

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYEE DISPUTE RESOLUTION
DIVISION OF HEARINGS

In the matter of Case No.: 12403
Hearing Date: 16 April 2026
Decision Issued: 8 June 2026

SUMMARY

For the reasons detailed herein, the Hearing Officer finds that the Group II and Group III Written Notices with Termination issued by Agency are upheld.

PROCEDURAL HISTORY

On 22 October 2025, Grievant was issued one Group II Written Notice and one Group III Written Notice regarding disciplinary action with the ultimate sanction of termination. (See Agency Exhibit ("AE ") 22. In the Group II Written Notice, the Agency described the nature of the offense as follows:

13 - Failure to Follow Instructions or Policy\

A. On Friday, October 3, 2025, at 6:08 am, I [Deputy Director of General Accounting] sent you an email . . . requesting you to submit your time in the Time Effort and Absence (TEA) system. When you failed to do so by the end of the business day I sent you a follow-up email. Reporting time helps to maintain an accurate depiction of hours work and leave hours utilized.

B. On Monday, October 6, 2025, you stated in a text to [Director of the Office of Financial Management (OFM)] and I that you were "out of town," which indicated that you were not at your designated and approved telework location.

C. After noticing the continuous connectivity issues you experienced on Monday, October 6, 2025, and Tuesday, October 7, 2025, I consulted OHR the same day (October 7, 2025) to verify what options were allowable to address the technical and agency-related interferences in lieu of your active reasonable accommodation to telework. It was determined that the connectivity issues you encountered presented an agency hardship and necessitated the removal of your teleworking accommodation. I informed you via text message to your personal phone . . . that you were required to report to the office until further notice. On October 7, 2025, at 10:07 a.m., I sent you a text message to your personal cell phone with instructions to report to the office to complete your workday and you did not report to the office as directed. You replied via text (see [Response to In Office Request.pdf] stating that you planned to use Uber for transportation to work on

Wednesday, October 8, 2025, and referred me to note the text message you sent me on Monday, October 6, 2025, (see [Out of Town.pdf] wherein you stated that you were out of town and unable to "hobble into the office and grab a docking station to use."

37 - Disruptive Behavior

At 3:02 PM on October 2, 2025, I prescheduled an October 3, 2025, "Review SMART Goals and EPP" Microsoft Teams meeting with you, [Human Resource Business Partner ("HRBP")], Office of Human Resources (OHR), and myself (see [Meeting Chat.pdf]). You did not respond to the invitation I sent you. On October 3, 2025, we began the meeting at 8:30 AM and you did not respond in the meeting chat until 9:02 AM, which is thirty-two minutes after the meeting start time. HRBP had to contact you via chat to verify whether you were joining the meeting or not. You mentioned your unawareness of the meeting and verified that the invitation I sent you the previous day was in your email inbox. Next, you sought to reschedule the meeting to ensure that you had an advanced opportunity to preview the same documentation the meeting was initiated to review with you. HRBP sent you numerous chat messages explaining the purpose of the meeting and offered you guidance regarding the agency process related to your Employee Performance Profile (EPP). Your late arrival to the meeting scheduled for 8:30 AM, consistent requests for documentation beyond the scope of the EPP process I had intended for you, interfered with the planned flow and function of the meeting's purpose; and it displayed a disruptive behavior that inappropriately challenged and resisted my managerial/supervisory authority.

56 - Insubordination

- A. On Friday, October 3, 2025, I sent a meeting invite at 3:22 pm for a meeting at 3:45 pm. You declined the request. stating you were currently in a meeting. I responded to you via chat (see [Performance Meeting.pdf] informing you that you could join the scheduled 3:45 pm meeting after your meeting ends, and that we would wait for you. We received confirmation from [Director of Data & Quality, Office of information Management (OIM), that the meeting you were in ended at 4:02pm. We waited for you approximately half an hour in the Microsoft Teams meeting I scheduled until 4:32pm before hanging up. Your failure to attend the meeting was a blatant refusal of my direction and instruction.
- B. On Wednesday, October 8, 2025, I sent a meeting invite to you at 10:22 am for a meeting at 11 :30 am. You declined the invitation to the meeting at 10:26 am (see [Decline Meeting.pdf]), without any explanation. This example of your behavior maintains a pattern of direct disregard of the workflow and directives I administer to you in lieu of supporting our office's business.

