COMMONWEALTH of VIRGINIA

Department of Human Resource Management
Office of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No. 12438

Hearing Date: April 27, 2026
Decision Issued: April 29, 2026

PROCEDURAL HISTORY

On December 17, 2025, the Agency issued Grievant a Group II Written Notice of disciplinary action. The offense was leaving work without permission, abuse of state time, and falsifying records on November 24, 25, and December 10, 2025.

The Grievant timely filed a grievance to challenge the Agency's disciplinary action, seeking recission of the Group II offense. The matter advanced to hearing. On March 16, 2026, the Office of Employment Dispute Resolution assigned this grievance to the Hearing Officer. The hearing was scheduled for April 27, 2026, the first available date for the parties. The hearing was held as scheduled, in person at the agency's facility.

The Agency and the Grievant submitted documents for exhibits that were accepted into the grievance record as joint exhibits, and they will be referred to as Joint Exhibits. The record closed at the conclusion of the hearing. The hearing officer has carefully considered all evidence and argument presented.

APPEARANCES

Grievant
Agency Representative
Advocate for Agency
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. In all other actions, such as claims of retaliation and discrimination, the employee must present her evidence first and must prove her claim by a preponderance of the evidence. *In this grievance, the burden of proof is on the Agency. Grievance Procedure Manual* (GPM) § 5.8. However, § 5.8 states *"[t]he employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline*." A preponderance of the evidence is evidence which shows that what is sought to be proved is more likely than not; evidence that is more convincing than the opposing evidence. GPM § 9.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

> It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . .
> To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

Va. Code § 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 § 2.2-3005.1 provides that the hearing officer may order appropriate remedies including alteration of the Agency's action. Implicit in the hearing officer's statutory authority is the ability to determine independently whether the employee's alleged situation, if otherwise properly before the hearing officer, justifies relief. The Court of Appeals of Virginia in *Tatum v. Dept. of Agr. & Consumer*

Serv., 41 Va. App. 110, 123, 582 S.E. 2d 452, 458 (2003) (*quoting Rules for Conducting Grievance Hearings*, VI(B)), 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 the disciplinary action."

Under Operating Procedure 135.1, *Standards of Conduct*, Group II offenses include acts and behavior of a more serious or repetitive nature. This level is appropriate for offenses that seriously impact business operations and/or constitute a neglect of duty involving major consequences, insubordinate behaviors, and abuse of State resources, etc. An accumulation of two Group II notices normally should warrant termination. Joint Exh. 8, p. 122. Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy or procedure are specific examples of a Group II offense.

The Offense

The Group II Written Notice, issued by the assistant training director on December 17, 2026, detailed the facts of the offense, and concluded:

> Violations of Operating Procedure 135.1, Standards of Conduct, DHRM Policy 1.60, Standards of Conduct, Operating Procedure 110.1, Hours of Work and Leaves of Absence, Operating Procedure 110.5, Telework. [The Grievant's] violation of the Standards of Conduct Operating procedures constitutes unethical conduct such as falsifying record by omission (leave records). [The Grievant] violated the Hours of Work and Leave of Absence bv not requesting proper approval, notice or reporting of his absences.
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> [The Grievant] violated the Telework protocol as he did not request approval to telework, provide a telework itinerary, nor did he produce any work on the day he stated he was teleworking. Telework is not common practice for Security Training staff due to the nature of their job duties. In addition to OP 110.5, Telework protocol for Security Training staff was addressed at Security Training Unit meetings on January 25, 2025, and again on July 25, 2025. Staff were advised that permission to telework would be reviewed on a case-by-case basis and staff will submit a telework itinerary prior to approval from their supervisor.
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> On December 5, 2025, [the Grievant] was instructed to submit leave in DocTime for November 24-25, 2025, the dates he did not report to work. The Training Manager advised that the only authorized holiday was a half day on Wednesday, full days on Thursday and Friday and leave must be submitted for time off at the beginning of the week. He was reminded again on December 10, 2025, but failed to comply, claiming he had been teleworking. However, there is no record of prior

