

COMMONWEALTH OF VIRGINIA

DHRM

Office of Employment Dispute Resolution

Re: Grievance of (Case No. 12301)

**Decision**

Grievant:

Administrative Hearing Officer:  
Polly Chong, Esq.  
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Newport News, Virginia 23606  
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Grievant Advocate:

[REDACTED]

Advocate for Agency:

[REDACTED]

**I. BACKGROUND**

Grievant is an employee of Eastern State Hospital (“ESH or DBHDS or Agency”) with a job title of Trade Technician III. Grievant timely filed a grievance to challenge the Agency’s disciplinary action by submitting the Grievance Form A on May 21, 2025, from the date of the Discipline. The Grievant believes the discipline was “too harsh”. The Grievant requested relief was to be “reinstated” to his position with an alternate disposition of 30 day suspension and to take into consideration the time frame of suspension to run concurrent with the time he has not been working since his termination.

The Agency Written Notice, issued on May 21, 2025, stated a Group III violation of workplace violence -Policy 2.35, with a disciplinary action of termination. Written Notice Offense Code 39. Section II – Offenses stated “On April 28, 2025, you placed notes on an employee’s vehicle which sated, “Don’t start your car. I know where you live. And I will kill you!” These actions are defined as workplace violence. In accordance with Policy 2.35. You acknowledged these actions to the ESH Chief Operations Office and a Virginia State trooper via telephone. These actions resulted in significant distress to the employee impacted, as well as the VSP having to direct a VSP bomb Technician with service dog to conduct a search of the employee’s vehicle.” (Exhibit 3)

EDR appointed the undersigned as Hearing Officer on June 16, 2025.

A teleconference call was conducted on June 16, 2025. Present were: The Hearing Officer-Polly Chong; Attorney [REDACTED] for the Agency; and the Grievant. The purpose of the teleconference was to set the trial date and the date for the exchange of documents. A Scheduling Order was entered on the same date. The trial date is July 1, 2025, at the ESH Administrative Building and the date for exchange of documents is June 26, 2025, by 5 p.m. On June 17, 2025, [REDACTED] advised via email that he would serve as the advocate for the Grievant in the hearing. [REDACTED] advised in his email that he “would be

submitting a list of witnesses and request for documents in the next few days” having read the Order and emails. He further inquired if the Hearing Officer would send witness subpoenas/order to the HR department for the Grievant’s witnesses if they were still employees for which the answer was yes. The advocate replied he would send the requests in the next few days.

On June 19, 2025, an Order for Witnesses and Order for Production of Documents was entered and sent via email.

On June 25, 2025, advocate advised that the Grievant would “not be submitting exhibits and will use testimony of the witnesses during the hearing.”

On July 1, 2025, a hearing was conducted at the ESH administrative building starting at 9 a.m. The binder of exhibits was submitted on the June 26, 2025, deadline and at the outset of the hearing. The exhibits were entered into evidence. Case Number 12301.

## **II. APPEARANCES**

Grievant

Grievant Advocate

Agency Attorney Representative

Witnesses: 4 for the Agency and 9 for the Grievant. All witnesses were sworn in at one time and separated until they were each called to testify.

## **III. ISSUES PRESENTED**

This Hearing Officer considered the following issues as presented.

1. Whether 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; that is, properly characterized as a Group III offense.
4. Whether there are mitigating circumstances justifying a reduction or removal of the disciplinary action and if so whether aggravating circumstances existed that would overcome the mitigating circumstance.

## **IV. BURDEN OF PROOF**

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 circumstance. The employee has the burden of raising and establishing any affirmative defenses to the discipline and any evidence of mitigation circumstances related to discipline. Grievance Procedure Manual (“GPM”) § 5.8. A preponderance of the evidence is evidence which shows what is sought to be proved is more probable than not. (GPM § 9)

## **V. CONCLUSION OF LAW AND DISCUSSION/FINDINGS OF FACT**

All proposed exhibits submitted by the Agency were admitted. The Grievant and his advocate advised that “the Grievant will not be submitting exhibits and will use the testimony of the witnesses during the hearing” (via email on June 25, 2025).

