



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12442

Hearing Date: May 12, 2026

Decision Issued: May 26, 2026

PROCEDURAL HISTORY

On January 29, 2026, Grievant was issued a Group III Formal Written Notice for a violation for DOC OP 135.4 drug policy from two positive drug tests for THC.

On February 2, 2026, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On March 9, 2026, the Office of Employment Dispute Resolution assigned this appeal to the Hearing officer. On May 12, 2026, a hearing was held in-person.

APPEARANCES

Grievant
Department of Corrections Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice Form 129-01-004 for a Group III Violation?
2. Whether the behavior constituted misconduct?

An Equal Opportunity Employer

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?
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

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of 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.

FINDINGS OF FACT

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

The Department of Corrections' Rustburg Correctional Center ("Rustburg") employed Grievant as a Corrections Officer. On January 29, 2026, a Written Notice of Group III violation was provided which Grievant refused to sign.

Grievant received training, DOC Policies, and notices regarding drug violations. Rustburg provided standards of ethics and conflicts of interest, instructing Grievant on the proper policies related to positive drug testing.

Grievant admitted to receiving these policies. Grievant admitted members of his immediate family were known THC users. Grievant knew the policies related to a positive drug test. Grievant denied personal use of THC.

CONCLUSIONS OF POLICY

Operating Procedure 135.1 sets forth the Agency's Standards of Conduct. OP 135.1 XIV B 10 states employees, "... any/all use, possession, distribution, sale, etc. of illegal drugs, or unlawful use of controlled substances will result in termination."

Operating Procedure 135.4 sets forth the Agency's policies regarding Alcohol and Drug Testing. Operating Procedure 135.4 III D 2 states, "employees who are confirmed positive for unlawful, illegal, or prohibited usage will be terminated for conduct which endangers the public safety, internal security, or affects the same and efficient operation of the DOC."

Operating Procedure 135.4 III D 2 (a) sets for the THC/marijuana positive testing policy, "Marijuana and marijuana products may remain in one's system for an extended period."

Virginia Department of Human Resource Management Policy 1.05 Alcohol and Other Drugs' purpose is, "It is the policy of the Commonwealth of Virginia to establish and maintain a work environment free from the adverse effects of alcohol and other drugs to include marijuana, marijuana products, cannabis oil and cannabis products..."

On December 22, 2025, Grievant participated in a random drug test. On December 31, 2025, testing results showed Grievant failed the random drug test, testing positive for THC. Grievant requested a retest and paid \$200.00 for the retest. A second sample was tested and this also tested positive on January 15, 2026.

Rustburg provided Grievant with a Group III Written Notice for violations of DOC OP 135.1 and DOC OP 135.4. Grievant refused to sign the Written Notice.

On January 16, 2026, more than three weeks post the random drug test, Grievant submitted a hair sample and urine sample to an independent testing facility. Both of these tests came back negative for THC. Grievant argued he did not use or consume marijuana or THC.

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resource Management..." Va. Code §3005. Under the Rules for Conducting Grievance Hearings, [a] hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. 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. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action. The Hearing Officer notes there is no policy related to grievant submitting independent drug test results.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III, Written Notice Form 129-01-004 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 Street, 12th Floor
Richmond, Virginia 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

/s/ James Bradley Winder, Jr.

James Bradley Winder, Jr., Esq.
Hearing Officer

¹ See sections 7.1 through 7.3 of the *Grievance Procedure Manual* for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant.