handled by the Nurse of the Day ([Grievant]). [NM] documented the call and reassigned the case to [Grievant] for follow-up, explaining that at that point the only action required was to request the patient to quarantine. [NM] further clarified that [Grievant] did not mention her brother's surgery or any personal emergency when they spoke (this was around 10:00 AM). When I spoke with [DNS], she explained that during her phone call with [Grievant], [Grievant] was **not making much sense** and then **there was a long pause**. **[DNS] assumed the call had either disconnected or that [Grievant] had left the conversation**. She then contacted [NM] to discuss the situation. Both [NM] and [DNS] have provided their own accounts of the incident separately in detail. This incident highlights the importance of balancing personal emergencies with workplace communication standards. [Grievant] was under **significant stress** due to her brother's surgery, which affected how she expressed herself in that moment. At the same time, it is **best practice for staff to communicate urgent personal matters privately with a supervisor** to ensure clarity, maintain confidentiality, and minimize disruption in front of other team members.²⁶ (Emphasis added)

HR testified that Leave Policy does recognize that there may be circumstances where an employee cannot give advance notice.²⁷ He further testified that the context of the alleged behavior must be considered regarding a violation of policy 2.35.²⁸ When asked if Grievant's action disrupted the workplace with what took place in the lunch, HR testified "Per se, work? Not necessarily...it could have handled better. I understand Grievant was going through something..."²⁹

A Due Process meeting was held October 29, 2025.³⁰ HR was present at this meeting and created a Summary of Interaction report.³¹ It stated in part: [Grievant] acknowledged understanding the process and admitted that she has made mistakes in the past. She shared that her recent time away from work gave her an opportunity to reflect on her behavior and identify areas for improvement.³²..

²³ Hearing Record at approximately 20:25 – 20:50 (NM testimony)

²⁴ Hearing Record at approximately 57:45 – 58:10 (HR testimony)

²⁵ Hearing Record at approximately 1:12:15 – 1:12:25 (HR testimony)

²⁶ A Ex. at 39

²⁷ Hearing Record at approximately 1:18:20 – 1:19:10 (HR testimony)

²⁸ Hearing Record at approximately 1:18:25 – 1:19:50 (HR testimony)

²⁹ Hearing Record at approximately 1:42:10 – 1:42:35 (HR testimony)

³⁰ A Ex. at 55-59

³¹ A Ex. at 60,61

³² Id. at 60

It was noted that during the incident, [Grievant] appeared **overwhelmed and was unable to communicate** effectively on the phone, leading to a disconnection. She stated that she does not fully recall the details of that conversation but accepted responsibility and acknowledged that **she should have handled the situation more appropriately.**³³ (Emphasis added)

The second violation was then discussed, specifically concerning inappropriate behavior in a public setting and challenging a supervisor's authority. It was explained that such conduct is not acceptable and constitutes a violation of the organization's Code of Conduct. **[Grievant] again accepted responsibility, apologized for her actions,** and shared that she has been focusing on her health and well-being through consultations with medical professionals.³⁴ (Emphasis added)

DNS received a call from NM regarding the TB patient. She called NM and told her to assign the case to Grievant. NM testified that Grievant called her regarding this assignment and **"she was very jumbled and seemed like she was beside herself...this is just too much for me...and she just kept getting more jumbled...she said she had to go and everything went silent...I thought she hung up or the connection was lost."**³⁵ (Emphasis added)

Merriam Webster dictionary defines jumbled as "to move in a confused or disordered manner." NM's testimony is that Grievant was very jumbled and became more jumbled on this call. Said another way, Grievant was confused and became more confused and then everything went silent.

DNS stated that Grievant did not violate the Agency's leave policy even though she did not give advance notice prior to leaving on September 12.³⁶ She stated that LW said Grievant gave the TB case to her to handle.³⁷ LW was not a witness.

GSL testified that Grievant's brother was scheduled for brain surgery on September 12. She informed Grievant of this during the evening of September 11 and said Grievant was very upset. As it turned out, surgery was not needed at this time and GSL notifies Grievant of that around 2:30 PM on September 12. Grievant did not come to the hospital on September 12.