After reviewing the evidence presented, observing the demeanor of each witness, hearing arguments, the closing statement of the Agency and the written post hearing statement of the Grievant, the Hearing Officer makes the following Findings:

1. Grievant has been employed at ESH with a role title of Trade Technician III with a length of employment for about 25 years with the Agency and about 25 years with the Commonwealth of Virginia at the time of the Written Notice.
2. The agency presented its case in chief. The first witness was [REDACTED] ESH Chief Operations Officer. On direct examination, he testified that he was familiar with the April 28, 2025, incident involving the Grievant and identified the notes left on the coworker's car citing Exhibit 7. He was asked, via exhibits, the Policy 2.35 which he cited and read from; that it was a Group III violation and that the Grievant was terminated as a result. He acknowledged that the Grievant admitted to the notes left on the car and Grievant advised that "it was a joke." He read directly from the Policy 2.35 first citing Exhibit 13 regarding the purpose of the Policy stating "...workplace violence of any kind are prohibited in state government agencies." Secondly, citing Exhibit 17 regarding engaging in prohibited conduct stating, "shall be subject to corrective action, up to and including termination..." Thirdly, citing Exhibit 19 stating "Any targeted or directed unwelcome verbal, written, social or physical conduct that either denigrates or shows hostility or aversion towards a person not predicated on the person's protected class." Lastly, citing Exhibit 20 regarding workplace violence stating "Any physical assault, threatening behavior, or verbal abuse occurring in the workplace by employees, or third parties. Threatening behaviors create a reasonable fear of injury to another person or damage property or subject another individual to extreme emotional distress." On cross examination, he testified the termination was based upon the "egregious nature" of the notes, that the Grievant was otherwise a good outstanding employee and that the Grievant advised the notes were a joke between two people. Although no charges were taken as a result, the agency has zero tolerance for these types of notes. He was further cross examined on an incident from September of 2023 where a DSA threatened to shoot with a firearm and kill another coworker and both involved were not terminated. [REDACTED] testified he was not familiar with that incident as he started his employment at ESH in August of 2023, that he does not remember the incident, and that it was not in his chain of command. He did acknowledge that such an incident would have been investigated by the agency, but he did not get the reports of that incident at that time. Currently, he gets all reports. He could not testify that there were inconsistencies in application of the Policy due to his not being involved in the September 2023 incident. He stood by the Written Notice (Exhibit 3) and said that he was unaware of any inconsistencies. The second witness was [REDACTED]. She testified that she was familiar with the April 28, 2025, incident. That she got a call from the pod manager that [REDACTED] (recipient) found "stickies" on her car, that doctors were trying to discern if it was a patient who left the "stickies", and Whitaker informed her boss or immediate supervisor. Penn was instructed to go to Public Safety. The manager conveyed to her [REDACTED] concerns. She testified that she called [REDACTED] follow up and the manager advised that [REDACTED] was crying. The manager advised that Grievant admitted that he put the "stickies" on [REDACTED] car. [REDACTED] got an email copy of the notes-"stickies" which she identified in Exhibit 7. She did not think this was a joke, that it was serious and that they needed to follow through with the procedures. On cross examination, she described the Grievant as "nice, great and

gets things done, but never worked with him in any aspects of joking". Once [REDACTED] found out it was a joke, she still took it seriously. She saw [REDACTED] in the parking lot with a frustrated demeanor after finding out it was supposed to be a joke "because [REDACTED] does not joke like that." That [REDACTED] was concerned since there were windows where individuals could see how, if any patients perceived the incident or how coworkers would perceive the incident. She then testified that she did not actually witness [REDACTED] crying. The third witness was [REDACTED] who testified she was familiar with the April 28, 2025, incident. She testified that [REDACTED] came to her office upset around 3:30 p.m. inquiring "this was on my car – I don't know what to do?" She testified that [REDACTED] initially thought it was a specific patient because earlier the patient questioned [REDACTED] about writing in the patient's file. [REDACTED] was described as scared and she instructed [REDACTED] to go to Public Safety which [REDACTED] did. The medical and clinical directors were concerned if a patient had left the notes. An email was sent. Then she got a call from the Grievant that he put the notes on the car as a joke – "he knew I was [REDACTED] supervisor" as Grievant used to volunteer on her unit for several years and would be comfortable calling her. She testified "I did not take this as a joke then or now and appropriate steps were taken to provide [REDACTED] support. As manager, I instructed her to go to Public Safety and make sure she was safe". On cross examination, she testified that the Grievant did volunteer on her unit, that they (he and she) had a good rapport, he was an excellent worker, and on time. She described Grievant "as a jokester, but bad judgment as far as a joke." She also testified that when Grievant volunteered on her unit, [REDACTED] was not yet employed so she has not been able to observe [REDACTED] and the Grievant interact with each other. She described [REDACTED] on the date of the incident as "shaky, voice cracking and tearful." The fourth witness was [REDACTED]. She read directly from Exhibit 7 identifying the notes stating, "Don't start your car." "I know where you live." "I will kill you". She discovered three separate notes on her car and was upset and anxious as she did not know who put them there. She testified that she first talked to her manager who made copies of the notes. One of the officers saw her pull the notes from the window of her car as he was in the parking lot with emergency services. She was instructed by her manager to go to Public Safety. She wrote a statement, spoke to the night shift lieutenant, VSP was called, Officer [REDACTED] looked at her car (he laid on the ground to see underneath), she looked at her car (around the wheel well), and did not see anything. Then VSP arrived from Richmond, looked at her car, and took possession of her keys. Bomb Squad and Bomb dogs were called. She had to write another statement. Later, she discovered that Grievant put the notes there as a joke but she testified "no one has ever joked with me like this. I did not take it as a joke." The process took about 3 hours as she clocked out around 3:30 p.m. and the process did not end until about 6:30 p.m. She was doing volunteer overtime that day. Afterwards, she went home. On cross examination, she testified she had known the Grievant since September of last year, that they had joked around in the hallway or in the pod, but does not remember what they had joked about earlier to the incident on that day. Once she found out it was the Grievant who placed the notes on her car, her anxiety subsided, but she was still upset. She further testified that she was physically and visibly distraught. She was present during the examination of her vehicle standing about 3 feet away. [REDACTED] was questioned about the emails on Exhibit 10, but she testified she was not privy to the emails. [REDACTED] called to her to make sure she "was ok". She feels "safe now". She was asked if she filed a complaint, and she

