

COMMONWEALTH OF VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 12410

Hearing Officer Appointment: December 22, 2025
Hearing Date: April 17, 2026
Decision Issued: May 4, 2026

ISSUES:

The Grievant requested an administrative due process hearing to challenge the issuance on October 20, 2025, by a facility (the “Facility”) of the Virginia Department of Corrections (the “DOC” or the “Department” or the "Agency") of a Group III Written Notice with termination effective October 21, 2025, for violation of Written Notice Offense Codes 11 (unsatisfactory performance), 13 (failure to follow instructions and/or policy), and 39 (violation of DHRM Policy 2.35, Civility in the Workplace).

The Grievant has raised the issues specified in his Grievance Form A and is seeking the relief requested in his Form A, including reversal of the discipline.

PROCEDURAL HISTORY & BACKGROUND:

FIRST PREHEARING CONFERENCE CALL:

The Grievant, the Grievant’s attorney, the Agency’s advocate and the hearing officer participated in the first prehearing conference call at 12:30 pm on January 30, 2026.

The parties consented to written communication by email alone.

The hearing was scheduled and held on April 17, 2026.

At the hearing, the hearing officer received various documentary exhibits into evidence, namely all exhibits in the Agency's white binder and all exhibits in the Grievant's black binder.¹

The hearing officer recorded the hearing.

At the hearing, the Grievant's attorney represented the Grievant and the Agency was represented by its advocate. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party.

APPEARANCES

Representative for Agency
Grievant
Advocate for Agency
Attorney for Grievant
Witnesses

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as Deputy Chief and Acting Chief ("Chief"), an important supervisory position within the facility.
2. The Grievant was required to strictly adhere to all applicable Agency policies and procedures.

¹ References to the agency's exhibits will be designated AE followed by the exhibit tab and/or Bates-page number. References to the grievant's exhibits will be designated GE followed by the exhibit reference.

3. As Chief at the relevant times, amongst other duties, Grievant was responsible for supervising and controlling numerous subordinates, including Agency employees who worked at the facility.
4. The Grievant, as a supervisor, is held to a higher standard when it comes to compliance with Agency policies and procedures and is expected to set an example to his subordinates.
5. The Grievant performed an important vital function for the Facility as essentially the officer in charge, with significant and substantial training invested in the Grievant by the Agency in all aspects of his employment.
6. The Facility reasonably and of necessity relied on the Grievant to fulfill all his duties and responsibilities.
7. The Facility is an important institution in the Commonwealth's penal system and the Grievant's role in maintaining the confidence and trust of all staff is paramount, particularly when the Grievant was assigned to the position of Acting Chief.
8. Accordingly, efficacious performance of Grievant's work is critical for the orderly and efficient functioning of the Agency, especially as regards Grievant's supervisory duties pertaining to the employees of the Facility.
9. The Grievant has been with the agency for the past 22 1/2 years.
10. On July 29, 2025, at approximately 1335 hours at the Facility, the Grievant told the Office Service Specialist ("OSS") to go to her office following a brief interaction in which Grievant asserted the OSS was insubordinate.

11. The Grievant followed the OSS into her narrow, confined office, installing himself near the office door on the opposite side of the OSS' desk from which the OSS was seated. AE 5.
12. The Grievant stated that they needed to talk, asking the OSS what was wrong with her, and asserting that the OSS was being insubordinate
13. The OSS became visibly upset and began to cry.
14. The OSS tried to leave her office twice and was blocked by the Grievant.
15. The Grievant admitted to the regional manager that he blocked the OSS from leaving the office
16. The Office of Law Enforcement Services (the "OLES") then conducted a thorough investigation based upon a complaint from the OSS.
17. The experienced investigator found as substantiated the OSS' claim that the Grievant refused to let her exit her office on two occasions, holding her against her will.
18. Facility witnesses reported seeing the Grievant distraught and crying upon finally exiting her office.
19. OLES conducted a thorough investigation and the case findings of substantiated were reasonable. AE 4.
20. During his interview, the Grievant admitted to the OLES special agent who interviewed him that Grievant put his hand on the doorknob and told the OSS he wanted to talk, and she needed to sit down. The OSS then said, "You can't hold me hostage". AE 4 at 36.

