

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

DIVISION OF HEARINGS

In the matter of: Case No. 12425

Hearing Officer Appointment: February 23, 2026
Hearing Date: June 12, 2026
Decision Issued: June 17, 2026

ISSUES:

The Grievant requested an administrative due process hearing to challenge the issuance on October 7, 2025, by a facility (the “Facility”) of the Virginia Department of Corrections (the “DOC” or the “Department” or the "Agency") of a **Group II Written Notice** for violation of Written Notice Offense Code 11 – Unsatisfactory Performance.

The Grievant has raised the issues specified in her Grievance Form A and is seeking the relief requested in her Form A, including rescission of the discipline.

PROCEDURAL HISTORY & BACKGROUND:

The Grievant, the Agency’s advocate and the hearing officer participated in the first prehearing conference call at noon on March 10, 2026, and a second prehearing conference call at 4 pm on April 24, 2026.

The parties consented to written communication by email alone.

At the hearing, the hearing officer received various documentary exhibits into evidence.¹

The hearing officer recorded the hearing.

At the hearing, the Grievant represented herself 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 at the Facility as a Lieutenant. AE at 4.
2. On. June 6, 2025, Grievant was a witness and/or was involved in a use of force incident with an inmate in the dining hall/chow hall during chow movement. Video; AE 5.
3. The particularly large inmate cut in line and became disruptive, combative and threatening.
4. Grievant, who was supervising in the chow hall, intervened to remedy the situation.

¹ References to the agency's exhibits will be designated AE followed by the exhibit tab and/or page number. The Grievant offered no exhibits.

5. As required by policy, Grievant failed to activate her body worn camera (“BWC”), and Grievant admitted and admits this infraction.
6. Grievant also failed to complete and submit an Internal Incident Report (“IIR”) in VACORIS, as also required by policy.
7. On Monday December 8, 2025, the Warden met with the Grievant for the second resolution step.
8. In the meeting, Grievant stated on June 6, 2025, after the incident occurred in the dining hall, Grievant met with the Warden and Assistant Warden, and while in the meeting, Grievant received an emergency call stating her mother was being rushed to the hospital by ambulance.
9. At that time, Grievant was told to leave the Facility, to go check on her mother and to write a statement concerning the incident upon her return to work.
10. Grievant stated she was never told to write an IIR, just to write a statement, therefore Grievant did not submit a written IIR.
11. In the context of her mother’s emergency, the Grievant was instructed by the Warden and Assistant Warden just to write a statement initially, but with the full understanding that the Grievant, a supervisor, understood she needed to also write and submit an IIR. After all, on March 11, 2025, Incident Reporting had just been addressed by the Facility’s Major in the security supervisors’ meeting, as reflected in the minutes.

12. In the meeting Grievant admitted she failed to activate her BWC and that she did push the inmate to remove herself from the corner where she had positioned herself in the dining hall. The push is also visible in the video. AE 6.
13. The Grievant was required to strictly adhere to all applicable Agency policies and procedures.
14. As a supervisor at the relevant times, amongst other duties, Grievant was responsible for supervising and controlling numerous inmates and numerous subordinates, including Agency employees who worked at the Facility. AE 4.
15. 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 her subordinates.
16. The Grievant performed a vital function for the Facility as a Corrections Lieutenant with significant and substantial training invested in the Grievant by the Agency in all aspects of her employment.
17. The Facility reasonably and of necessity relied on the Grievant to fulfill all her duties.
18. The orderly and efficacious performance of the Grievant's work is critical for the orderly and efficient functioning of the Agency.
19. Despite this critical need, Grievant committed serious violations of the Agency's security policies and protocols by failing to activate her BWC during necessary situations, such as supervising chow movement or by even just being present in the chow hall, and by not completing the IIR.

20. Grievant's EWP provides concerning the work description and performance plan concerning Grievant:

"Enhances public safety of the citizens of the Commonwealth of Virginia and Department of Corrections staff and inmates, by meeting re-entry objectives and by providing effective security services, programming, custody and control of adult inmates in a major correctional facility ...

Position is responsible for contributing to the public safety mission by providing first line supervision to Corrections Officers and Corrections Officer Trainees in an institutional setting. Supervises and monitors staff on assigned shift to ensure a safe and secure environment. Communicates with management, staff, visitors, inmates and the public. Leads and counsels staff. Completes required training. Maintains a safe and productive workforce."

AE at 147.

21. The investigation conducted was thorough and impartial. The conclusions reached were reasonable.
22. 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.
23. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
24. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
25. 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 9 at 239.

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.

The Grievant did not follow the applicable state and agency policies.

Specifically, the Grievant committed the following disciplinary infractions which were reasonably classified by management, as a Group II offense.

For the Group II offense, Operating Procedure 430.6, *Body Worn Camera Equipment*, Grievant was required to activate her BWC when in the chow hall. AE 10.