said that she did not want to press any charges, but that there should be consequences. She also said that she would not have wanted the Grievant to be terminated. The agency objected to this question and answer. [REDACTED] stated "no one told me anything. I was debriefed one week after. I was told Tuesday that I would be here today....I did not want to press charges but there should be consequences." On re-direct she was asked if she considered this situation a joke and she said no that she did not consider this to be a joke. As she was leaving the Grievant shook hands with her. The agency rested. The Grievant then presented his case. The first witness for the Grievant was [REDACTED]. He testified that he is "the boss of [REDACTED] and does evaluations." He described the Grievant as an "extraordinary employee, brightens the room, well received by people, faithful, never known to lose his temper, never known to threaten anyone and would love to have him back". He did not make the decision to terminate, nor was he consulted about the decision. He testified that the Grievant made a bad judgment. There was no cross examination of this witness. Grievant's second witness was [REDACTED]. He testified that he had known Grievant for four years, working side by side - 8 hours a day with no issues, never known the Grievant to threaten anyone and never seen Grievant get upset. He has witnessed Grievant and [REDACTED] joke once or twice. He would like to work with the Grievant again stating "he made a bad judgment." There was no cross examination of this witness. The Grievant's third witness was [REDACTED]. She has known Grievant for 11-12 years at work and outside of work – in the pods, physical therapy, church and gospel events he invited her to. She testified she had witnessed the Grievant joke around stating, "him and I would joke about movies...like sayings from a movie. I was shocked about this. He made a bad decision. I feel like he didn't mean any harm. The joke went a little too far. Someone with over 20 years will not make those kinds of bad decisions". She further testified that the Grievant has never threatened her and she feels safe with the Grievant. She had not previously seen the notes, but at the hearing did read the notes that were left on the car as shown to her through Exhibit 7. There was no cross examination of this witness. However, the agency then objected to these witnesses thus far as not being eye witnesses to this particular incident and that these witnesses were cumulative to show Grievant's work history. The advocate responded that they were called to establish the Grievant's character. That being said, advocate advised the next few witnesses were individuals who had personal knowledge of the incident. The Grievant's fourth witness was Officer [REDACTED] who described himself as the primary officer to the incident. The advocate questioned him about Exhibit 29 – the offense report/Code of Virginia 18.2-60. The narrative states in part: *"At approximately 3:45p.m. on April 28, 2025, I met with DSA [REDACTED] in the Public Safety Office in reference to notes left on her car. She had 3 notes (sticky notes)..... "Don't start your car", "I know where you live", and "I will kill you!".... consulted with [REDACTED] and it was decided to reach out to the local VSP Sergeant... DSA [REDACTED] and I went to her vehicle..... where I performed a visual inspection on the exterior and underneath....nothing suspicious found....Sgt [REDACTED] would have a trooper respond and not to allow DSA [REDACTED] to leave or enter the vehicle. At 4:38 p.m. he called back via cell and stated the a BCI and a bomb tech were responding as this was considered a bomb threat. ....I was notified by Lt. [REDACTED] that there was a suspect .... Lt. [REDACTED] had me ask DSA [REDACTED] if she knew him which she said yes.....he reached out to administration and confessed to putting the notes on her car as a joke. DSA [REDACTED]*

stated that she was playful and joking....when they would see each other around campus....trooper informed DSA [REDACTED] that her car was evidence and we were waiting for K-9 to arrive. The trooper and K-9 arrived on scene at 6:22 p.m. and searched DSA [REDACTED] car with negative results. All VSP and ESH public safety units were clear of the scene by 6:35 p.m.” (Exhibit 29) [REDACTED] testified that [REDACTED] was standing about 5-10 feet away from the vehicle when he-himself was at the vehicle. By way of background, he formerly served as a sheriff deputy in Gloucester for 12 years before coming to ESH. He took the incident seriously because the threats were in writing. He called Richmond dispatch at around 4:31 p.m. and dispatch called someone higher up and then sent out a trooper along with bomb techs. Later, [REDACTED] contacted Admin and self-admitted.” It was decided to “call off the bomb techs, but to have the dogs clear the car and have the trooper work the scene.” To the witness’s knowledge, the trooper did not take out charges. [REDACTED] described the trooper as professional. [REDACTED] testified that “once they found out it was a joke; my demeanor was here I’m dealing with a serious threat that someone thought was a joke.” [REDACTED] testified that he felt like the trooper felt the same way. ESH did not shut down any roads, but did shut down the parking lot for about 5 minutes. They did not evacuate patients, nor was staff in danger. He spoke to [REDACTED] who told him that she and Grievant have joked in the past. The process took about 3 hours. On cross examination, Officer [REDACTED] stated that he took the incident seriously and “this is not a joke” (while looking at the notes in Exhibit 7) as there was no identification on the notes. Grievant’s fifth witness was Lieutenant [REDACTED]. By way of background, he was formerly in law enforcement for about 16 years. He was present on the date of the incident and “took it very seriously.” He testified that ESH did not shut any roads down, no evacuation, no programming stopped, nor did services stop, but he did “monitor the videos” until authorities found out it was a joke. VSP had the bomb dogs in route and “had quite a team lined up”, but after speaking with Grievant, authorities called off the bomb squad. The dogs were still in route. He was aware that the VSP spoke to [REDACTED] but he-himself did not question her. The initial officer questioned [REDACTED] testified that he was able to observe [REDACTED] who he described as calm. He was asked about Exhibit 29 (cited above). He identified Exhibit 29 as the Offense Report. Grievant’s sixth witness was [REDACTED] who had over 10 years with DBHDS and has investigated workplace violence. She was formerly a law enforcement officer for about 12 years. Advocate asked her about an incident in September 2023 which the Agency Attorney strongly objected to as not relevant, unrelated to this proceeding as the incident did not involve the same individuals or management and that the Agency has no actual knowledge of the incident as the Grievant did not submit exhibits by the Scheduling Order deadline. (The Scheduling Order was entered on the same date as the teleconference in which the Grievant participated). Agency further objected to the witness as the September 2023 incident had no direct bearing on the 4/28/25 incident as [REDACTED] stated she had no direct knowledge of the 4/28/25 incident. Advocate argued that it was relevant as [REDACTED] was actually aware of the September 2023 incident and goes to the credibility of [REDACTED]. Additionally, that the Grievant would say there was a tolerance of workplace violence and Grievant spoke to the DSA suspect in the 2023 incident. Agency continued to object that the witness had no firsthand knowledge of the 4/28/25 incident and how it was handled to be able “to pass judgment” on what happened on 4/28/25. The witness [REDACTED] then made facial expressions. Advocate argued that

Grievant wanted to show that ESH's application of policy is inconsistent as the individual(s) involved in the September 2023 incident were still employed with ESH. After hearing both sides, the Hearing Officer ruled that the Grievant can testify as to the application of policy by ESH as it was proffered that he spoke to the suspect in the September 2023 incident. The witness was re-separated to allow the advocate to flesh out their position. The next witness was the Grievant who testified that he does not deny that he wrote the notes from Exhibit 7. That earlier in the day he and [REDACTED] were joking around "as we do. Everyone knows I joke. I like to see a smile on everybody's faces. She said something to me and I said something back. Joking about me coming on to her. Hey how is your day going? I see you're not doing anything as usual. I'm always working and you're always sitting. She said you get on my nerves. She was smiling. Others were joking. [REDACTED] and [REDACTED] the new guy were laughing. Everyone jokes with me. I made a bad decision. I did what I did, I regret what I did. I don't want to cause distress. I wasn't raised like that. I thought the joke would be caught before it got this far". The advocate questioned him about the punishment and his knowledge of the September 2023 incident. Grievant stated "I thought the punishment was too hard because two prior staff members had gotten into it...real hard.... real bad...violent words were exchanged. I talked to the person at hand." At this time the agency objected that the Grievant had no direct knowledge of the prior investigation, had only talked to someone, that Grievant was not himself involved in the prior incident, personnel issues are held in strict confidence, and that the incident was 2 years old. Agency continued objecting that Grievant cannot bring up an incident with nothing to reference to as the agency has no knowledge of the 2023 incident to be able to cross examine. Advocate advised the Grievant did have knowledge, aware of the incident that was "broad cast throughout the hospital", that the DSA suspect in the 2023 incident is still employed at ESH even though it involved workplace violence. The advocate advised that in his Request for Documents, he specifically asked for the report and the report was not given to him, that it would show the policy was applied unfairly, that [REDACTED] testified ESH has zero tolerance and that he wanted to introduce testimony that the two individuals involved in the 2023 incident were not terminated. (Note that the following email does not address the report, but states "Please be advised the Grievant will not be submitting exhibits and will use the testimony of the witnesses during the hearing.