21. On October 20, 2025, the Regional Administrator issued a Group III Written Notice to the Grievant for violation of Written Notice Offence Codes 11 (unsatisfactory performance), 13 (failure to follow instructions and/or policy), and 39 (violation of DHRM Policy 2.35, Civility in the Workplace).
22. The Department also terminated Grievant's employment, effective as of October 21, 2025. AE 1.
23. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.
24. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
25. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
26. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

APPLICABLE POLICY, LAW, ANALYSIS AND DECISION

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(A) 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.

In disciplinary actions, the Agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management (DHRM) promulgated Standards of Conduct Policy No. 1.60. The operative Agency Standards of Conduct (the "SOC") are contained in Agency Operating Procedure 135.1 ("Policy No. 135.1").

The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

The Grievant did not follow the applicable state and agency policies.

Specifically, the Grievant committed the following disciplinary infractions which were reasonably classified by management, as a Group III offense.

Violation of Operating Procedure 135.1, Section XIV (B) (12), (16), (17), (20) & (21) <Third Group Offense> for:

XIV. Third Group Offenses (Group III)

A. These offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, include but are not limited to, endangering others in the workplace, constituting illegal or unethical conduct, indicating significant neglect of duty; resulting in disruption of the workplace; or other serious violations of policies, procedures, or laws.

B. *Group III* offenses include, but are not limited to:

...

12. Threatening or coercing persons associated with any state agency, including but not limited to employees, supervisors, volunteers, inmates/probationers/parolees, visitors, and/or students...

16. Refusal to obey instructions that could result in a weakening of security...

17. Disruptive behavior or disruption in the workplace, may be considered a *Group I, II or III* offense depending on the nature circumstances of the violation...

Violation of [DHRM Policy 2.35 Civility in the Workplace](#) or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, considered a *Group III* offense, depending upon the nature of the violation.

21. Violation of [DHRM Policy 2.05 Equal Employment Opportunity](#) or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, considered a *Group III* offense, depending upon the nature of the violation.

AE 9 at 194.

Violation of Operating Procedure 135.3, Standards of Ethics and Conflict of Interest

<Third Group Offense> for:

Violation of 135.3, Standards of Ethics and Conflict of Interest

I., C. Employees of the DOC must conduct themselves by the highest standards of ethics so that their actions will not be construed as a conflict of interest or conduct unbecoming an employee of the Commonwealth of Virginia.

II., E. The DOC expects all employees, contract personnel, consultants, volunteers, interns and any other person providing services to inmates or probationers/parolees to conform to a high professional, ethical, and moral standard of conduct.

II. D. Employees in DOC supervisory and managerial positions must be especially mindful of how their words and deeds might be perceived or might affect or influence others. Therefore, they may be held to a higher standard for misconduct and violations of this operating procedure based on their scope of authority and influence, status as a role model, and ability to significantly impact the employment status and direct the work of others.

AE 7.

Violation of Operating Procedure 145.3, Equal Employment Opportunity, Anti-Harassment, and Workplace Civility <Third Group Offense> for:

I (F). The DOC specifically prohibits employment discrimination, harassment to include sexual harassment, bullying behaviors, threatening or violent behaviors, retaliation for participating in a protected activity, or other displays of inappropriate behavior toward any employee, applicant for employment, vendor, contractor, or volunteer...

Behaviors that undermine team cohesion, employee morale, individual self-worth, productivity, and/or safety are not acceptable...

4. Violation of DOC Operating Procedure 145.3, Attachment 1. Guidance on Prohibited Conduct: Equal Employment Opportunity, Anti-Harassment, and Workplace Civility

Prohibited Conduct/Behaviors may include, but are not limited to the following:

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest
- Behaving in a manner that displays a lack of regard for others and/or significantly distresses, disturbs, and/or offends others
- Cornering people or blocking their entrance or exit
- Invading personal space

AE 8.

The Grievant argues that the Agency has not carried its burden of proof, has misapplied policy and acted unjustly in issuing the discipline. However, the hearing officer agrees with the

Agency's advocate that the various offenses are appropriately classified at the Group III level, as designated, with the Agency appropriately exercising the discipline and ending the Grievant's employment due to the severity of the offenses.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that Grievant violated numerous policies, including Policy No. 1.60 and that the violations each rose to the level indicated.

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; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past good service to the Agency. *See*, GE 21-47.

DHRM's *Rules for Conducting Grievance Hearings* provide in part:

DHRM's *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." *Rules* § VI(B).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant. AE 1; Tape 1A

The Grievant has asserted that the discipline was unwarranted. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below,

the hearing officer considered a number of factors including those specifically referenced in AE 1, the Written Notice, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the demands of the Grievant's work environment;
2. the Grievant's long tenure at the Agency;
3. the effect of the COVID-19 pandemic;
4. the Grievant's past favorable performance evaluation history;
5. the fact of the Grievant's recent appointment to the position of Acting Chief;
6. his very hard work for the Facility;
7. the Grievant's lack of prior formal discipline;
8. the Grievant's prompt report of the incident to the Regional Administrator;
9. the long hours worked by the Grievant;
10. the shortage of staff at the Facility; and
11. the stressful work.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the the policies are important to the proper functioning, appearance and reputation of the Agency, and the Grievant held an important supervisory position where management of necessity relied on him to attend work and to perform his duties in strict conformity with Agency policies, as he had undertaken to do. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

Grievant supervised Facility employees. EDR has consistently held supervisors, such as Grievant, to a higher standard. As EDR stated in case No. 9872, in evaluating misconduct by a supervisor that to a non-supervisory employee would have been a Group I, the discipline was increased to a Group II, stating, "This is especially so because of the supervisor's role and the agency's expectations of the supervisor to serve as a role model to clients and to employees under his supervision." *See, also*, DHRM Ruling 2015-3953:

The issue of whether an agency can hold a supervisor to a higher standard is a policy issue as well as a procedural issue. As discussed above, the Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy. DHRM has previously determined that "agencies may hold supervisors and managers to a higher degree of responsibility and leadership than non-management employees."

The *Rules for Conducting Grievance Hearings* require that a hearing officer must show deference to how the agency weighs the supervisory status of an employee in determining the appropriate level of discipline. Here, the agency determined that the Grievant's misconduct was more severe based, in part, on his position as a supervisor. Policy permits the agency to hold supervisory employees to a higher standard than non-supervisory employees, and accordingly the hearing officer defers to the agency's weighing of that factor.

Similarly, Agency Operating Procedure 135.3 stresses:

"Employees in DOC supervisory and managerial positions must be especially mindful of how their words and deeds might be perceived or might affect or influence others. Therefore, they may be held to a higher standard for misconduct and violations of this operating procedure based on their scope of authority and influence, status as a role model, and ability to significantly impact the employment status and direct the work of others." AE 7.

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; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given 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. Accordingly, if 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 is not a "super-personnel officer" and 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. *Id.*

In EDR Case No. 8975 involving the University of Virginia ("UVA"), a grievant received a Group III Written Notice with removal for falsifying records on five (5) separate dates. Although the evidence supported only one of those instances, the hearing officer upheld the disciplinary action. The grievant appealed to EDR asserting that the disciplinary action was inappropriate in that the grievant did not engage in as much misconduct as alleged by UVA. The Director upheld the hearing officer's decision:

The grievant's arguments essentially contest the hearing officer's determinations of fact as they relate to the proper sanction for the misconduct. Such determinations are within the hearing officer's authority as the hearing officer considers the facts de novo to determine whether the

disciplinary action was appropriate. In this case, while it appears that the hearing officer did find that the grievant did not engage in as much misconduct as alleged by the University, it was still determined that the grievant had falsified a state record with the requisite intent, generally a Group III offense under the Standards of Conduct. [footnote omitted] Upon review of the record, there is no indication that the hearing officer abused his discretion in making these findings or that the facts were not supported by the hearing record. Consequently, this Department has no basis to disturb the hearing decision.

EDR Ruling Number 2009-2192; February 6, 2009.

The Grievant's arguments about Agency failures in the due process procedures are not warranted. The essence of pre-disciplinary due process is "notice" and an "opportunity to respond"; the process need not be elaborate and need only serve only as an "initial check against mistaken decisions." *See, e.g., Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545-46 (1985). Such pre-disciplinary procedures stand in stark contrast to those afforded by the full administrative post-disciplinary hearing offered in the grievance process, before which the grievant receives notice of all the agency's evidence with the ability to present his own evidence and witnesses and cross-examine the witnesses of the agency.

In this proceeding, the Agency's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer.

The hearing officer decides for each of the upheld offenses specified in the upheld written notice (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct; (iii) the Department's discipline was consistent with law and policy and

that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the written notices and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

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 and Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer.

The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

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

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.^[1]

ENTER 5/4/2026

John Robinson

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

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