Moreover, Operating Procedure 135.1, *Standards of Conduct*, Section XIII, concerning Group II offenses, provides:

“A. These include acts and behaviors that are of a more serious or repetitive nature. This level is appropriate for offenses that seriously impact business operations and/or constitute a neglect of duty involving major consequences, insubordinate behaviors, and abuse of State resources, etc. An accumulation of two Group II offenses normally should warrant termination.

B. Group II offenses include, but are not limited to:

1. Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy or procedure.” AE 9 at 256.

Here, the Grievant held the rank of Lieutenant. All sergeants and higher-ranking officers are by definition supervisors. As such, that person is issued a BWC whenever they enter the institution. The data from the BWC is downloaded at the end of a shift in order to have a record of the time it was on and of any incidents for which this data would be valuable.

The Grievant failed to follow policy and activate her BWC when in the chow hall. Activating the BWC is an important safety measure when interacting with inmates. Without the BWC recording, inmates might be more likely to act aggressively or inappropriately, knowing that there would be no video evidence of their actions.

Similarly, Grievant was required to complete an IIR under Operating Procedure 038.1 -- Reporting Serious and Unusual Incidents. AE 8 at 231. Grievant's failure to report was a serious disciplinary infraction, also rising to the level of a Group II offense.

Use of Force OP 420.1: Use of Force Page 7, states, in part:

III. Use of Force Incident Reporting and Documentation

A. Any staff member who uses force, observes the use of force, or receives an inmate or CCAP probationer/parolee allegation that force was used must report the incident to the Facility Unit Head or designee immediately for appropriate review and investigation.

B. Any staff member who uses force or observes the use of force must submit an Incident Report in VACORIS; see Operating Procedure 038.1, Reporting Serious or Unusual Incidents. Any staff member who fails to report any use of force incident accurately and completely may be subject to disciplinary action.

OP 038.1 Page 6 states, in part:

I. Incident Reporting

A. Incident reporting is required for any situation or event that involves the life, health, or safety of employees, contractors, volunteers, interns, visitors, inmates, or probationers/parolees; damages to state property; and any situation that has the potential of subjecting the agency to public comment.

B. The timely and accurate reporting of incidents is essential for an immediate response, investigation, and further action and support in the event of a critical incident involving an employee, contractor, volunteer, intern, visitor, inmate, probationer/parolee, or DOC property. (4-APPFS-3G-04)

1. Since incident reports are frequently used in litigation proceedings, the importance of writing clear, concise, factual, and complete reports cannot be over emphasized...

OP 430.6, Page 6 states, in part:

3. Security Supervisors up through Chief of Security positions must activate their BWC when:
 - a. Making rounds in inmate Housing Units, Recreation Area, Visitation Areas, etc.
 - b. Asking inmates assigned to the Restorative Housing Unit if they wish to participate in outside recreation. (added 9/1/23)
 - c. Supervising meals in the inmate dining area
 - d. Interacting with or managing a disruptive/assaultive or potentially disruptive/assaultive inmate
 - e. Responding to an incident
 - f. Interacting with a staff member, volunteer, intern, visitor, or other individual who has become disruptive and/or assaultive
 - g. Monitoring Count
 - h. During Monitoring Institution Lockdowns/Searches (changed 3/14/24)
 - i. Documenting an inmate's visitors request for and consent to a strip search

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 II level, as designated, with the Agency appropriately issuing the Group II Written Notice.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated numerous policies, including Policy No. 1.60 and that the violations each rose to the level of a Group II offense.

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 did consider mitigating factors, including the Grievant's past stellar service to the Agency. *See*, AE 1.

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. *See*, AE 1.

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 a number of 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 admission concerning the BWC.
3. the Grievant's tenure at the Agency;
4. the Grievant's past favorable performance evaluation history;
5. no active prior discipline;
6. her very hard work for the Facility;
7. the long hours worked by the Grievant, with few breaks;
8. the shortage of staff at the Facility; and
9. the stellar work by Grievant.

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 policies are important to the proper functioning, appearance and reputation of the Agency, and the Grievant held an important position where management of necessity relied on her to attend work and to perform her duties in strict conformity with Agency policies, as she 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.

Additionally, the Grievant supervised Facility inmates and employees. EDR has consistently held supervisors, such as Grievant in this case, 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*, § VI 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 her 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.

Similarly, Agency Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, Section II(D) stresses: “Employees in DOC supervisory and managerial positions must be especially mindful of how their words and deeds might be perceived or might affect or influence others. Therefore, they may be held to a higher standard for misconduct and violations of this operating procedure based on their scope of authority and influence, status as a role model, and ability to significantly impact the employment status and direct the work of others.”

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, 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 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.

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 the offenses specified in the written notices (i) the Grievant engaged in the behavior described in the written notices; (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 6/17/2026

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.