Grievant testified that she did not assign the TB file to LW. She gave the TB file to LW, said she did not know what to do with it, DNS knows I am leaving, please let NM or DNS know where the file is.³⁸ She knew when the TB case was assigned to her that that she could not responsibly handle the case, but was unable to immediately verbalize that inability. I called DNS to let her know.³⁹ On cross examination, Grievant stated she was unable to communicate and realized **she was unable to function or perform her duties safely.**⁴⁰ (Emphasis added)

Neither the Agency nor Grievant called LW as a witness. Grievant's Advocate argued Agency's failure to call LW implied LW would not support the Agency's assertions regarding what was said between Grievant and LW when the TB case changed hands. Of course, the exact same is true for why Grievant did not call LW as a witness to corroborate what Grievant said regarding the transfer of the matter to LW. Regardless, there is no dispute that Grievant gave the file to LW. The dispute seems to be whether there is a distinction between assign or give or hand to with instruction to let NM and DNS know.

EDR has opined as follows: *In our administrative review, we remanded...for reconsideration of the charge related to the Grievant's reference to his subordinate employee as "Barbie," ... the hearing officer found that "a reasonable person may find the behavior of jokingly making the Barbie comment and the*

³³ Id. at 60

³⁴ Id. at 60

³⁵ Hearing Record at approximately 1:50:00 – 1:52:15 (DNS testimony)

³⁶ Hearing Record at approximately 2:44:25 – 2:44:45 (DNS testimony)

³⁷ Hearing Record at approximately 3:03:50 – 3:03:55 (DNS testimony)

³⁸ Hearing Record at approximately 3:34:00 – 3:34:50 (Grievant testimony)

³⁹ Hearing Record at approximately 3:39:30 – 3:40:10 (Grievant testimony)

⁴⁰ Hearing Record at approximately 4:21:35 – 4:21:40 (Grievant testimony)

finger gesture is prohibited behavior under Policy 2.35,” but “the Group III level offense is too severe for a first offense and **when considering the overall context.**” The hearing officer upheld the discipline at the Group I level as the maximum reasonable discipline under the circumstances.

The Agency strongly disagrees, arguing that calling a female subordinate “**Barbie**” – especially in front of other female subordinates – falls under “the most serious type of violation of the civility code for the Commonwealth” in large part because it denigrates individuals based on membership in a protected class. In support of its contention, the Agency also cites the Grievant’s written feedback to Complainant D that her actions were “**passive aggressive**” and that she needed to “**temper [her] passion.**” The Agency also argues that **showing a middle finger** to a direct report should justify a Group III offense because it is “obscene and extremely offensive to a reasonable person.” Finally, the Agency maintains that policy violations are generally disciplined at the Group II level and that “[i]f the reconsidered decision stands as it is written, the rules regarding civility in the state workplace will simply be unenforceable.”

We agree with the Agency’s position that gender-derogatory “jokes” and profane gestures are generally unacceptable under DHRM Policy 2.35. That said, the reconsidered decision identifies multiple reasons for finding the discipline at the Group III level to be unwarranted under the circumstances... Here, the hearing officer **appropriately considered contextual evidence** to determine the severity of the misconduct in this particular case...⁴¹

EDR has held: Under Policy 2.35 Policy Guide, as the hearing officer notes, a “reasonable person” standard is applied when assessing the behavior to determine whether the behavior is offensive or inappropriate. Indeed, the Policy Guide further states that “[t]he context of the behaviors, nature of the relationship between the parties, frequency of associated behaviors, and the specific circumstances must be considered in determining if the behavior is prohibited.” We do not interpret the hearing officer’s analysis as establishing an excuse for the Grievant’s behavior, and we would not support such a conclusion, or the disciplinary action would not have been upheld at all. Instead, the hearing officer is demonstrating consideration of the full context of the situation, which is the appropriate application of policy.⁴²

Rules for Conducting Grievance Hearings at (VI)(B) states in part: The hearing officer should ensure that an employee receives adequate post-disciplinary due process. Thus, a hearing officer’s review is limited to the conduct charged in the Written Notice and attachments.

EDR has opined as follows: Based on EDR’s review of the record evidence, we are unable to find that the arguments presented on appeal demonstrate a basis for remand. We have not identified evidence that the hearing officer failed to consider that would warrant reconsideration of the decision. To the extent there is an Agency policy or guidance on invasions of personal space or professional boundaries with residents, it is not present in the hearing record, and it is not cited on the Group III Written Notice or in the Agency’s appeal. Accordingly, we concur with the hearing officer’s reasoning in that there was insufficient evidence presented about a standard by which to measure whether the Grievant’s behavior was misconduct. The Agency’s appeal attempts to make the case about more behaviors than what was charged in the Written Notice. While it may very well be that there was further misconduct here, it was not cited in the Written Notice and, therefore, cannot be considered. Furthermore, the misconduct that was upheld (two Group I’s and one Group II) may have been charged differently and could have supported termination on their own, but that did not occur here. In short, the Agency is unable to rise above that which is charged in its **Written Notices**. We cannot find that the hearing officer’s evaluation of the available evidence was improper such that remand is warranted.⁴³

EDR, has opined as follows: Hearing officers are authorized to make “findings of fact as to the material issues in the case” and to determine the grievance based “on the material issues and the grounds in the record for those findings. Further, in cases involving discipline, the hearing officer reviews the facts de

⁴¹ Second Administrative Review Ruling Numbers 2025-5772, 2025-5775, November 20, 2024, at 7,8

⁴² Administrative Review Ruling Number 2026-5971 November 26, 2025, at 6

⁴³ Administrative Review Ruling 2026-5992, December 11, 2025, at 5

novo to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action. Thus, in disciplinary actions the hearing officer has the authority to determine whether the Agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances. Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based upon evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings⁴⁴

The Agency does have the burden to demonstrate that a disciplinary action is consistent with policy.⁴⁵ The Agency must present evidence demonstrating that a Written Notice is properly categorized at the appropriate level under state and Agency policy.⁴⁶

Regarding the issue of the alleged violation of Policy 2.35, NM said the Grievant “came stomping into the lunchroom, loudly asked me, my supervisor (DNS) hung up on me, and she has no empathy.” HR said the Grievant stated that “her supervisor hung up on her.” This interaction seems to have lasted for no more than a minute. HR described Grievant as “visibly overwhelmed and her mental state as one of extreme stress, anxiety, and lack of focus. Regarding the phone call between Grievant and DNS, DNS told HR that Grievant was “not making much sense and was confused and became more confused and then everything went silent.

The Policy Guide for Civility in the Workplace sets forth that the context and frequency of the behavior and the specific circumstances must be considered to determine if the behavior is prohibited. Speaking loudly, by itself, is not a prohibited conduct or behavior. The evidence before me regarding who hung up on whom is such that I do not know the answer to that question. Grievant testified that DNS hung up on her and DNS testified that there was a long period of silence, and she assumed that Grievant hung up on her. DNS did not testify that she heard a dial tone which might signify that the phone at the other end of the call had been hung up. Stating that someone has no empathy is simply not a violation of Policy 2.35. None of these actions remotely rise to calling a female subordinate “Barbie” or showing a “middle finger.” And even if they did, the Agency concedes that the Grievant’s mental state was such that she likely was far from being a “reasonable person” when these statements were made. I find that a reasonable person would find that a loud voice, which of course is incredible subjective, coupled with saying someone lacks empathy, does not rise to the level of even a Group I violation of Policy 2.35.

Agency witnesses have conceded that there was not a violation by Grievant in leaving work. The issue is the hand off of the TB case. Grievant testified that she knew she could not reassign that case to LW. Grievant conceded in her testimony and in the documentary evidence⁴⁷ that she could have done things differently on September 12. Agency presented evidence that LW thought the TB case was now hers and Grievant testified that she merely gave it to LW, with instructions for LW to notify either NM or DNS, or both. Grievant placed LW in an untenable position when she gave her this case. With minimal effort, she could have called or found either NM or DNS and returned the case to one of them. Grievant could have refused the case when it was first given to her. She did neither.

Attachment A: Policy 1.60 Standards of Conduct defines Group I offenses as follows: Group I Level Offenses includes acts of misconduct, violations of policy, or **unsatisfactory performance** that have a **minor impact** on agency business operations but still require intervention.⁴⁸ (Emphasis added)

⁴⁴ Administrative Review Ruling Number 2025-5769, October 31, 2024, Administrative Review Ruling Number 2024-5665, March 8, 2024, at 5,6, Administrative Review Ruling 2026-5971, November 26, 2025, at 8,9

⁴⁵ Rules for Conducting Grievance Hearings § VI(B)(1)

⁴⁶ Administrative review Ruling Number 2025-5888, May 29, 2025, at 3

⁴⁷ A Ex. at 60

⁴⁸ G Ex. at 44

While Agency presented no evidence of a Written Policy as to how the hand off of the TB should have occurred, it is surely reasonable that Grievant knew she should have given it to a supervisor and not LW. This is unsatisfactory performance. The evidence presented indicated that the case was re-assigned properly that same day, the patient was not harmed, and Grievant went on an approved leave. If there was any impact on the on the Agency business operations, it was minor. Grievant has committed a Group I offense.

Agency produced evidence, objected to by Grievant's Advocate, that would suggest there have been past issues.⁴⁹ NM testified Grievant has 1 informal discipline in 2020, 3 in 2021, 4 in 2022 and 4 in 2023.⁵⁰ For reasons known only to the Agency, none of these ever resulted in a Written Notice. Conceptually, had any of those resulted in a founded Group Notice, the results in this matter might be different.

MITIGATION

Va. Code § 2.2-3005(C)(6), authorizes and grants Hearing Officers the power and duty to receive and consider evidence in mitigation or aggravation of any offense charges by an Agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearings ("Rules"), provide that a Hearing Officer is not a super personnel officer. Therefore, in providing any remedy, the 2101747Hearing Officer should give the appropriate level of deference to actions by the Agency management that are found to be consistent with law and policy. Specifically, in disciplinary grievances, if the Hearing Officer finds that (1) the employee engaged in the behavior described in the Written Notice; (2) the behavior constituted misconduct; and (3) the Agency's discipline was consistent with law and policy, then the Agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness

Hearing Officers are authorized to make findings of fact as to the material issues of the Case and to determine the grievance based on the material issues and the grounds and the records for those findings. The Hearing Officer reviews the facts *de novo* to determine whether the cited actions constitute misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action. The Hearing Officer has the authority to determine whether the Agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.

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 that the employee is accused of violating, (2) the Agency has consistently applied disciplinary action among similarly situated employees, (3) the disciplinary action was free of improper motive, (4) the length of time that Grievant has been employed by the Agency, and (5) whether or not Grievant has been a valued employee during the time of his/her employment at the Agency.

I find no reason to mitigate this matter.

DECISION

For the reasons stated herein, the Agency's issuance to Grievant of two Group II Written Notices of disciplinary action with termination is rescinded. I find Grievant has committed a Group I offense. The Agency is ordered to reinstate Grievant to Grievant's same position prior to removal, or if that position is filled, to an equivalent position. The Agency is directed to provide back benefits including health insurance and credit for leave and seniority that the employee did not otherwise accrue.

Pursuant to §7.2(e) Special Rules for Discharge Hearings, in the event counsel for the Grievant seeks attorneys' fees, he shall ensure that the Hearing Officer receives, within 15 calendar days of the issuance of the initial decision ordering reinstatement, counsel's petition for reasonable attorneys' fees. The petition shall include an affidavit itemizing services rendered, time billed for each service, and the hourly rate charged in accordance with the Rules for Conducting the Grievance Hearings. A copy of the fees petition must be

⁴⁹ A Ex. at 29-32

⁵⁰ Hearing Record at approximately 46:36:35 – 46:56:10 (NM testimony)

provided to the opposing party at the time it is submitted to the Hearing Officer. The Agency may contest the fees petition by providing a written rebuttal to the Hearing Officer.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EDR within 15 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 that 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 where 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].

William S. Davidson
William S. Davidson, Hearing Officer

Date: April 12, 2026