

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYEE DISPUTE RESOLUTION
DIVISION OF HEARINGS

In the matter of Case No.: 12423
Hearing Date: 8 April 2026
Decision Issued: 26 May 2026

DECISION OF HEARING OFFICER (AMENED)

SUMMARY

For the reasons detailed herein, the Hearing Officer finds that the four Group II Written Notices are upheld along with the sanction of Termination.

PROCEDURAL HISTORY

1. On 16 January 2026, Grievant was issued four (4) Group II Written Notice of disciplinary action with the cumulative sanction of the four Notices being Termination. The Agency described the nature of the offense as:

- Notice 1: Violation Codes 03 [Failure to Report Without Notice] and 13 [Failure to Follow Instructions or Policy] (Agency Exhibit (“AE”) 2);
- Notice 2: Violation Codes 02 [Leaving Work Without Permission] and 13 { Failure to Follow Instructions or Policy] ((AE3);
- Notice 3: Violation Codes 13 [Failure to Follow Instructions or Policy] and 03 [Failure to Report Without Notice] (AE 4);
- Notice 4: Violation Codes 13 [Failure to Follow Instructions or Policy] and 99 [Other] (AE 5).

2. On 16 January 2026, Grievant timely filed a Grievance Form A to challenge the Agency’s action. On 12 February 2026, the Office of Employment Dispute Resolution assigned this matter to this Hearing Officer. (*See Appointing Order.*)

3. On 25 February 2026, the parties participated in a pre-hearing conference call scheduled by the hearing officer. During the pre-hearing conference, the parties agreed to the hearing date of 7 April 2026 and set dates for submission of documentary evidence and witness lists. On 4 March 2026, the Hearing Officer issued his First Pre-Hearing Order. At the time of the pre-hearing conference, Grievant was not represented by an Advocate, but thereafter the Grievant retained an Advocate. (*See Pre-Hearing Order.*)

4. On 20 March 2026, the Grievant objected to a previously submitted request from the Agency for an Order for the Grievant to appear as a witness and further objected to the Grievant being called by the Agency in its case-in-chief. The Hearing Officer denied the Grievant's objection and issued the Order to Appear to the Grievant. The Hearing Officer further noted that he would entertain argument from the parties as to whether the Grievant would be called by the Agency to testify in the Agency's case in chief. (Email exchange dated 16-20 March 2026.) On the date of the Hearing, the Grievant was called as a witness by the Agency and testified without objection.

5. On 27 March 2026, after having requested documents from the Agency through the Agency's counsel, Grievant, through his Advocate, forwarded to the Hearing Officer a request that he Order the Agency to produce a number of documents. The request included:

- Any and all recorded disciplinary measures taken against other VDOE employees for attendance/ timeliness issues from October 2025 to present (Offense Codes 01, 02, and 03)
- Any and all recorded disciplinary measures taken against other VDOE employees for Willful Misconduct from October 2025 to present (Offense Code 99)
- Badge logs for all Office of Procurement employees from Dec. 1-13, 2025
 - May be redacted except for late arrivals, early departures, or failures to report if deemed reasonably necessary
- History of enforcement in the last 3 years at the VDOE for failure to report without notice, tardiness, leaving without permission, and willful misconduct.

(Grievant email dated 27 March 2026.)

After reviewing the request and considering same, the Hearing Officer declined to Order the Agency produce the requested documents on the grounds that it was overbroad. (HO email dated 2026-03-31.) Grievant's exception to this ruling was noted.

6. By email dated 6 April 2026, the Agency, through its Advocate, objected to Grievant exhibits I and J on the grounds that Virginia Code Section 60.2-623 prohibited the admission into evidence of the information contained in the two exhibits. The Hearing Officer granted the objection and noted that Grievant Exhibits I and J would not be admitted into evidence but would be noted as Appellate Exhibits I and II respectively.

APPEARANCES

Grievant
Agency Representative
Counsel for Agency
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the four (4) Group II Written Notice of disciplinary action?
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 II 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

7. 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 Grievant has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. (Grievance Procedure Manual ("GPM") § 5.8.) A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. (GPM § 9.)

8. The Grievant requested an administrative due process hearing to challenge the award of the Group II Written Notices issued by the Agency, as described by the Grievance Form A submitted by Grievant dated 16 January 2026.

FINDINGS OF FACT

The Offense

9. After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the Findings of Fact as detailed below.

10. Grievant held the position of Procurement Officer II (Senior Buyer). He commenced working as a Procurement Officer at the Agency in August 2024. Grievant testified that he had been employed by the Commonwealth of Virginia for a total of approximately 13 years. He commenced his current employment at the Agency in August 2024. (*See* AE 12, p. 3.) He testified that the position is a one of trust in that he is involvement in the procurement process of hundreds of millions of dollars for the Agency. Grievant had not previously been disciplined by Agency.

11. From October to December 2025, Grievant's hours were from 9:00 a.m. to 5:30 p.m., Monday through Friday. Grievant's telework days were Monday and Friday and his hours on those days were also 9:00 a.m. to 5:30 p.m. (*See* AE 13., p. 2.) Grievant acknowledged that variances to the schedule were permitted, with approval of the supervisor. Grievant was normally the only Procurement Officer in the building on Wednesdays.

12. Grievant's direct supervisor ("Supervisor") took over as Grievant's supervisor in the July-August 2025 timeframe. Supervisor commenced medical leave on October 31, 2025. Upon returning from medical leave after Thanksgiving, 2025, supervisor teleworked until the beginning of 2026. During that time period, Grievant was supervised by "Acting Supervisor." (Acting Supervisor was, in fact, the supervisor of "Supervisor.")

13. Grievant acknowledged that he signed the Agency Telework Agreement and that he understood that failure to comply with the Agency Telework Agreement could result in discipline. (See AE 9.)

14. Grievant testified that he understood that pursuant to Agency Standards of Conduct (Agency Policy 1.60), failing to report to work without proper notice is a Group II offense as is leaving work without proper permission. Grievant further acknowledged that he was required to access the building in which the Agency was located by "badging in" (i.e. having the badge electronically record the badge holder entering the relevant area) upon arrival and then "badge out" (i.e. having the badge electronically record the badge holder's departure from the area) upon his departure.

15. Grievant reviewed the Cardholder Transaction History Report (AE 17) and stated that he believed that it was an accurate rendition of the date and times of his arrival and departure from the Agency building. Grievant testified that he believed that the dates and times of his arrival and departures as articulated in AE 2 and AE 3 were accurate and that he did not have permission from his supervisor to arrive at work late or to depart from work early. Grievant admitted that this acknowledgment was a departure from his assertions in his Response to the Notice of Intent to Discipline. (AE 1, p. 19.)

16. Grievant further testified that he did not appear onsite on the dates specified on in AE 4. Grievant asserted that he did telework on the dates specified in AE 4. He acknowledged that he did not have permission to work remotely on those dates and that working remotely on those dates was in violation of his Telework Agreement. Grievant admitted that this acknowledgment was a departure from his assertions in his Response to the Notice of Intent to Discipline. (AE 1, p. 19.)

17. Grievant, in his testimony, acknowledged the Fourth Written Notice (AE5) accurately quoted the 12/11/2025 text exchange between Grievant and Supervisor. Grievant further acknowledged that AE15 further detailed that text exchange. Grievant acknowledged that he had not been in the office on that date prior to the time of the text message exchange contained in AE 15, but Grievant denied that he had intentionally misrepresented his whereabouts. Grievant also acknowledged the statement, "I answered truthfully that I was not in the office at that moment, I had been present earlier on that day, but that presence is not reflected in badge log" was inaccurate and misleading since, he had not been in the office at all at the time of the time of the email exchange. (See AE 1, p, 21.)

18. Grievant presented documentary evidence to corroborate his assertion that even though he was not at his assigned workplace (i.e. working from home instead of at the Agency building) on the dates and times noted in the Written Notices, he engaged in work duties during

his assigned work hours. (See, e.g. Grievant Exhibit (“GE”) Q-S and GE O through R.) Grievant further presented documentary evidence to corroborate his assertion that during the time period referenced in the Written Notices (i.e. October 30 – December 11, 2025) Grievant had logged into his work computer from remote location during non-working hours and had engaged in some work-related activity (See GE O through R.) . Grievant could not state what duties may have been performed at the times referenced in the exhibits.

