



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 12453

Hearing Date: April 28, 2026

Decision Issued: May 18, 2026

PROCEDURAL HISTORY

On February 4, 2026, Grievant was issued a Group III Written Notice of disciplinary action with removal for lack of civility in the workplace.

On March 6, 2026, Grievant filed a grievance to challenge the Agency's action. The matter advanced to hearing. On March 30, 2026, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On April 28, 2026, a hearing was held at the Agency's local office.

APPEARANCES

Grievant
Agency Party Designee
Agency Counsel
Witnesses

ISSUES

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

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

BURDEN OF PROOF

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 Virginia Department of Taxation employed Grievant as a Telecommunication Technician Specialist at one of its locations. He was hired in an hourly position with the Agency in 2022 and then selected for a permanent position in 2023. No evidence of prior active disciplinary action was introduced during the hearing.

Grievant reported to Manager. Grievant worked with a team of fewer than 10 employees. Among the employees was a Team Lead. The Team Lead did not supervise Grievant and his co-workers, but was responsible for directing Grievant's daily work and responding to Grievant's questions. The Team Lead was responsible for guiding the team and acting as a proxy for Manager but without disciplinary authority. Grievant's cubical desk was located near Team Lead's cubical desk.

Grievant was responsible for providing support to more than one hundred employees who used mobile phones. His duties included keeping an inventory of mobile phones. Having Grievant work in the office and interact with employees was important to the Agency.

The Team met on a daily basis for approximately one hour. Each employee was expected to discuss the employee's work for the previous and current day.

The Agency began a mobile phone “refresh” in April 2024. Work assignments were made through “tickets”. Grievant was expected to pick up a ticket within eight business hours and complete the work within 39.5 business hours. He was responsible for maintaining an inventory of mobile phones.

The Manager became concerned about Grievant’s performance and decided to draft a Performance Improvement Plan (“PIP”) for Grievant with the objective of helping Grievant meet the Manager’s work expectations. The first PIP began on June 9, 2025 and ended July 28, 2025. It was not “filed” with the Agency’s Human Resources Department. The Manager met weekly with Grievant. The Manager did not perceive Grievant’s performance as improving. Grievant was not timely processing tickets and sometimes failed to maintain inventory records. The Manager issued a second PIP which began on August 5, 2025 and ended September 10, 2025. A third PIP was issued in September 2025 and this one was a “performance” PIP that was referred to the Agency’s Human Resources Department. The Team Lead was not responsible for drafting the PIPs. The Team Lead had to check-in with Grievant to keep him on task.

In October 2025, Manager took medical leave and stopped reporting to the office. He returned to work in mid-December 2025. When Manager returned, several staff reported to him that Grievant was spending a lot of time speaking with other staff in their work cubicles and staff had to ask Grievant to leave. Four or five staff told Manager that Grievant was making threats and they were afraid of Grievant. Grievant made statements that he knew people in Chicago who he could have go to Team Lead’s house and break his kneecaps. Grievant said he had steel-toed boots for kicking. Grievant said that while Manager was out of the office, Grievant was going to set up a meeting with Team Lead and confront Team Lead. If Grievant did not like Team Lead’s answers, Grievant would attack Team Lead and blame it on post traumatic stress disorder.

Grievant did not directly communicate his threats to Team Lead. When Manager was away from the office on leave, several employees told Team Lead about Grievant’s statements about harming him. Upon learning of Grievant’s threats to him, Team Lead became fearful that Grievant would harm him. The Team Lead’s fear was so great that he requested and was granted permission to telecommute instead of working in the office near Grievant. He worked from his home for approximately five weeks. This created inconvenience for the Agency employees who needed access to Team Lead.

Several employees refused to testify at the hearing because they feared Grievant.

Grievant provided a written response to the disciplinary action:

I would like to firstly state that I apologize for a potential lack of articulate verbiage that could have been used in this response as I have never been the best at sending items similar to this without a massive amount of time proofreading for the target audience or individual(s).

As discussed during the meeting, several statements I made were reported to HR and could be perceived as threatening.

I acknowledge that I did make those statements. However, they were not made as a single comment, in any specific order, nor in an escalating or directed manner. They were expressed during a moment of frustration related to ongoing workplace events and were not intended to be threatening toward any individual or toward the Department of Taxation.

I sincerely apologize for the manner in which those statements came across. At no point did I intend to make anyone feel unsafe, uncomfortable, or threatened. I regret that my words resulted in concern being raised to HR, and I am deeply sorry that anyone felt impacted in that way. That outcome was never my intention.¹

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “have a minor impact on agency business operations but still require intervention.” Group II offenses include, “acts of misconduct, violations of policy, or unsatisfactory performance of a more serious nature that has a considerable impact on the agency’s ability to provide services and meet business needs.” Group III offenses include, “acts of misconduct, violations of policy, or unsatisfactory performance that is of a most critical nature and significantly impacts agency services and operations.”²

DHRM Policy 2.35 governs Civility in the Workplace. Under this policy, “workplace violence of any kind [is] prohibited in state government agencies.” This policy provides:

The Commonwealth strictly forbids ... bullying behaviors, and threatening or violent behaviors of employees, ... in the workplace.

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

Any employee who engages in conduct prohibited under this policy or who encourages or ignores such conduct by others shall be subject to corrective action, up to and including termination, under Policy 1.60, Standards of Conduct.

“Workplace Violence” is defined as:

¹ Agency Exhibit p. 6.

² DHRM Policy 1.60, Attachment A.

Any physical assault, threatening behavior, or verbal abuse occurring in the workplace by employees or third parties. Threatening behaviors create a reasonable fear of injury to another person or damage to property or subject another individual to extreme emotional distress.

Grievant engaged in workplace violence. His statements about having people harm Team Lead and attacking Team Lead were threats of physical harm prohibited by DHRM Policy 2.35. Grievant created reasonable fear of injury in several employees including Team Lead.

Grievant's behavior undermined team cohesion and safety. Several employee expressed fear of Grievant and did not want to work with him. The Team Leader sought to work from his home rather than encounter Grievant in the office.

The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice. Upon the issuance of a Group III Written Notice, an agency may remove an employee. Accordingly, the Agency's decision to remove Grievant must be upheld.

The Agency concedes that it is not likely that Grievant intended to scare anyone, but asserts that his statements did so. It is not necessary for the Agency to show that Grievant intended to harm anyone or that he was likely to carry out his threats. Grievant's statements were threatening behavior subject to disciplinary action.

Grievant did not testify or call any witnesses on his behalf. The documents he submitted are not sufficient to excuse or justify his statements.³ Grievant requested, "transfer to a different department or team also be considered as an alternative."⁴ The Agency had discretion to transfer Grievant to another location, but chose not to do so. The Agency was not obligated to transfer Grievant in lieu of removal. Its decision to remove Grievant was supported by the evidence.

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"⁵ 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

³ Grievant presented a statement dated September 16, 2025 from a medical professional seeking accommodation for Grievant. It is unclear if this was presented to the Agency and, if so, how it may have been implemented.

⁴ Agency Exhibit p.5.

⁵ *Va. Code § 2.2-3005.*

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.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal 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.^[1]

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

[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].

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer