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

DIVISION OF HEARINGS

In the matter of: Case No. 12424

Hearing Officer Appointment: March 16, 2026
Hearing Date: May 12, 2026
Decision Issued: May 17, 2026

ISSUES:

The Grievant requested an administrative due process hearing to challenge the issuance by a facility (the "Facility") of the Virginia Department of Transportation ("VDOT" or the "Department" or the "Agency") of a Group III Written Notice, and a Group II Written Notice with termination due to cumulation, effective January 15, 2026. The Group III Written Notice was issued 12/23/25 for violation of Written Notice Offense Codes 11 (unsatisfactory performance), 13 (failure to follow instructions and/or policy), and 99 (security violation). The original Group III Written Notice initially carried a termination, but this was mitigated by management for the reasons provided in the written notice. The Group II Written Notice was issued 1/15/26 for violation of Written Notice Offense Code 11 (unsatisfactory performance), with termination due to accumulation of written notices.

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

PROCEDURAL HISTORY & BACKGROUND:

FIRST PREHEARING CONFERENCE CALL:

The Grievant, the Agency's advocate and the reappointed hearing officer participated in the first prehearing conference call at noon on April 13, 2026.

The parties consented to written communication by email alone.

The hearing was held in-person on May 12, 2026, the date originally scheduled by the full-time hearing officer, who has since left EDR.

At the hearing, the hearing officer received various documentary exhibits into evidence, namely all exhibits in the Agency's black binder (also delivered electronically per the full-time hearing officer's order) and all hard copies in two manilla folders received from the Grievant (not delivered electronically per the full-time hearing officer's order).[1]

The hearing officer recorded the hearing.

At the hearing, the Grievant represented himself 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
Witnesses

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as a Ferry Captain ("Supervisor"), an important supervisory position within the facility.

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

2. The Grievant was required to strictly adhere to all applicable Agency policies and procedures.

3. As Supervisor at the relevant times, amongst other duties, Grievant was responsible for supervising and controlling numerous subordinates, including Agency employees who worked at the facility. AE 13 at 53.

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 with many responsibilities including, for example, piloting 4 different ferry vessels on designated waters; carrying passengers, vehicles and property; ensuring the safety of passengers, crew and cargo; and obeying all U. S. Coast Guard regulations governing ferry operations. AE 13 at 53.

6. Significant and substantial training was invested in the Grievant by the Agency in all aspects of his employment. AE 21.

7. The Facility reasonably and of necessity relied on the Grievant to fulfill all his duties and responsibilities.

8. The Grievant's role in maintaining the Facility's excellent relationship with the Coast Guard and in maintaining the confidence and trust the roughly 6,600 members of the public who utilize the Facility's ferries each day and of all its personnel is paramount.

9. 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 and complying with federal safety and security regulations.

10. On January 15, 2025, June 1, 2025, and November 8, 2025, a combination of photographic and video evidence showed Grievant bringing an unauthorized person into the pilot house.

11. When the Grievant initially met the Operations Manager to discuss the matter on December 1, 2025, Grievant admitted to the Operations Manager that Grievant allowed an unauthorized person into the pilot house. AE 14 at 56.

12. Allowing anyone unauthorized into the pilot house is a significant security breach and is in violation of Homeland Maritime Transportation Act title 33 CFR chapter 1 subchapter H part 104 Maritime Security: Vessels; [Facility] Ferry Vessel Security Plan section 11.1; and [Facility] Ferry Standard Operating Procedures (SOP) chapter 6, section XIII.

13. It also constitutes a safety issue as the pilot can more easily be distracted leading to accidents, as has happened in the past.

14. The Group III Written Notice was issued 12/23/25 for violation of Written Notice Offense Codes 11 (unsatisfactory performance), 13 (failure to follow instructions and/or policy), and 99 (security violation).

15. For the reasons provided in the Group III written notice, the Agency decided to mitigate the discipline down from termination.

16. Grievant failed to prepare his crew for a U.S. Coast Guard annual inspection conducted on December 4, 2025.

17. This failure resulted in the Coast Guard issuing an 835 Report, documenting poor performance of Grievant and his crew.

18. During the inspection, the Coast Guard found the following areas of deficiency:

(a) Poor communication and execution during the small boat lower drill (Man Overboard Drill).
(b) When asked by the U.S. Coast Guard Inspector how the ship's fixed firefighting system worked, Grievant admitted he did not know.
(c) During the vessel steering test Grievant operated the wrong steering control from what was requested.
(d) When the U.S. Coast Guard Inspector brought this to Grievant’s attention, Grievant continued to insist they were using the correct steering control.

19. Following the inspection, the U.S. Coast Guard issued an 835 Report listing numerous deficiencies which needed to be corrected. AE 1 & AE 12.

20. Prior to this occurrence, no Facility crew had ever received documentation for poor performance during a U.S. Coast Guard inspection.

21. To exacerbate matters, no appropriate training was logged appropriately over the three months before December 4, 2025, to prepare for the U.S. Coast Guard inspection. AE 1.

22. Although at the time of the inspection, Grievant was a relatively new Captain, Grievant had been employed with the Facility for almost 25 years.

23. During this time, Grievant participated in numerous U.S. Coast Guard inspections, including during his time as a Junior Ferry Captain.

24. Grievant’s Job & Position Description for Ferry Captain, specifically states, "Maintain vessel readiness for USCG inspections." AE 13 at 54.

25. Concerning Required skills for job & position, mandated requirements include:

- Ability to complete and maintain records and reports.

- Ability to communicate effectively both orally and in writing and to interact professionally with passengers and crew.
- Skill and ability to pilot ferry vessel safely.
- Ability to comply with appropriate U.S. Coast Guard and VDOT rules and regulations.
- Knowledge of ferry operations and safety and governing U. S. Coast Guard regulations.
- Ability to respond effectively in emergency situations.

Ae 13 at 54.

26. Grievant's inability to prepare his crew for the U.S. Coast Guard inspection conducted on December 4, 2025, disparaged the organization with an important oversight agency which had a negative impact on its operations.

27. The Group II Written Notice was issued 1/15/26 for violation of Written Notice Offense Code 11 (unsatisfactory performance), with termination due to accumulation of written notices.

28. 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.

29. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.

30. The Department's actions concerning this grievance were reasonable and consistent with law and policy.

31. 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 "SOC"). AE 20.

The SOC provide a set of rules governing professional and personal conduct and acceptable standards for work performance of employees. The SOC 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.

<u>THE GROUP III OFFENSE:</u>

Group III offenses include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, for example, endanger others in the workplace, constitute illegal or unethical conduct; indicate significant neglect of duty; result in disruption of the workplace; or other serious violations of policies, procedures, or laws.

Attachment A provides examples of Group III Offenses: Absence of three or more consecutive workdays without approval; safety/health infractions that endanger the employee and/or others; unethical or illegal conduct; significant neglect of duty, disruption of workplace, or other serious violations of policy, procedures or laws.

The Grievant, by committing the serious safety and security violations of admitting an unauthorized person into the pilot house, did not follow the applicable state and agency policies and committed serious disciplinary infractions which were reasonably classified by management, as a Group III offense.

<u>THE GROUP II OFFENSE:</u>

Grievant's failure to prepare his crew was in violation of Department of Human Resource Management (DHRM) Policy 1.60 - Standards of Conduct, which provides that employees are expected to: perform assigned duties and responsibilities with the highest degree of public trust;

meet or exceed established job performance expectations; make work-related decisions and/or take actions that are in the best interest of the agency.

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 or II level, as designated, with the Agency appropriately exercising the discipline and ending the Grievant's employment due to the severity of the offenses and to cumulation of Written Notices.

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 mitigated the original Group III and did consider mitigating factors in the most recent discipline, including the Grievant's past good service to the Agency.

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 several 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 Grievant's very hard work for the Facility;
6. the Grievant's relative lack of prior formal discipline;
7. the long hours worked by the Grievant;
8. the shortage of staff at the Facility;
9. the stressful work;
10. that the Grievant was recently elevated to the rank of Captain;
11. the missed meeting; and
12. the unavailability of the vessel on December 3, 2025.

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.

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 did not present any material probative evidence at the hearing concerning any affirmative defenses.

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 5/17/2026

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.