19. The Employee Relations Director reviewed Agency computer logs and testified that the fact that logs showed computer activity did not necessarily mean that Grievant was performing Agency work. He noted for example that an email with an auto “out of office” response would register in the logs as if an employee were actually sent an email. The Agency provided no definitive evidence that Grievant was not working while he was out of the office.

20. Grievant testified that, prior to the current Written Notices, he had not been disciplined by the Agency. He further asserted that he had not previously received any formal counseling regarding his attendance. Grievant further asserted that he was improperly targeted because he was not the only person in his division in the Agency who deviated from the schedule (arriving late and leaving early) but he was the only person (to his knowledge) who had been sanctioned.

21. Agency witnesses denied that any other employee who was similarly situated to Grievant had consistently violated their work hours obligations or their Telework Agreements obligation as systematically as Grievant had. Grievant presented no evidence that would contradict the assertion of Agency witnesses other than his assertion (as noted above) that other employees had deviated from their schedule with impunity.

Documentary Evidence

22. The documentary evidence established, without contradiction that Grievant failed to report late to work on the dates specified in the first Written Notice (AE 2) and left early on the dates specified in the second Written Notice (AE 3). (See AE 17.) The documents similarly established that Grievant failed to appear at the workplace on the dates detailed in the third written Notice (AE 4). As noted above, Grievant acknowledged that accuracy of these records at the Hearing.

23. The Telework Agreement signed by Grievant established that Grievant’s work hours during the dates and times specified in the written notices and specifically noted that on the days . produced no evidence that on the four successive Wednesdays that Grievant failed to report to work at the office he was scheduled to be the only

Analysis and Discussion

24. 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. 1998).

25. 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. *See* DHRM Policy 1.60. As long as it acts within law and policy, the Agency is permitted to apply exacting standards to its employees.

26. 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).

27. 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).

28. 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.

29. Evidence presented by the Agency included documentary evidence of multiple instances of Grievant's behavior as well as the testimony of Grievant's Direct Supervisor as well as the other witnesses. Evidence presented by Grievant included documentary evidence submitted by Grievant as well as Grievant's testimony at the hearing.

30. Analysis, discussion, and findings regarding each of the specified offenses are addressed individually below.

First Written Notice (AE 2) Violation of Offense Code 03 [Failure to Report Without Notice] and Code 13 [Failure to Follow Instructions or Policy]

31. For the reasons detailed below, I find that Grievant engaged in the behavior as described in the First Written Notice (AE 2) and that the behavior constituted misconduct, to wit, violation of Misconduct Codes 03 [Failure to Report Without Notice] and 13 [Failure to Follow Instructions or Policy].

32. Documentary evidence presented by Agency provides clear evidence that Grievant failed to report in accordance with his work schedule. Moreover, as noted above, Grievant admitted that the Badge Log (AE 17) and other Agency records were accurate.

33. Grievant provided no reasonable excuse or explanation for the multiple instances of reporting to work late. He suggested that his failure to be at his appointed place of at the appointed times should be excused since he (1) periodically engaged in work activities from home during non-work hours and (2) other employees do the same thing.

34. Grievant's supervisor(s), not Grievant himself, establishes his work hours. Although I find that Grievant did, on at least some occasions, perform work related activity outside of assigned work hours, Grievant did not have permission to appear late or to fail to obey his work schedule as specified by his supervisor. I therefore find that the behavior constituted misconduct and a violation of Offense Codes as alleged in the Written Notice

35. Agency Policy 1.60 - Standards of Conduct provides that "failure to follow supervisor's instructions" and failure to report to work without notice/approval may be considered Group II offenses. (AE 6, p. 25.)

36. As a Procurement Officer II, Grievant held a position of significant responsibility and accountability. The behavior alleged in the Written Notice and to which Grievant has admitted, involved multiple instances of misconduct. Grievant's supervisor(s) clearly believes that an individual in such a position of significant responsibility should be held accountable for being at his appointed place at the appointed time. Grievant's uncorroborated assertion that "everyone does it" is not a credible reason to find that an individual in an accountable position should not be held accountable for his behavior. I therefore find that Grievant's actions as detailed in the First Written Notice (AE 2) are properly considered Group II violations.