(AE 22.)

The Written Notice further described the alleged misconduct as Written Offense Codes 13 [Failure to follow written notice or policy], 37 [Disruptive Behavior] and 56 [Insubordination].
(AE 22.)

In the Group III Written Notice (AE 23), the Agency described the nature of the offense as follows:

On September 16, 2025, [Director of Business Processes] messaged me [the Deputy Director of General Accounting] through Microsoft Teams a screenshot . . . of an "undeliverable" notification he received to his [Agency] email address shortly after his sending an email to [Grievant's] work email address. I forwarded the screenshot to [the Chief Financial Officer], who contacted [the Chief Information Security Officer], for insight into the notification [the Director of Business Processes] received. Although [the Chief Information Security Officer] did not receive a rejection, he informed [the Chief Financial Officer] that he would contact N*** to investigate. Upon N***'s investigation, it was confirmed that you had auto-forwarding enabled to your Gmail account. It was also determined that the Security Standards prohibited the auto-forwarding of your work email to a generic email such as your Gmail; and the outbound spam policy blocked external auto-forward for many messages, Your attempt to auto-forward your [Agency] emails to your Gmail account incorporates a misuse of your [Agency] mail account to satisfy a personal need, sustains potential system vulnerabilities and risks to the agency, and is noncompliant with [Agency's] Acceptable Use Policy, which disallows auto-forwarding to external accounts.

(AE 23.)

The Written Notice further described the alleged misconduct as Written Offense Codes 13 [Failure to follow written notice or policy] and 51 [Unauthorized use of state property or records]. (AE 23.) Grievant was terminated effective 22 October 2025. (AE 22 & 23.)

On 19 December 2025, Grievant timely filed a Grievance Form A to challenge the Agency's action. The matter was initially assigned to Hearing Officer ("HO") Angela Jenkins who set the hearing for 6 May 2026 at 10:00 a.m. at Agency Headquarters as the date, time, and location for the Hearing. HO Jenkins also established 29 April 2026 as the date for exchange of witness lists and exhibits. (See HO Jenkins Hearing Confirmation Letter dated 2/9/2026.) Order.) On 16 March 2026, the matter was re-assigned to the undersigned, HO Prescott L. Prince. HO Prince re-confirmed dates and times of the Hearing in his Pre-Hearing Order. (See Pre-Hearing Order.)

On 6 May 2026, the hearing was held in-person at the Agency's facility. The Agency and the Grievant each submitted documents for exhibits that were accepted into the grievance record. The record closed at the conclusion of the hearing. The hearing officer has carefully considered all evidence and argument presented.

APPEARANCES

Agency Representative
Grievant did not appear at the Hearing
Counsel for Agency
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group III Written Notice of disciplinary action (i.e., Sleeping during working hours)?
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 Grievant requested an administrative due process hearing to challenge termination of her employment at the Agency, effective 22 October 2025, pursuant to the Group II and Group III Written Notice issued by Management of the Agency. (See [REDACTED] Re-Appointment File at p.6.)

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.

FINDINGS OF FACT

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

Prior to her dismissal, Grievant was a Financial Services Specialist I (Working Title: Accountant Senior) and had been in her current position since October 2025. (AE 1.)

The Offense

Grievant actions that led to the alleged misconduct are detailed above and in Agency Exhibits 22 & 23.

Testimony at the Hearing, including the testimony of the Deputy of Deputy Director of General Accounting, the Human Relations Business Partner, and the Chief Information Security Officer testified in accordance with the allegations as detailed in the Written Notices. Each testified in accordance with the documentary evidence.

Grievant Evidence

Grievant submitted no documentary evidence and did not appear at the hearing. Neither the Agency nor Grievant submitted the Grievance that is at issue in this matter as documentary evidence. I nevertheless take notice of the Grievance and the attachments that were forwarded in Appointment File that is included in the Record. (See Re-Appointment File; pp 6-13.) The Grievance provided no specific assertions regarding the instant alleged misconduct. Instead, it included, as attachments, copies of two grievances previously submitted by Grievant. (See AE 2 and 13.)

These two grievances that Grievant included as attachments to the instant Grievance were processed by the Agency. The resolutions were partially favorable to Grievant although Grievant did not receive all of the relief requested. Both grievances were ultimately administratively closed when Grievant did not pursue them in accordance with the Grievance Manual. (See AE 2, p. 13 and AE 13, p. 15.)

As noted above, the Grievance submitted by the Grievant provided no relevant information to the instant case. Grievant did not deny that she engaged in the alleged behavior and she provided no evidence that could be reasonably interpreted that the behavior was not misconduct.

Analysis and Discussion

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. 1988).

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

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).

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).

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.

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

First Written Notice

For the reasons detailed below, I find that each of the alleged instances of misconduct included in the first Written Notice are properly considered Group II Level Offenses as defined in OP 160.1.

The First Written Notice (AE 22) alleged three instances of misconduct in violation of Offense Codes 13 [Failure to follow instructions or policy], 37 [Disruptive behavior], and 56 [Insubordination], I find as follows:

Attachment A to Agency Operating Procedure "OP" 160.1, "Standards of Conduct" states:

Group II Level Offenses includes 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.

(AE 24, p. 25.)

Regarding violation of Offense Code 13: Evidence presented by the Agency established that Grievant failed to act in accordance with the Agency Telework Policy (OP 1.61 (See AE 25.) Attachment "A" to OP 160.1 specifically provides that failure to comply with written policy or agency procedures may be considered a Group II violation. (See AE 24, p. 25.) Moreover,

the violation of the policy was more than a mere technical violation as Grievant's actions impacted her connectivity and thus her ability to effectively carry out her work responsibilities.

Regarding violation of Offense Code 37 [Disruptive behavior]: I find that Grievant intentionally failed to engage with the Human Resource Business Partner "HRBP" in response to HRBP's request to meet with Grievant to review and explain her Employee Profile and her Goals for the upcoming year. Such actions create a burden on the Agency and impacts the ability of the Agency to provide services and business needs.

Regarding Offense Code 55 [Insubordination]: On two occasions, Grievant failed to attend a meeting as requested by her supervisor. Although the allegation as stated in the Written Notice states that Grievant was sent an "invite" to the meetings, such "invites" were clearly directions to attend the meeting. Grievant's failure to attend such meetings without explanation creates a burden on the Agency and impacts the ability of the Agency to provide services and business needs.

I find that each of these instances of misconduct, standing alone, would qualify as a Group II violation and the three instances of misconduct, taken together, make such a finding more certain.

Grievant was awarded a single sanction (termination) for the two 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

For the reasons detailed below, I find that each of the alleged instances of misconduct included in the second Written Notice are properly considered Group III Level Offenses as defined in OP 160.1.

The Second Written Notice (AE 23) alleged misconduct in violation of Offense Codes 13 [Failure to follow instructions or policy and unauthorized use of state property or records], I find as follows:

Attachment A to Agency Operating Procedure "OP" 160.1, "Standards of Conduct" states:

Group III Level 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.

(AE 24, p.25.)

Grievant "auto-forwarded" email to a personal email account (i.e. a "gmail" account). This action violated Agency Policies regarding Information Security and Use of Electronic Communications and Social Media. Grievant's actions created a security risk in that and, is therefore a critical violation that impacted agency services and operations.

I find that the misconduct alleged in the Second Written Notice (AE 23) qualifies as a Group III violation. Grievant was awarded a single sanction (termination) for the two Written Notices. The issue of whether mitigating circumstances justify a reduction in the sanction that was awarded for all offenses is addressed below.

Mitigation

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).

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).

The Agency noted in its documentary evidence that no mitigating evidence was found. (See AE 22 & 23.)

Grievant presented no evidence. There is therefore no mitigating evidence presented by Grievant that can be considered. No mitigating evidence was found *sua sponte* by the Hearing Officer.

DECISION

For the reasons stated herein, the Agency’s Group III Written Notice, with 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.³
[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.



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