> approval for telework during that period, and the required leave was not submitted. He reported that he completed the five-hour CPR training at Marion; however, when asked by the Training Manager if he started annual training at Marion or where he was after completing CPR training [, he] indicated he went home. He did not submit leave for three hours on November 24, 2025.
>
> [The Grievant's] assertion that he teleworked on November 25, 2025, is inconsistent with departmental procedures, which require prior supervisory approval and a detailed outline of tasks. He provided no documentation, failed to submit a telework itinerary, and did not complete assigned duties, including logging into his VLC account or completing annual training. VLC transcripts for [the Grievant] do not show any annual training started or completed on November 25, 2025. Additionally, a VLC report shows no activity at all by [the Grievant] on November 25, 2025.
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> Despite two directives to submit leave, [the Grievant] remained noncompliant, resulting in an unauthorized absence and a violation of DOC leave reporting procedures. His claim of telework, unsupported by approval or evidence of work performed, constitutes a misrepresentation of his work activity and is considered falsification of time records.
>
> [The Grievant's] repeated disregard for directives, misrepresentation of telework status, and failure to fulfill responsibilities reflect a pattern of egregiously unethical behavior that undermines the integrity of the training environment and poses operational risks to the agency.
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> While your actions meet the criteria for a Group III offense under the Standards of Conduct, consideration has been given to your overall performance history. Given the absence of prior disciplinary issues, the level of disciplinary action has been mitigated to a Group II Written Notice.

Joint Exh. 1. For circumstances considered, the Written Notice stated:

> The responsibility of understanding and abiding by the listed Operating Procedures falls on [the Grievant] and he is expected to remain in compliance with these procedures. His failure to do so, reflects negligent behavior and poses operational risks to the unit. While [the Grievant's] actions warrant a Group III, after review of [the Grievant's] written response to his Due Process Notification, the charge has mitigated to a Group II based on [the Grievant's] tenure with Department of Corrections and no prior disciplinary action during his career with the department.

The Assistant Training Director testified regarding her supervisory oversight of the Security Training Unit and her role in issuing the Written Notice. She explained that telework for security training staff required prior approval and a telework itinerary and was not automatic. She testified that the Grievant did not request or receive telework approval for November 25, 2025, and that VLC[1] records reflected no training activity on that date. She further testified that the training the Grievant claimed to have completed on that date was completed on December 9, 2025, and that no system issue existed that would explain the lack of records.

The Training Manager testified regarding her day-to-day supervision of the Grievant and communications concerning time and leave reporting. She testified that she directed the Grievant multiple times in early December 2025 to submit leave for the Thanksgiving week. She stated that the Grievant reported completing CPR training on November 24 and asserted telework and in-service training on November 25. She testified that the Grievant did not request telework approval or submit a telework itinerary and that she relied on his representations until records were later reviewed.

The Training Director testified regarding Academy-wide operations, telework expectations, and the disciplinary review process. She testified that unit meeting minutes reflected repeated communications that telework for Security Training Unit staff required approval and documentation. She described reviewing VLC records, DOC network authentication logs, and email activity reports, all of which showed no evidence that the Grievant worked on November 25, 2025. She testified that the Agency concluded the Grievant had not worked that day and mitigated the offense from Group III to Group II based on tenure and disciplinary history.

Through documentary evidence reviewed by management witnesses, IT security records showed that the Grievant did not log into the DOC network authentication system, did not access VLC, and did not send Agency emails on November 25, 2025. Management witnesses testified that these system-generated records are reliable and would have reflected activity if work had been performed.

As reflected through management witnesses, the Agency addressed the Standards of Conduct review process. The Agency determined that the conduct met Group III criteria due to falsification by omission but mitigated the discipline to Group II in light of the Grievant's tenure and lack of prior discipline. The Agency also reviewed assertions that similar conduct was permitted elsewhere and found no substantiating evidence.

The Grievant testified that he believed he was working or teleworking during the Thanksgiving week and that he completed in-service training on November 25, 2025, possibly using his personal phone while at a family farm in West Virginia. He testified that he did not refuse to submit leave and would have submitted leave had he been clearly instructed to do so. He attributed the lack of VLC records to possible system issues and acknowledged that he did not have documentation corroborating work activity on November 25.

The testimony of Agency witnesses was internally consistent and corroborated by contemporaneous electronic records, system logs, and documentary evidence. The Grievant's testimony was sincere but unsupported by objective records and contradicted by system-generated evidence. Greater weight is therefore given to the Agency's evidence.

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[1] Virginia Learning Center.

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

1. The Grievant was employed as a Training and Development Coordinator, Senior at the Academy for Staff Development and assigned to the Security Training Unit.

2. Telework for Security Training Unit staff was not treated as automatic and was discussed during multiple unit meetings in 2025 as requiring supervisory approval and documentation.

3. On November 24, 2025, the Grievant completed approximately five hours of CPR training at Marion Correctional Center. He did not return to his assigned duty location afterward and did not submit leave for the remaining hours of the workday.

4. On November 25, 2025, the Grievant asserted that he teleworked and completed in-service training. He did not request or receive approval to telework on that date and did not submit a telework itinerary.

5. The Grievant did not report to ASD-Central on November 24 or November 25, 2025, and did not notify supervisory staff in advance that he would be absent or working remotely.

6. VLC transcripts and training activity reports show no training activity by the Grievant on November 25, 2025.

7. Records establish that the training courses the Grievant claimed to have worked on November 25, 2025, were initiated and completed on December 9, 2025.

8. IT security and system authentication records show no DOC network login, no VLC access, and no Agency email activity by the Grievant on November 25, 2025.

9. There was no VLC system outage during Thanksgiving week 2025 that would have prevented training activity from being captured or recorded.

10. On December 5, December 8, and December 10, 2025, the Grievant was directed to submit leave in DOCTime for November 24–26, 2025.

11. The Grievant did not submit leave for November 25, 2025, nor for the unapproved portion of November 24, 2025.

12. The Agency determined that the conduct met the criteria for a Group III offense and mitigated the discipline to a Group II Written Notice based on the Grievant's tenure and lack of prior discipline.

Analysis

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g.*, *Rules for Conducting Grievance Hearings*, § VI (*Rules*); *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

As long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. DHRM Policy 1.60. As long as it acts within law and policy, the Agency is permitted to apply exacting standards to its employees.

EDR's *Rules* provide that "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." *Rules* § VI(A).

As previously stated, the agency's burden is to show upon a preponderance of evidence that the discipline of the Grievant was warranted and appropriate under the circumstances. Pursuant to applicable policy, management has the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior.

EDR's *Rules* provide that in disciplinary grievances, if the hearing officer finds that:

> (i) 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 discipline exceeds the limits of reasonableness.

Rules § VI(B).

In sum, the grievance hearing is a *de novo* review of the evidence presented at the hearing, as stated above. The Agency has the burden to prove that the Grievant is guilty of the conduct charged in the written notice. Such decision for discipline falls within the discretion of the Agency so long as the discipline does not exceed the bounds of reasonableness. The Agency is justified in expecting its employees to adhere to established work policies. Based on the testimony, manner, tone, and demeanor of the testifying witnesses, I find that the Agency has proved the misconduct charged in the Written Notice.

The Agency met its burden of proof by a preponderance of the evidence. Under Agency policies governing attendance, leave, telework, and time accountability, employees are required to obtain approval for telework, accurately report time, and submit leave when not working. The Grievant's failure to submit required leave, combined with assertions of work activity unsupported by system records, constituted falsification of time records by omission and misuse of state time. The proven conduct met the criteria for Group III discipline under the Standards of Conduct. The Agency's decision to mitigate the offense to a Group II Written Notice based on tenure and lack of prior discipline was reasonable, appropriate, and consistent with policy.

While I might have levied lesser discipline under these circumstances, this judgment of misconduct falls within the Agency's discretion. The Agency could have elected lesser discipline along the continuum of progressive discipline, but it is not required to exercise informal discipline in lieu of formal, or less formal discipline, when the facts support the offense. Accordingly, I find that the Group II discipline is consistent with policy.

Mitigation

As with all mitigating factors, the grievant has the burden to raise and establish any mitigating factors. *See e.g.,* EDR Rulings Nos. 2010-2473; 2010-2368; 2009-2157, 2009-2174. *See also Bigham v. Dept. of Veterans Affairs*, No. AT-0752-09-0671-I-1, 2009 MSPB LEXIS 5986, at *18 (Sept. 14, 2009) citing to *Kissner v. Office of Personnel Management*, 792 F.2d 133, 134-35 (Fed. Cir. 1986). (Once an agency has presented a *prima facie* case of proper penalty, the burden of going forward with evidence of mitigating factors shifts to the employee).

Under Virginia Code § 2.2-3005, the hearing officer has the duty to "receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [DHRM]." The Agency's Policy 135.1, *Standards of Conduct*, is consistent with DHRM policy. 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 that 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.

EDR has further explained:

> When an agency's decision on mitigation is fairly debatable, it is, by definition, within the bounds of reason, and thus not subject to reversal by the hearing officer. A hearing officer "will not freely substitute [his or her] judgment for that of the agency on the question of what is the best penalty, but will only 'assure that managerial judgment has been properly exercised within tolerable limits of reasonableness.'"

EDR Ruling 2010-2465 (March 4, 2010) (citations omitted).

The Agency's mitigation decision is fairly debatable. Because I am not a "super-personnel officer," even though I may have elected lesser discipline, I lack the authority to reduce the discipline under these circumstances. The Grievant has not borne the burden of proving that the conduct was justified.

DECISION

For the reasons stated herein, the Agency's Group II Written Notice must be and is upheld.

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 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.[2]

[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].

[2] Agencies must request and receive prior approval from EDR before filing a notice of appeal.

I hereby certify that a copy of this decision was sent to the parties and their advocates shown on the attached list.

Cecil H. Creasey, Jr.
Hearing Officer