37. Grievant was awarded a single sanction (termination) for the four Written Notices. The issue of whether mitigating circumstances justify a reduction in the sanction that was awarded for all offenses is addressed below.

Second Written Notice (AE 3) Violation of Offense Code 02 [Leaving Work Without Permission] and Code 13 [Failure to Follow Instructions or Policy]

38. For the reasons detailed below, I find that Grievant engaged in the behavior as described in the Second Written Notice (AE 3) and that the behavior constituted misconduct, to

wit, violation of Misconduct Codes 02 [Leaving Work Without Permission] and 13 [Failure to Follow Instructions or Policy].

39. Documentary evidence presented by the Agency provides clear evidence that Grievant left work early on multiple occasions in violation of his work schedule. Moreover, as noted above, Grievant admitted that the Badge Log (AE 17) and other Agency records were accurate.

40. I do not find that Grievant's departures from his work schedule by leaving early were *de minimus* and should be ignored. I recognize that on one occasion, Grievant's early departure was only two minutes before the end of his scheduled workday and another early departure was only eight minutes prior to the end of the workday. I further note, however, that these departure times recorded Grievant's departure from the parking deck, not his assigned workspace. One may speculate how long it may have taken Grievant to actually get from his workspace to parking deck gate, but it was certainly not instantaneous. Moreover, whereas these two incidents of early departures by themselves might be considered as "minimal," on other occasions, Grievant was recorded as departing as early 1:10 p.m. (10/30/2025) 2:33 p.m. (11/19/2025) and 3:41 p.m. (12/10/2025). These early departures cannot be considered minimal and the repeated nature of Grievant's actions cannot be considered insignificant.

41. As with Grievant's late arrivals to the office, Grievant provided no meaningful excuse or explanation for the multiple instances of early departure. Also as noted above, Grievant suggested that his failure to be at his appointed place of at the appointed times should be excused since he (1) periodically engaged in work activities from home during non-work hours and (2) other employees do the same thing.

42. Whereas one can certainly understand the desire to leave work early, even if there may be an intent to complete work at home, Grievant's supervisor(s), not Grievant himself, establishes his work hours. Grievant did not have permission to depart early or to ignore his work schedule as specified by his supervisor(s). I therefore find that the behavior constituted misconduct and a violation of Offense Codes as alleged in the Written Notice.

43. Agency Policy 1.60 - Standards of Conduct provides that "failure to follow supervisor's instructions" and "leaving work without permission" may be considered a Group II offenses. (AE 6, p. 25.)

44. As a Procurement Officer II, Grievant held a position of significant responsibility and accountability. The behavior alleged in the Written Notice and to which Grievant has admitted involved multiple instances of misconduct. Grievant's supervisor(s) clearly believe that an individual in such a position of significant responsibility should be held accountable for being at his appointed place at the appointed time and should not be permitted to leave the office at will. Grievant's uncorroborated assertion that "everyone does it" is not a credible reason to find that an individual in an accountable position should not be held accountable for his behavior. I

therefore find that Grievant's actions as detailed in the Second Written Notice (AE 3) are properly considered Group II violations.

45. Grievant was awarded a single sanction (termination) for the four Written Notices. The issue of whether mitigating circumstances justify a reduction in the sanction that was awarded for all offenses is addressed below.

Third Written Notice (AE 4) Violation of Offense Code 03 [Failure to Report Without Notice] and Code 13 [Failure to Follow Instructions or Policy]

46. For the reasons detailed below, I find that Grievant engaged in the behavior as described in the Third Written Notices (AE 4) and that the behavior constituted misconduct, to wit, violation of Misconduct Codes 13 [Failure to Follow Instructions or Policy] and 03 [Failure to Report Without Notice].

47. Documentary evidence presented by the Agency provides clear evidence that Grievant failed to report to the work site (i.e. the Agency office location) on the dates specified in the Third Written Notice in violation of his work schedule. Moreover, as noted above, Grievant admitted that the Badge Log (AE 17) and other Agency records were accurate.

48. Grievant provided no reasonable excuse or explanation for the multiple instances of failing to report to the work site. He asserted without contradiction that he was actually working from home. He further asserted that his failure to be at his appointed place of at the appointed times should be excused since he (1) periodically engaged in work activities from home during non-work hours and (2) other employees changed their work schedules with impunity.

49. Grievant's supervisor(s), not Grievant himself, establishes his work schedule. Grievant signed a Telework Agreement that clearly provided that his telework days were Monday and Friday. (*See* AE 9.) If Grievant needed to change or amend his telework days for specified purposes, he was required to obtain permission from his supervisor. He made no effort to obtain permission to be absent for the worksite for the dates specified in the Written Notice (AE4). I therefore find that the behavior constituted misconduct and a violation of Offense Codes as alleged in the Written Notice.

50. Agency Policy 1.60 - Standards of Conduct provides that "failure to follow supervisor's instructions" and failure to report to work without notice/approval may be considered Group II offenses. (AE 6, p. 25.)

51. As a Procurement Officer II, Grievant held a position of significant responsibility and accountability. Grievant's supervisor testified that on the four successive Wednesdays that Grievant failed to report to work at the office he was scheduled to be the only Procurement

Officer in the building. Grievant's supervisor(s) clearly believe that an individual in such a significant position of responsibility must be at the appointed place at the appointed time and that one who fails to carry out this important responsibility should be held accountable for this behavior. Grievant's uncorroborated assertion that "everyone does it" is not a credible reason to find that an individual in an accountable position should not be held accountable for his behavior. I therefore find that Grievant's actions as detailed in the Third Written Notice (AE 4) are properly considered Group II violations.

52. Grievant was awarded a single sanction (termination) for the four Written Notices. The issue of whether mitigating circumstances justify a reduction in the sanction that was awarded for all offenses is addressed below.

Fourth Written Notice (AE 5) Violation of Offense Code 02 [Leaving Work Without Permission]; Code 03 [Failure to Report Without Notice]; Code 13 [Failure to Follow Instructions or Policy]; and Code 99 [Other (Willful Misconduct)]

53. For the reasons detailed below, I find that Grievant engaged in the behavior as described in the Fourth Written Notice (AE5) and that the behavior constituted misconduct, to wit, Violation of Misconduct Codes 2 [Leaving Work Without Notice] 3, [Failure to Report Without Notice], Code 13 [Failure to Follow Instructions or Policy] and 99 [Other-- Willful Misconduct].

54. Documentary evidence provided by Agency provide clear evidence that Grievant failed to report to work in accordance with his work schedule on 3/11/2026. Moreover, as noted above, Grievant admitted that the Badge Log (AE 17) and other Agency records were accurate. I find that this failure to appear in accordance with his work schedule supports the finding of a violation of Code Sections 03 and 13 [Failure to Follow Instructions or Policy] .

55. When Grievant was questioned about his whereabouts, his response was misleading. I find that the response clearly suggested that Grievant had been at the office earlier that day when, in fact, he had not appeared at all that day. I further find that Grievant's misleading statement was not an unintentional failure to use concise language. I find that the only reasonable interpretation of the statement, "I came home for an early lunch so I'm not in [the office] right now, but will be back over there shortly," is that Grievant intended to convey that he had been in the officer earlier that same day. Grievant repeated his misrepresentation in his Response to the Due Process Notice in which he stated, "I had been present early that day, but that presence is not reflected in the badge logs." (AE1, p. 21.) I therefore find that Grievant's misrepresentation was an intentional act in which he intended to mislead his supervisor regarding his whereabouts on the morning in questions. Accordingly, I find that Grievant's actions constitute a violation of Code 99 [Other (Willful Misconduct)].

56. The Badge Log (AE 17) also showed Grievant departing at 4:25 on 12/11/2026. I therefore find that Grievant's actions constitute a violation of Code 02 [Leaving Work Without Permission] and a further violation of Code 13 [Failure to Follow Instructions or Policy].

57. Grievant provided no reasonable excuse or explanation for his initial failure to appear at his assigned work site (i.e. the Agency office) in a timely manner, his early departure, or his efforts to mislead his supervisor as to his whereabouts. As was noted above, Grievant's supervisor(s), not Grievant himself, establishes his work hours. Grievant did not have permission to arrive late or to depart early. His disingenuous response to Supervisor provides considerable evidence that he was aware that his actions were contrary to Agency rules. I therefore find that the behavior constituted misconduct and a violation of Offense Codes as alleged in the Written Notice.

58. Agency Policy 1.60 - Standards of Conduct provides that "failure to report without notice," "leaving work without permission," and "failure to follow supervisor's instructions" may be considered a Group II offenses. (AE 6, p. 25.) I further find that intentional misconduct by an accountable individual such as a procurement officer is a significant violation that qualifies as a Group II offense.

59. Grievant was awarded a single sanction (termination) for the four Written Notices. The issue of whether mitigating circumstances justify a reduction in the sanction that was awarded for all offenses is addressed below.

60. No unlawful or discriminatory action was identified that would suggest that the Agency's actions were improper in disciplining Grievant for this offense.

Due Process Considerations

67. I found no evidence of violations of law or Due Process by the Agency in its processing and executing of disciplinary procedure. Documentation presented by the Agency as well as Agency witnesses including the Employee Relations Director, the Director of Finance, the Chief HR Officer, and Grievant's direct supervisor confirmed that the Agency conducted an appropriate review of the proposed discipline. (See AEs 1-5.)

Mitigation

68. 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).

69. 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 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).

70. The Agency noted in its documentary evidence that mitigation evidence was considered but determined that the mitigating evidence did not outweigh the severity of Grievant’s actions. (*See* AE 2-5.)

Sanction Awarded

71. For the reasons listed below, I find that termination is a proper sanction for the offenses listed in the Four Written Notices.

72. As detailed above, I found Grievant’s misconduct as detailed in the four Written Notices to be repetitive and without valid excuse. Attachment “A” to DHRM Policy 1.60 provides that absent mitigating circumstances, a discharge may be awarded when an employee accumulates two Group II violations. (*See* AE 6, p. 25.) I further note that the Fourth Written Notice (AE 5) included Intentional Misconduct. While not charged as such, it involved dishonesty in that Grievant’s communication to his supervisor was intentionally misleading. Though labeled as a Group II offense, the Grievant’s behavior reflects negatively on his integrity. A procurement officer who has integrity issues is, at minimum, a serious concern for the Agency.

73. Grievant argued that the Agency should have engaged in progressive discipline and that Grievant should have been warned that his attendance issues were unacceptable. Whereas one may reasonably argue that the better supervisory approach may have been to warn or counsel Grievant and provide him with an opportunity to correct his behavior, I defer to the judgement of the supervisor who is charged with the responsibility of observing the performance of her supervisee and acting accordingly. As noted above, EDR’s Rules provide that “a hearing

officer is not a “super-personnel officer.” “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). Moreover, Grievant’s actions were not accidental or an error in judgement. Grievant was aware of the Agency policy and understood his work schedule. He simply decided not to obey the Rules and did so consistently and repetitively.

74. Grievant’s actions were not minimal or infrequent, nor were they accidental or an error in judgement. Grievant was aware of the Agency policy and understood his work schedule. He simply decided not to obey the Rules and did so consistently and repetitively. As the result of such consistent and repetitive misconduct, Grievant’s supervisor lost trust in Grievant’s ability or willingness to follow the directions of his supervisors and to accurately report his actions, including accurately reporting to work and remaining at his appointed place for the full workday. Executive leadership at the Agency concurred with the supervisor’s assessment. Accordingly, I find that termination is an appropriate sanction for the conduct described in the Written Notice.

75. I further find that Grievant presented no mitigation that was not considered by the Agency that would reasonably support a lesser sanction. Accordingly, having reviewed all the evidence and considered same, I find that the mitigating factors offered by the Grievant do not rise to the level required to alter the Agency’s election to exercise its discretionary discipline.

DECISION

For the reasons stated herein, the Agency’s Four Group II Written Notices, with with the sanction of Termination, 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. [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].

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

ENTERED: 26 May 2026

A handwritten signature in dark ink, appearing to read "Prescott L. Prince", is written over a horizontal line.

Prescott L. Prince, Esq., (VSB# 23077)

Hearing Officer

1901 Huguenot Road, Ste. 200

N. Chesterfield, VA 23235

Telephone: (804) 677-3744

Facsimile: (804) 674-9864

Email: plprince@aol.com