

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

DIVISION OF HEARINGS

In the matter of: Case No. 12445

Hearing Date: June 17, 2026
Decision Issued: June 18, 2026

PROCEDURAL HISTORY

On September 19, 2025, Grievant was issued a Group III Written Notice of disciplinary action, with demotion, for falsification of count sheets. On September 28, 2025, Grievant timely filed an expedited grievance challenging this Written Notice. After proceeding through the resolution steps, the grievance was qualified for a hearing on February 20, 2026. On April 1, 2026, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On June 17, 2026, a hearing was held remotely, with virtual access provided at the facility where Grievant worked.

Grievant did not submit documentary evidence or raise any objections to the proposed exhibits which were timely submitted by the Agency. Thus, the Hearing Officer received all of the proposed exhibits of the Agency into evidence at the hearing, specifically, pages Bates numbered 1-58 (referred to as “A. Ex.” throughout this decision) and one video exhibit.

ISSUES

1. Whether the Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?
3. Whether the Agency’s discipline was consistent with law and policy?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual (“GPM”) §5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM §9.

APPEARANCES

Representative for Agency
Agency's Legal Advocate
Witnesses

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer sets forth her findings of fact below:

1. During the time relevant to this proceeding, the Grievant was employed by the Agency as a Corrections Sergeant at one of its facilities.
2. On or about September 17, 2025, an officer reported to Major J that Grievant had falsified the inmate count on August 23, 2025. *See* A. Ex. 015-016.
3. Major J testified that this officer told him that Grievant had inappropriately re-used old count sheets. Further, his name appeared on the count sheets, but the officer denied completing count.
4. Major J also testified that inmate count is the most important function of Grievant's and the officers' roles.
5. The Warden met with Grievant about this allegation, and Grievant admitted to the conduct. Grievant alleged that she had been told that when the facility was short-staffed, her actions were permissible.
6. Captain AB testified that he never advised Grievant of such, and under no circumstances should count be handled in this manner.
7. Grievant's probationary period with the Agency had previously been extended because of a report that she falsified times on her status sheets on October 21, 2022. A. Ex. 017-018.
8. On September 19, 2025, Grievant was issued a Group III Written Notice, with demotion and corresponding pay decrease. While this grievance was pending, Grievant resigned from her employment with the Agency.

CONCLUSIONS OF LAW AND POLICY

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:

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.

Pursuant to § 2.2-1201 of the *Code of Virginia*, the Virginia Department of Human Resource Management ("DHRM") promulgated Policy 1.60, *Standards of Conduct*. Policy 1.60 provides a set of rules governing professional and personal conduct and acceptable standards for work performance of employees, and establishes a fair and objective process for correcting or treating unacceptable conduct or work performance.

Did the Grievant engage in the behavior, and did the behavior constitute misconduct?

Grievant did not appear at the hearing in order to present defenses on this point. The Hearing Officer finds the witnesses produced by the Agency to be credible in their testimony, including the Warden's testimony regarding Grievant's admission to the misconduct at issue. Further, the Hearing Officer does not find it credible that Grievant believed she was permitted to re-use old count sheets or falsify the information (including names of officers assisting with count) therein. Purposefully noting incorrect information on the Agency's record of inmate counts constitutes falsification of documents, and also presents a serious risk to Agency operations.

The Agency has met its burden of proving that Grievant engaged in misconduct.

Was the discipline consistent with law and policy?

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include acts of minor misconduct that require formal disciplinary action." Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action." Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."

In this case, Operating Procedure 135.1 explicitly categorizes "[f]alsifying any records... by creating a false record..." as a Group III offense. A. Ex., p. 050. The Agency's Operating Procedure is consistent with DHRM Policy 1.60, *Standards of Conduct* (which designates falsification of records as a Group III offense in its Attachment A).

Accordingly, for this serious misconduct, the Agency's discipline was consistent with law and policy.

Mitigation

Va. Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies, including “mitigation or reduction of the agency disciplinary action.” 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.

Under the *Rules for Conducting Grievance Hearings* VI (A), “a hearing officer is not a ‘super-personnel officer’ ...[and] 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.” Accordingly, a hearing officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. Because reasonable persons may disagree over whether and to what extent discipline should be mitigated, a hearing officer may not simply substitute his or her judgment on that issue for that of agency management.

Here, the Agency considered Grievant’s length of service, lack of prior disciplinary action, and the regularity of the facility being short staffed in mitigating the disciplinary action from a termination to demotion. The Hearing Officer finds that no additional mitigating circumstances exist to further reduce the disciplinary action.

In summary, the hearing officer determines for this Written Notices and the offenses specified, (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct; (iii) Agency’s discipline was consistent with law and policy and that there are no additional mitigating circumstances justifying a further reduction or removal of the disciplinary actions.

DECISION

For the reasons stated herein, the Agency has sustained its burden of proof by a preponderance of the evidence, and the Group III Written Notice, with demotion, is **upheld**.

APPEAL RIGHTS

Either party 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 from the date the decision was issued.

Please address your request to:

Office of Employment and 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 day when the decision becomes final.¹

ENTER: June 18, 2026



Brooke S. Kennington, 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.