*Although the Grievant acknowledges the requested documents were submitted via hand delivery to me while I was not in the office or the state on the 24th. In earlier emails where [REDACTED] replied he was not available until the 24th, I in turn replied I had been on vacation since the 14th and would not be back until late the 28th*

*Given that I was on vacation and working with limited resources as stated in my email, I expected the requested documents would have been sent electronically as they have always been in other cases. The Grievant does understand in the scheduling order they can be electronic, hand delivered or mailed.*

*I asked [REDACTED] if he was available to pick up the documents at ESH. He stated he was not able to because of a family situation he was tending to until Saturday, which is past the submission date.*

*Since we are unable to submit exhibits, or even review the requested documentation until after the deadline, we will not be and instead will use relevant testimony from the witnesses").*

Grievant was allowed to continue his testimony. "I talked to the DSA suspect. DSA is still employed even though it involves workplace violence. Information spread around the hospital. A ton of people called me about my case. When we were joking on the unit, there's a movie called 'I knew what you did last summer'. I thought she would catch it. The notes reference the movie-it was a joke. The notes are the same style. At this present time, it was a bad decision...it was serious. I self-reported because I don't lie. I didn't think it would go this far. I'm very honest. I let them know I was joking. I like to play. I like to laugh. In December, it will be 26 years. I talked to the trooper and [REDACTED]. He was then questioned about what the trooper said and Grievant testified that the trooper said "it didn't look like a joke...everyone's been on the back end of a joke. I explained the joke. The only person I didn't talk to was [REDACTED]. At this time, I realized it was a bad decision. Trooper didn't think it was a joke. No joke. [REDACTED] told me to grieve it. He did not want this to happen. That I should grieve it. He cannot afford to lose me. [REDACTED] terminated me. I'm an honest person. The punishment was not right for the crime. It's like I stole a lollipop and I get life in prison. I'm a helping hand, raised in a Christian home where love was distributed. I have worked in four different departments. I don't want her to feel like she was in danger. I let everyone know I was playing a joke. If I didn't confess, I would still be working here. My character won't let me rest. If I had known she thought a patient did it (her encounter with a patient), I would not have done it. I'm an honest person. I hear the state say about integrity. I've been an outstanding employee since I've been here." On cross examination, Grievant was asked about Exhibit 26 in which he testified he was the author of the letter confessing to the notes on the vehicle that were unsigned, that his letter explains everything, and that he stands by his letter. He was asked by the agency regarding the statements in the letter that "I now see clearly crossed a line and caused unintended distress....I now realized was inappropriate and could be easily misinterpreted....Clearly, she didn't and the joke took a very unfortunate and unintended turn". Grievant stood by his letter. On redirect, Grievant again testified he did not realize it would be taken this far stating, "I thought she would get the joke. Human beings make mistakes. Nobody's perfect. It will never happen again." At this time, advocate wanted to call back [REDACTED]. The agency strongly objected again that [REDACTED] testimony does not involve the same incident, not the same people, not the same management, no foundation has been laid, two years old, the Grievant was allowed to testify to the incident and no documentation to reference to. The advocate argued that the policy is applied inappropriately or unfairly, and that [REDACTED] knew about the 2023 incident. The Hearing Officer asked why [REDACTED] was not cross examined as to the statement that the Grievant alleged that [REDACTED] wanted Grievant back, that [REDACTED] told the Grievant to grieve the matter and that he could not afford to lose him. [REDACTED] testified on cross examination that he was unaware of the 2023 incident. Here, the Grievant was allowed to testify as to his knowledge of the 2023 incident, that [REDACTED] had no knowledge of the 4/28/25 incident, and that the advocate as well as the Grievant have argued that ESH did not apply the Policy fairly. Other than what she briefly testified to, she did not further testify. There were no other witnesses called. After hearing all the evidence and testimony, this Hearing Officer gave the Grievant an opportunity to submit a written post hearing statement as Grievant and his advocate waived oral closing. The agency waived the written post hearing statement and opted for the oral closing statement at the hearing. Agency argued that continually it has

been shown that this was a serious incident via witness testimony of which █████ sought directions from manager and police. She was upset. She came to work on a day she was not required to work. The notes on the car caused her to be fearful. █████ considered this a threat and not a joke. Whitaker supported █████ during this process. Grievant admitted to doing this. █████ never threatened the Grievant. █████ cited specific language in his testimony that it was a Group III – DHRM 2.35 citing Exhibit 20. It all happened because of Grievant's actions. ESH had to take action by terminating the Grievant. The hearing ended. The Grievant's written post hearing stamen was timely submitted on July 7, 2025.

3. DHRM: Employee offenses: Unacceptable behavior is divided into three types of offenses according to their severity, as per DHRM Policy 1.60 Employee Standards of Conduct: "Perform assigned duties and responsibilities with the highest degree of public trust. Devote full effort to job responsibilities during work hours, use safe equipment, time and resources judiciously and as authorized. Support efforts that ensure a safe and healthy work environment...demonstrate respect for the agency and towards the agency coworkers, supervisors, managers, subordinates...."  
Group I offenses – "include acts of minor misconduct that require formal disciplinary action...For repeated violations of the same offenses, an agency may issue a Group II Notice if the employee has an active Group I Written Notice for the same offense in his/her personnel file..."  
Group II offenses – "include acts of misconduct, violation of policy, or performance of a more serious and or repeated nature that significantly impact the agency's services and operations...Examples may include...failure to comply with written policy or agency procedures.....Second offense; discharge or in lieu of discharge the agency may suspend.....demote.....or transfer...absent mitigating circumstances, discharge may occur for accumulations as follows...two Group II level offenses...."  
Group III – "includes acts of misconduct of such a severe nature that a first occurrence normally should warrant a termination." If the employee is not discharged upon the issuance of the Group III Level offense, the employee should be advised that any subsequent Written Notice occurring during the active life of the Group III may result in discharge..."
4. Termination in this case was identified as based upon Policy 2.35 defined as workplace violence. DHRM Policy 2.35 – Civility in the workplace includes the following language: "It is the policy of the Commonwealth to foster a culture that demonstrated the principles of civility, diversity, equity and inclusion. In keeping with this commitment, workplace harassment (including sexual harassment), bullying behaviors (including cyber bullying), and workplace violence of any kind are prohibited in state government agencies." (DHRM Policy 2.35: Exhibit 13) The consequences of such conduct "shall be subject to corrective action, up to and including termination, under Policy 1.60, Standards of Conduct. (DHRM Policy 2.35: Exhibit 17) The workplace is defined as "any location, either permanent or temporary, where an employee performs any work related duty or is representing the agency in this capacity. This include but is not limited to the building and surrounding perimeter, including parking lots...." (DHRM Policy 2.35: Exhibit 20) Workplace violence is defined as "any physical assault, threatening behavior, or verbal abuse occurring in the workplace by employees or third parties. Threatening behaviors creates a reasonable fear of injury to another person or damage to property or subject

- another individual to extreme emotional distress.” (DHRM Policy 2.35: Exhibit 20)
5. The Grievant did not dispute the incident but disputed the discipline of termination.

## VI. MITIGATION

The Grievant requests mitigation of the discipline of termination based upon years of service, that he is well liked at the hospital, that he confessed, and that the discipline was “too harsh”. 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”. The EDR Administrative Review Ruling Number 2024-5620 dated November 15, 2023, states as follows:

“By statute, Hearing Officers have the power and duty to receive and consider evidence in mitigation or aggravation of any offenses charged by an agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearing (“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 action by agency management that are found to be consistent with law and policy.” More specifically, in disciplinary grievances, if the Hearing Officer finds that (1) employees engaged in the behavior described on the Written Notice, (2) the behavior constituted misconduct, (3) the agency’s discipline was consistent with law and policy, then the agency’s discipline does not exceed the limits of reasonableness. (§VI 13). 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 judgement for that of agency management.** Indeed, the “exceeds the limits of reasonableness” standard is high. EDR, in turn will review a Hearing Officer’s mitigation decision for abuse of discretion, and will reverse the determination only for clear error...” The Rules state that “In making such mitigation decision, **the Hearing Officer must give due weight to the agency’s discretion in managing and maintaining employee discipline and efficiently, recognizing that the Hearing Officer’s function is not to displace management’s responsibility but to assure that managerial judgment has been properly exercised within the tolerable limits of reasonableness.**” (Rules VI (B)(2)) EDR Administrative Review Ruling Number 2023-5432 states “the useful model of the federal Merit System Protection Board for EDR Hearing Officers that **‘prohibits interference with management’s judgement unless, under the particular facts, the discipline imposed is ‘so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion...but may mitigate here the agency failed to weigh the relevant factors or the agency’s judgment clearly exceeds the limits of reasonableness.’**”

The Hearing Officer acknowledges that Grievant is an employee of lengthy duration, liked by his coworkers, that he took responsibility for authoring the notes and was otherwise competent in performing his duties.

Based upon the facts of the case, exhibits, and when considering the proffered mitigating

factors, Grievant did not establish mitigating circumstances justifying a reduction or removal of the disciplinary action at issue and the Grievant did not meet the burden of establishing that the agency abused its discretion. Instead, the Grievant testified that "If I didn't confess, I would still be working here. The punishment was not right for the crime." He equated this incident to an example that if he "stole a lollipop" and then got "life in prison". In his letter of confession (Exhibit 26 & 27) and post hearing statement, it is argued that:

*"He has stated at the time when he placed the notes on [REDACTED] car, he didn't think it would turn out the way it did and that if he would have known his actions would have had the outcome it did, he would never have done it. Hindsight is 20/20.*

*[REDACTED] stated that there isn't anyone in their lifetime who has not committed some action that at the time seemed harmless but turned out to have an unintended consequence they did not expect. He also stated that he was a human being just like everyone else and does make mistakes.*

*In closing, [REDACTED] never intended any harm to [REDACTED] or anyone. As soon as he learned of the situation, he immediately called to try to mitigate the situation and ensure to everyone there was no danger. He did not have to do that. There were no leads or suspects, and it would be unknown whether [REDACTED] would have ever been identified if he had not self-reported. His moral character and sense of decency told him to immediately call to diffuse the situation".*

Having read this post hearing statement and arguments, the problem is that the Grievant's actions directly led to the investigation to include ESH officers, State police, and bomb dogs. In addition, in regard to the September 2023 incident, [REDACTED] testified that he did not have knowledge of that incident. On cross examination, [REDACTED] testified the termination was based upon the "egregious nature" of the notes. He could not say that there were inconsistencies in application of the Policy due to his not being involved in the September 2023 incident. He stood by the Written Notice (Exhibit 3) Grievant knew the suspect in that 2023 incident and that information about it spread throughout the hospital. The Grievant testified that the suspect and other individual still work at ESH. Grievant testified that [REDACTED] wanted him to grieve the 4/28/25 incident as [REDACTED] could not afford to lose him. However, [REDACTED] was not cross examined as to this statement that he instructed the Grievant to grieve the termination or that "he cannot afford to lose me." Although most of the witnesses testified that Grievant was a good employee, none of the witnesses, who were questioned about the 4/28/25 incident, took the incident as a joke and most of the witnesses thought Grievant made a bad decision.

## **VII. AGGRAVATING FACTORS**

Aggravating factors are considered in this case. Specifically, as noted in the Written Notice, "On April 28, 2025, you placed notes on an employee's vehicle which stated ' Don't start your car. I now where you live and I will kill you!.' More notably, the Grievant acknowledged or admitted these actions to the ESH Chief Operations Office and a Virginia State Trooper via telephone. (Exhibit 3) The Written Notice was not disputed as the Grievant readily admitted to the notes. The post hearing statement minimizes Written Notice, the Offense Report (Exhibit 29), and the testimony of the witnesses as stated:

*"[REDACTED] and [REDACTED] of ESH Public Safety both testified that operations to the hospital were not affected. Roads were not shut down;*

*programming was not halted for the patients and NO buildings were evacuated. It would appear that even the experts felt there was no credible or real danger of an assumed bomb threat. After talking to [REDACTED], Virginia State Police recalled the Bomb Squad but continued a detector K-9 and handler as protocol. The result of that search was negative. Virginia State Police did not charge [REDACTED] because no crime was committed. Their investigation proved no intent or harm."*

At the hearing, the advocate questioned [REDACTED] about Exhibit 29 – the offense report/Code of Virginia 18.2-60. [REDACTED] took the incident seriously because the threats were in writing. [REDACTED] testified that "once they found out it was a joke; my demeanor was here I'm dealing with a serious threat that someone thought was a joke." and "this is not a joke (while looking at the notes) as there was no identification on the notes. [REDACTED] acknowledged that "ESH did not shut down any roads, but did shut down the parking lot for about 5 minutes". Lieutenant [REDACTED] testified that he was present on the date of the incident and "took it very seriously." VSP had the bomb dogs in route, and VSP "had quite a team lined up", but after speaking with Grievant they called off the bomb squad. The dogs were still in route. More notably [REDACTED] testified that later, she discovered that Grievant put the notes there as a joke but she testified "no one has ever joked with me like this. I did not take it as a joke." Upon discovering the notes, on her car, she was upset and anxious as she did not know who put them there. On cross examination, she testified she has known the Grievant since September of last year, that they had joked around in the hallway or in the pod, but does not remember what they had joked about earlier to the incident on that day. Once she found out it was the Grievant who placed the notes on her car, her anxiety subsided, but she was still upset. She further testified that she was physically and visibly distraught. Once [REDACTED] found out it was a joke, she still took it seriously. She saw [REDACTED] in the parking lot with a frustrated demeanor after finding out it was supposed to be a joke "because [REDACTED] does not joke like that." [REDACTED] testified "I did not take this as a joke then or now" and appropriate steps were taken to provide [REDACTED] support. She described [REDACTED] on the date of the incident as "shaky, voice cracking and tearful." Most of the witnesses to include Grievant's witnesses did not take the matter as a joke and described the Grievant as making a bad decision. [REDACTED] described the notes as "egregious." Specifically, the words "I will kill you" would have a chilling effect on any reasonable person. The Grievant's actions set in motion a chain of events that led to management's decision to terminate.

