

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

DIVISION OF HEARINGS

In the matter of: Case No. 12419

Hearing Officer Appointment: March 16, 2026
Hearing Date: June 10, 2026
Decision Issued: June 16, 2026

ISSUES:

The Grievant was until recently a Food Service Operations Manager (“FSM”) at a facility (the “Facility”) of the Department of Behavioral Health and Developmental Services (“DBHDS” or the “Department” or the “Agency”). The Grievant requested an administrative due process hearing to challenge the issuance on February 20, 2026, of a Group III Written Notice, with termination effective the same date due to cumulation of written notices, for violations of DHRM 1.60 (Civility in the Workplace) and DHRM 2.35 (Violation of DHRM 2.35 –Facility Workplace Violence), by management of the DBHDS, as described in the Grievance Form A. The issues for hearing are those delineated by the Grievant in his Form A.

For relief, the Grievant has requested reinstatement, amongst other things.

PROCEDURAL HISTORY & BACKGROUND:

The hearing officer and the parties scheduled a first prehearing conference call via Zoom at 2 pm on April 13, 2026. After giving notice to the parties, the hearing officer held the first prehearing conference call on April 13, 2026, at the scheduled time. The grievant, the agency's

advocate and the hearing officer participated in the call

The parties agreed that email is acceptable as a sole means of written communication.

The virtual hearing was held on June 10, 2026.

At the hearing, the hearing officer received various documentary exhibits into evidence, namely all exhibits in the Agency's white binder.¹

The hearing officer recorded the hearing.

At the hearing, the Grievant represented himself 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 as an FSM, an important supervisory position within the facility.
2. The Grievant was required to strictly adhere to all applicable Agency policies and procedures.

¹ References to the agency's exhibits will be designated AE followed by the exhibit tab and/or pdf-page number. The Grievant offered various letters of support which were admitted into evidence.

3. As a supervisor at the relevant times, amongst other duties, Grievant was responsible for supervising and controlling numerous subordinates, including Agency employees who worked at the facility. AE 5.
4. 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 his subordinates.
5. The Grievant performed an important vital function for the Facility with many responsibilities including, for example, the supervision of staff members and administrative responsibility for the management, maintenance and upkeep of food services for the Facility.
6. Grievant's EWP describes the organizational objective of Grievant's position as:

“To provide safe, quality, nutritional care to support the recovery of individuals with serious mental illness so that they may achieve more satisfying and productive lives. To fully support the individuals at [Facility], this position has been designated as essential to [Facility] operations.”

Grievant's EWP describes the purpose of Grievant's position as:

“Oversee the food preparation and distribution of all meals at the facility, following the safety standards and guidelines established by the Fairfax Co. and the VA State Department of Health.”

AE 5 at 81-88.
7. Significant and substantial training was invested in the Grievant by the Agency in all aspects of his employment. AE 4.
8. The Facility reasonably and of necessity relied on the Grievant to fulfill all his duties and responsibilities.

9. Grievant's role in contributing to a safe and therapeutic environment for all acute psychiatric patients, staff and individuals in the dangerous environment of the Facility and in maintaining the confidence and trust of all staff is paramount.
10. Accordingly, efficacious performance of Grievant's work is critical for the orderly and efficient functioning of the Agency, especially as regards Grievant's supervisory duties pertaining to the employees of the Facility.
11. On February 9, 2026, Grievant used his finger to write "next time" in the snow, in large letters, on the rear window of the vehicle parked directly next to his vehicle in the employee parking lot at the Facility. AE at page 15.
12. Grievant acknowledged writing this on the car and communicated during the investigation and in the hearing that Grievant was frustrated with how closely the vehicle was parked next to his vehicle.
13. The owner of the vehicle found the written message to be unsettling and threatening, which prompted her to take radical countermeasures, such as have a family member drive her to work and using a different vehicle.
14. Grievant's behavior was disruptive and threatening by nature and violated DHRM Policy 2.35 Civility in the Workplace as well as Facility Policy A-46 Workplace Violence.
15. The investigation was thorough and the findings were reasonable.
16. During the hearing, the Grievant admitted that his was "not the right approach" and the Grievant acknowledged the situation should have been handled differently.

17. Grievant's actions disrupted the operations of the Facility, diverting resources away from its typical functions and requiring extra patrols of security on the Facility grounds.
18. On February 20, 2026, management of DBHDS issued to the Grievant a Group III Written Notice, with termination effective the same date due to cumulation of written notices, for violations of DHRM 1.60 (Civility in the Workplace) and DHRM 2.35 (Violation of DHRM 2.35 –Facility Workplace Violence). AE 1.
19. Grievant has an active Group II Written Notice which was issued on August 31, 2023, for violation of substantially the same policies. AE 7.
20. 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.
21. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
22. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
23. 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 4 at 60.

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.

Group III offenses include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, for example, endanger others in the workplace, constitute illegal or unethical conduct; indicate significant neglect of duty; result in disruption of the workplace; or other serious violations of policies, procedures, or laws.

