

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

DIVISION OF HEARINGS

In the matter of: Case No. 12452

Hearing Date: May 19, 2026
Decision Issued: June 5, 2026

PROCEDURAL HISTORY

On December 17, 2025, Grievant was issued a Group II Written Notice of disciplinary action, for failure to follow instructions and/or policy during an incident that occurred on August 18, 2025. On January 5, 2026, Grievant timely initiated a grievance to challenge the Agency's action. On April 6, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On May 19, 2026, a remote hearing was held via the Teams platform, with Grievant and Agency witnesses appearing in person at an Agency location.

At the hearing, the Agency was represented by its advocate and the Grievant represented himself. The Hearing Officer received all proposed documentary exhibits of the parties into evidence at the hearing, specifically, Exhibits 1-27 from the Agency and Exhibits 1-9 from the Grievant (referred to in this decision as "A. Ex." and "G. Ex." followed by the exhibit/page number.¹

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?

¹ The Agency objected to Grievant's proposed Exhibits 1-3, and the Grievant objected to the Agency's proposed Exhibit T and any other proposed exhibit pertaining to any incidents occurring after the issuance of the Written Notice. The hearing officer advised that she would accept all proposed exhibits into the record, but would give them appropriate weight, i.e., disregarding anything that she concluded to be irrelevant to this matter.

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
Grievant
Grievant’s Counsel
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 (or, the “Department”) as a Trooper. He has worked for the Agency for over seven years.
2. Grievant serves as a Field Training Officer (“FTO”) and Chaplain for the Department, and at the time of the issuance of the disciplinary action at issue, he had earned a rating of “Extraordinary Contributor” on his most recent performance evaluation.
3. On July 14, 2025, Grievant was issued a counseling memorandum regarding his actions during a pursuit of a motorcycle on July 9, 2025. The video of this pursuit was played at the hearing and entered into evidence as Agency Exhibit 13. The counseling memo cited Grievant for failing to promptly call out this pursuit and failing to stop at intersections during moderate to heavy traffic as per policy. A. Ex. 13 Q, p. 304-306.
4. At the hearing, Captain O., supervisor of the Grievant’s division, testified to the importance of immediate notification of such pursuits, so that additional resources can be provided. Captain O. stated that vehicle pursuits are one of the most dangerous aspects of a Trooper’s job and the safety of the Trooper, as well as the public, must be paramount. Hearing Recording at 01:41:10 through 01:41:53.
5. On August 18, 2025, Grievant was on patrol and once again observed a motorcycle traveling at an excessively high rate of speed and without a license plate displayed, so he commenced a pursuit of the motorcycle. The video of this incident was played at the hearing and entered into evidence as Agency Exhibit 27.

6. During the pursuit, Grievant's emergency lights were flashing, but no siren could be heard.
7. The pursuit proceeded to an intersection controlled by a red traffic signal. Grievant's speed was 78 miles per hour ("MPH") pursuant to vehicular data.
8. Grievant entered the intersection at the same time as another vehicle (which was uninvolved in the pursuit) and was unable to stop the patrol car. A motor vehicle crash ensued, resulting in injuries and property damage to both parties involved.
9. The Department conducted an internal investigation of the incident. This investigation ultimately sustained three allegations: that Grievant did not operate his vehicle with due regard for safety when attempting to overtake the motorcycle, that he did not activate his emergency siren during the pursuit, and that he entered the intersection without due regard for safety, causing a motor vehicle crash. A. Ex. 5 A, p. 71-75.
10. During the investigation, Captain O. concluded that Grievant proceeded through the intersection at a rate of speed that was too high, such that he was unable to avoid the crash. *See* A. Ex. 5 A, p. 71-75. Captain O. also testified to the serious impact on the Department resulting from this incident and stated that Grievant's violations of the Department's administrative orders in this instance were egregious.
11. On December 17, 2025, Captain O. issued Grievant a Group II Written Notice based upon the August 18 incident.

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?

The Written Notice in this matter contains two allegations pertaining to the incident on August 18, 2025: that Grievant conducted a pursuit without the required emergency equipment (the vehicle's siren), and that he operated the vehicle without due regard to safety. At the hearing, the Department asserted that it considered issuing two separate Written Notices to Grievant - one for each of these allegations; however, ultimately combined the two into one Written Notice. See A. Ex 5 A, p. 71-75.

The Department's General Order 2.00 addresses Emergency Vehicle Operations as follows:

- a. A sworn employee engaged in an emergency response will immediately activate emergency lights... [t]he siren will be activated as may be reasonably necessary.
- b. Upon approaching an intersection controlled by a stop (red) light or stop sign, a sworn employee engaged in an emergency response will stop, and remain stopped, until all traffic has yielded the right-of-way.

A. Ex. 19, p. 396-400.

Grievant stated that he did not dispute the second allegation, and the Hearing Officer agrees that the record evidence shows that Grievant did not exercise due regard during the pursuit on August 18, 2025. Grievant sought to provide evidence that the emergency siren was not in working order at the time of this incident, but the Hearing Officer finds the proffered evidence inconclusive on that point. Coupled with Grievant's high rate of speed through the intersection, the Hearing Officer must conclude that the lack of emergency siren was a factor contributing to the crash, and Grievant's actions on August 18, 2025, violated the Department's General Order 2.00.

Based upon the foregoing, 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."

A violation of policy is normally considered a Group II offense. See DHRM Policy 1.60, Attachment A (which gives examples of offenses grouped by level). In this case, a Group II Written Notice was deemed appropriate by the Department, which also referred to Grievant's history of similar behavior and the seriousness of the incident as aggravating factors. EDR has cited to the *Rules for Conducting Grievance*

Hearings VI(B)(2), which state that “a hearing officer must give deference to the agency’s consideration and assessment of any mitigating and aggravating circumstances.” Thus, even if hearing officers disagree with an agency’s assessment of severity of the offense, they are not free to substitute their judgment for that of the agency, as long as the discipline was consistent with law and policy.

In this instance, 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.

A non-exclusive list of factors to consider includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive.

Here, the Grievant argues that the discipline imposed was too harsh, and points to his work history with the Department, including a past Extraordinary Contributor rating, and his status as FTO and Chaplain. To this, Captain O. testified that those factors were considered and noted on the face of the Written Notice. However, the Department also considered that Grievant had recently been counseled for similar incidents, which they may do under policy.

When an agency does not mitigate disciplinary action, the Hearing Officer’s authority to mitigate arises only when the disciplinary action exceeds the limits of reasonableness. While past service to the agency may be a mitigation consideration, 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. Here, the Agency’s disciplinary action in this case is consistent with the *Standards of Conduct* and does not exceed the limits of reasonableness. In light of the above standard set forth in the *Rules*, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.²

² In his closing statement, Grievant also argued that he was not provided with appropriate due process during the grievance resolution steps. However, it is well established that even if any alleged deficiency in due process occurred, the hearing process cures any such deficiency. Grievant had adequate notice of the misconduct via the Written Notice issued, and he had the opportunity to cross-examine Agency witnesses and to present any evidence and arguments he wished during the hearing.

In summary, the hearing officer determines for the Written Notice and the offenses specified in the 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 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 II Written Notice 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.³

³ Agencies must request and receive prior approval from EDR before filing a notice of appeal.

ENTERED: June 5, 2025

A handwritten signature in dark ink, reading "Brooke Kennington". The signature is fluid and cursive, with the first name "Brooke" and last name "Kennington" clearly legible. It is positioned above a horizontal line.

Brooke 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).