COMMONWEALTH OF VIRGINIA

DEPARTMENT OF EMPLOYEE DISPUTE RESOLUTION

DIVISION OF HEARINGS

In the matter of Case No.: 12436
Hearing Date: 14 May 2026
Decision Issued: 18 June 2026

SUMMARY

For the reasons detailed herein, the Hearing Officer finds that the Group II Written Notice with Sanction of 5-Days Suspension Without Pay is overturned and that Grievant must be reimbursed for the pay withheld as the result of the 5-day suspension.

PROCEDURAL HISTORY

On 2 January 2026, Grievant was issued a Group II Written Notice of disciplinary action with 5-day unpaid suspension. (Administrative Exhibit "AE" 2.) In the written notice, the Agency described the nature of the offense as follows:

> On 07/02/25, you were instructed via supervisor referral on case ID 13970779 to make additional contact attempts to the claimant prior to processing an FTC denial. The case was closed on 07/03/25 without taking the additional development steps outlined in the referral. This failure resulted in the case being returned by IQA with a Group 3 error requesting additional case development prior to processing an FTC decision.

The Written Notice further described the alleged misconduct as Written Offense Code 13 [Failure to follow instructions and/or policy].

(AE 2.)

The unpaid 5-day suspension was executed on 5-9 January 2026. On 16 January 202, Grievant timely filed a Grievance Form A to challenge the Agency's action. (*See* AE 1.) On 20 March 2026, the parties participated in a pre-hearing conference call scheduled by the hearing officer. The parties agreed to communication by email alone. During the pre-hearing conference, the parties agreed to the hearing date of 14 May 2026. Thereafter, on 22 March 2026, the Hearing Officer issued his Pre-Hearing Report and Order. (*See* Pre-Haring Order.)

On 14 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

Grievant
Agency Representative
Counsel for Agency
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group II Written Notice of disciplinary action.

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 II 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 the Group II Written Notice with 5-day suspension as described in the Grievance Form A submitted by Grievant dated 5 March 2025. (*See* AE 1.)

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:

Grievant is a Health Care Compliance Specialist (DDS Analyst-Junior Legal) at the Agency. (AE 1.) In her capacity, she functioned as a Claims Examiner and had been employed in her current position since December 2025. (See AE 6.)

The Director of the District Office in which Grievant was employed ("District Director") explained that Grievant's responsibilities at the Agency included examining claims that were received by the office and compiling the medical information to determine the functional capacity of the claimant. The District Director further explained that in the course of Grievant's (or any other examiner in a similar capacity) compiling of evidence, Grievant would be obligated to review documentation, speak with the claimant and to interview other individuals who might have relevant evidence. The examiner would then forward the claim on to a medical consultant (a medical doctor) for the medical review and approval of the claim.

The Offense

The District Director testified that on two separate occasions, Grievant's cases had been reviewed for Quality Assurance ("QA") before the claims were submitted to the medical consultant.[1] In these two cases, the QA reviewer had added a case note to claims, directing Grievant to take additional steps needed to close the case, but those cases were closed and the note deleted without the actions being taken. The District Director further testified that Grievant's failure to follow the QA reviewer's directions impacted the Agency's mission of providing prompt and accurate case reviews.

The District Director further testified that when Grievant was counseled about the matter, Grievant argued that the claims under consideration should not have been pulled for review prior to the claims being reviewed by the medical consultant. The District Director stated that the cases under consideration were randomly pulled for "in process" quality review and the review indicated that Grievant had not performed the requested actions. The District Director further testified that Grievant had previously objected to the practice of randomly reviewing cases that had been processed by the examiner (such as Grievant) prior to the claims being forwarded to the doctors and then marking such claims as "reviewed." The Grievant had explained to the District Director that she believed that when the medical consultants (who had the ultimate responsibility of reviewing and signing off on the approval or disapproval claims) were alerted that a claim had already been reviewed by a QA supervisor, the consultants did not properly perform their own review. (Grievant's concerns regarding the quality review process are further detailed below.)

In her cross-examination of the District Director, Grievant called attention to the fact that the District Director had referenced Claim No.'s *****421 and *****414 in her testimony, but those allegations had been dismissed and were not included in the Written Notice. (See AEs 2, 10 & 11.)[2] The District Director equivocated when presented with Grievant's questions on the issue and noted that Grievant had failed to follow directions on multiple occasions.

The Deputy Director of the Agency ("Deputy Director") testified that she has been employed by the Agency, in various capacities, for over 30 years and that her supervision responsibilities included supervising five District Directors (including the District Director who testified in the instant case.) Deputy Director testified that she was familiar with the circumstances related to the instant case, but she acknowledged that she did not have first-hand knowledge of the alleged misconduct. Deputy Director explained that she reviewed the allegations against Grievant, reviewed the Due Process Notice, reviewed Grievant's response to

[1] These "in-process" QA reviews were reportedly a normal parti of the Agency's quality assurance process.

[2] The Written Notice addressed only Claim No. *****779.

the Due Process Notice. Thereafter, after consulting with Human Resources and Agency leadership they proceeded with the Written Notice with the sanction of a Five-Day Suspension Without Pay.

Although it was not directly relevant to the allegations before the tribunal, much of the Agency's testimonial evidence focused on Grievant's objections to a program referred to as "Slam the Queue" (or "Slam the Q"). The Agency witness explained that "Slam the Q" was intended to be a quality review program that had the effect of being a faster process with improved outcomes (i.e. a better product being presented to the medical consultant) since it reportedly allowed the medical consultant to review claims more quickly and with decreased need for medical consultants returning claims to examiners for further work-up.

Prior to the alleged misconduct that is the subject of the Written Notice, Grievant had voiced to her supervisors her belief that the "Slam the Q" process tended to increase the likelihood of medical consultants failing to properly review claims in that the medical consultants were providing only cursory review of claims that had been marked "reviewed." Grievant asserted that, but for her expressing her concern regarding the "Slam the Q" program, the case that is the subject of the Written Notice would not have been reviewed. Grievant asserted that her cases had been pulled for review because she was being "targeted" as retribution for her complaints about the process. (*See* AE 4.)

The District Director and Deputy Director each denied that Grievant was "targeted" or that she was the subject of retribution. The District Director testified that cases are frequently and randomly pulled for review and that these reviews are part of the Agency's quality control practice.

Due Process Concerns

The District Director acknowledged that the Due Process Notice regarding the misconduct alleged in the Written Notice was issued over five months after the Grievant had allegedly committed the misconduct. The District Director explained that shortly after the alleged misconduct occurred Grievant was informed that the Agency was considering disciplinary action. Shortly thereafter, however, Grievant had requested and was granted personal leave. The leave period lasted approximately five months. The District Director further explained that the Agency leadership believed that it would not be appropriate to move forward with the disciplinary actions while the Grievant was on her personal leave. Upon Grievant's return from the leave, the Due Process Notice was issued, and the disciplinary process went forward thereafter.

The District Director further explained that the Agency briefly delayed the execution of the 5-day suspension without pay to avoid the unwanted and unnecessary impact of a suspension during the holiday period between Christmas and New Year holidays. The District Director explained that due to the intricacies of the Commonwealth of Virginia compensation system, a suspension that occurred during the extended holidays would result in a loss of pay of more than 5 days and the Agency did not want the suspension to result in an additional and unwarranted financial impact to Grievant.

<u>Grievant's testimony</u>

Grievant denied that she had failed to follow her supervisor's directions regarding Case No. *****779. She stated that she complied with the directions of her supervisor in that she attempted to follow up with the claimant and with a third party regarding the claimant's whereabouts. She further indicated that she proceeded to a determination on the matter only after confirming that the claimant's whereabouts were unknown. Grievant noted that documentary evidence corroborated her assertions. (*See* Grievant Evidence ("GE") S3.

Grievant testified that she believed that she her cases would not have been pulled for review had she not expressed her concerns about the "Slam the Q" program to her Supervisor, the District Director, and the Deputy Director. She asserted that her cases had never been pulled for "in process" reviews prior to her speaking up. She asserted that she was a whistleblower and she had been targeted for that reason.

In support of her assertion that she had been targeted, Grievant presented evidence that another employee who had also expressed concerns regarding the "Slam the Q" program had also been subjected to disciplinary proceedings, but the proceedings were dismissed when that employee agreed to resign. (The Agency acknowledged that disciplinary proceedings were initiated against the co-worker, but that they were unrelated to that individual's expressed concerns regarding the "Slam the Q" program. The Agency further acknowledged that the proceedings were dismissed when the employee agreed to resign.)

<u>Analysis and Discussion</u>

Applicable Legal Standards

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 and Discussion of Evidence Presented

For the reasons detailed below, I find that the Agency failed to meet its burden to prove the allegations as stated in the Written Notice. I therefore find that the Written Notice must be dismissed and that Grievant be reimbursed for pay withheld as the result of the 5-day suspension.

In her testimony, Grievant specifically denied that she had failed to follow the instructions from her supervisor to make additional contact attempts to the claimant prior to processing the FTC ("failure to cooperate") denial as alleged in the Written Notice. Grievant acknowledged that she closed the case, but she further explained that it was closed in accordance with the supervisor's directions and applicable regulations. Documentary evidence presented by Grievant corroborates her testimony. (See *AE* 1, p. 5; GE S3.) Grievant acknowledged that the case was sent back for further processing but noted that the QA review did not suggest that she had failed to follow supervisory guidelines. (*See* AE 1. P.5.)

The Agency presented no evidence that tended to rebut Grievant's assertions. I therefore find that the there is insufficient evidence to support a finding that Grievant engaged in the behavior alleged in the Written Notice (i.e. failing to follow the direction of her supervisor on case ID *****779).

The Agency presented evidence to the effect that, on multiple previous occasions, Grievant had failed to follow the directions of her supervisor. (*See* e.g. AEs 10 & 11.) Only one instance of misconduct (failure to follow the directions of her supervisor) was provided on the

Written Notice, however, that being case ID *****779. As noted above, I found insufficient evidence to find that the behavior occurred as alleged by the Agency.

The other incidents of misconduct discussed by Agency witnesses referred to incidents which may have occurred as reported but are not included in the Written Notice. Grievant may have committed misconduct, but she was either counseled about the behavior, or it was determined that the behavior did not rise to the level of misconduct. Regardless, since these incidents are not part of the Written Notice, Grievant cannot be sanctioned for them.

I make no finding as to whether Grievant was "targeted" due to her complaint regarding her expressed concerns regarding the "Slam to Q" program. Grievant asserted that the Written Notice should be dismissed because her cases would never have been pulled for "in process" review had she not expressed concerns about the "Slam the Q" program and therefore, no allegation that she failed to follow the directions of her supervisor. Grievant's assertion in this regard is an affirmative defense which is moot since the Written Notice was dismissed on other grounds.

DECISION

For the reasons stated herein, the Agency's Group II Written Notice, with Sanction of 5-Days Suspension is overturned. The Written Notice is therefore dismissed, and the Agency is directed to reimburse Grievant in full for pay withheld as the result of the 5-day suspension and is further directed to clear Grievant's record of the Group II Written Notice.

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
600 E. Main Street, 17th 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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