Attachment A provides examples of Group III Offenses: Absence of three or more consecutive workdays without approval; safety/health infractions that endanger the employee and/or others; unethical or illegal conduct; significant neglect of duty, disruption of workplace, or other serious violations of policy, procedures or laws.

The Grievant's actions were reasonably perceived by the addressee, in the milieu in which they were made, as threatening and unsettling, and caused great distress. Grievant's actions materially disrupted the essential safe and therapeutic environment, did not follow the applicable state and agency policies and committed serious disciplinary infractions which were reasonably classified by management as a Group III offense.

The Grievant also violated [FACILITY] POLICY NUMBER A-46 -Workplace Violence: "[The Facility] has zero tolerance for intimidating, disruptive and violent behaviors in the workplace. [The Facility] is committed to upholding the expectation that patients and staff have an environment that prioritizes their safety for the effective delivery of healthcare. To this end, a culture of Non-Violence is promoted, and staff are encouraged to report events. There will be no reprisals or repercussions towards any employee who reports acts of verbal or physical violence or aggression...

III. Definitions:

Workplace violence: An act or threat occurring at the workplace or directed toward persons at work or on duty including any of the following: verbal, nonverbal, written, or physical aggression; threatening, intimidating, harassing, or humiliating words or actions; bullying; sabotage; sexual harassment; physical assaults; or other

behaviors of concern involving staff, licensed practitioners, patients, or visitors.”

AE 6 at 89, et seq.

DHRM Policy 2.35, *Civility in the Workplace* superseded the former Policy 1.80, Workplace Violence, and former Policy 2.30, Workplace Harassment.

As stressed in the purpose of Policy 2.35, "It is the policy of the Commonwealth to foster a culture that demonstrates the principles of civility, diversity, equity and inclusion. In keeping with this commitment, workplace harassment (including sexual harassment), bullying (including cyber-bullying), and workplace violence of any kind are prohibited in state government agencies.” AE 6 at 98, et seq.

Policy 2.35 further provides:

“The Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties in the workplace. Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable.” AE 6.

Both *Discriminatory Workplace Harassment* and *Non-discriminatory Workplace Harassment* are prohibited by Policy 2.35. Policy 2.35 defines the term *Non- Discriminatory Workplace Harassment* [Harassment not based on protected classes] as:

“Any targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion to a person not predicated on the person's protected class.” AE 4.

The Policy Guide to Policy 2.35 provides further support for the Agency's discipline:

"The Civility in the Workplace policy defines prohibited conduct in general terms.

Because all potential behaviors cannot be anticipated or listed, this guide provides some examples of prohibited behaviors but is not intended to be all inclusive...

Disciplinary actions to address prohibited behaviors may be taken on a progressive basis **or actions may be taken upon the first occurrence, depending upon the nature and seriousness of the conduct.** The context of the behaviors, nature of the relationship between the parties, frequency of associated behaviors, and the specific circumstances must be considered in determining if the behavior is prohibited. A "reasonable person" standard is applied when assessing if behaviors should be considered offensive or inappropriate.

Prohibited Conduct/Behaviors may include, but are not limited to:

...

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest;

- Behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others;

- Making disparaging remarks, spreading rumors, or making innuendos about others in the workplace;

...

- Making culturally insensitive remarks; displaying culturally insensitive objects, images, or messages;

- Making demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted persons based on the group, class, or category to which they belong;"

The 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 III level, as designated, with the Agency appropriately exercising the discipline and ending the Grievant's employment due to the severity of the offenses and cumulation of written notices.

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

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 good service to the Agency.

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. AE 1; Tape 1A

The Grievant has asserted that the discipline was unwarranted and disproportionate. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below, the hearing officer considered several 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 long tenure at the Agency;
3. the effect of the COVID-19 pandemic;
4. the Grievant's past favorable performance evaluation history;
5. the Grievant's very hard work for the Facility;
6. the Grievant's relative lack of prior formal discipline;
7. the long hours worked by the Grievant;
8. the shortage of staff at the Facility;
9. the Grievant's cooperation with the investigation and particularly his admissions in the investigation; and
10. the stressful work.

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 supervisory position where management of necessity relied on him to attend work and to perform his duties in strict conformity with Agency

policies, as he 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.

Grievant supervised Facility employees. EDR has consistently held supervisors, such as Grievant, 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 SOC provide in part:

"Supervisors and managers are expected to serve as role models through their compliance with policies, agency protocols and best practices in leading and communicating with their subordinate employees. Expectations for supervisors, and managers include but are not limited to:

- Demonstrate interpersonal communications, leadership strategies and personal conduct that fosters a respectful workplace culture and models the expectations established for employees.
- Provide consistent and objective feedback, coaching and instructional guidance to employees regarding their performance, conduct or compliance with policies and procedures prior to initiating corrective or disciplinary actions..."

AE 6 at 113.

The *Rules for Conducting Grievance Hearings* 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.

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, if 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.

The Grievant did not present any material probative evidence at the hearing concerning any affirmative defenses.

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 each of the upheld offenses specified in the upheld written notice (i) the Grievant engaged in the behavior described in the written notice; (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 6/16/2026

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.