### **Order**

After reviewing the evidence presented, observing the demeanor of each witness, and based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer renders the following decision:

1. That ESH employed the Grievant as a Trade Technician III.
2. That by a preponderance of the evidence, under the facts of this case and the applicable regulatory standards, stated herein, that the Grievant engaged in the behavior described in the Written Notice (by his own admission), that the behaviors constituted misconduct, significantly impacted the agency's services and operations (VSP involvement to include trooper, bomb dog(s) and securing the parking lot); that the agency's discipline was consistent with law and policy.
3. The Grievant violated agency and department regulation and policy regarding workplace violence.

4. The Agency Written Notice, issued on May 21, 2025, stated a Group III offense of workplace violence – Policy 2.35 with a disciplinary action of termination is warranted. The Policy clearly states “conduct shall be subject to corrective action, up to and including termination”. The agency decision of termination was consistent with law and policy.
5. Va. Code Section 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resources Management.” Va Code § 3005. Thus, the Hearing Officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the Hearing Officer mitigates the agency’s discipline, the Hearing Office shall state in the hearing decision the basis for the mitigation.” A non-exclusive list of examples 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 motives. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action. Grievant has been employed with the agency for over 25 years. There was no evidence that that he did not have adequate notice. He admitted to authoring the notes. There was testimony of an incident from September 2023, where the Grievant had spoken to the DSA suspect who is still employed at ESH. However, there was no evidence that the circumstances are similarly situated as [REDACTED] was not aware of this incident to be able to make a comparison. Howard’s motives were not questioned. [REDACTED] testified the Grievant was otherwise a good employee. [REDACTED] had no direct knowledge of the 4/28/25 incident to compare to her involvement in the September 2023 incident. It is noted that the Grievant testified that it was [REDACTED] that told him to grieve this matter as [REDACTED] could not afford to lose the Grievant as an employee but the Grievant and his advocate did not cross examine the witness as to this statement. More notably, [REDACTED] who was the “victim” of these notes, testified that she was upset and that there should be consequences.

For this reason, stated herein, the Agency’s issuance to the Grievant of a Group III Written Notice with termination is upheld.

So Ordered.

Dated July 12, 2025.

Polly Chong/s/  
Hearing Officer

### **NOTICE OF APPEAL**

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 Resolutions  
Department of Human Resource Management  
101 North 14<sup>th</sup> Street, 12 Floor  
Richmond, Virginia, 23219

Or send email to:

[EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov)

Or via fax to 1-804-786-1606

You must 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 days period has expired or then the request for administrative review has been decided.

A challenge to the Hearing Officer's Decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the Hearing Officer's Decision is not in compliance.

You may request a judicial review if you believe the Hearing Officer's Decision is contrary to the 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 Hearing Officer's Decision becomes final. Agencies must request and receive prior approval from EDR before filing a Notice of Appeal. (See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation or call EDR's toll free Line at 888-232-3842 to learn more about appeal rights from an EDR consultant,

COMMONWEALTH OF VIRGINIA

DHRM

Office of Employment Dispute Resolution

Re: Grievance of (Case No. 12301)

**Reconsidered Decision**

|                     |                                                                                             |
|---------------------|---------------------------------------------------------------------------------------------|
| Grievant            | Administrative Hearing Officer:<br>Polly Chong, Esq.<br>732 B Thimble Shoals Blvd., Ste 201 |
| Grievant Advocate   | Newport News, Virginia 23606<br>Tel: (757) 599-8400<br>Facsimile: (757) 599-8592            |
| Advocate for Agency | E-mail: pcattyinc@gmail.com                                                                 |

EDR appointed the undersigned as Hearing Officer on June 16, 2025.

A teleconference call was conducted on June 16, 2025. Present were: The Hearing Officer, advocate for the Agency, and the Grievant. On or about June 17, 2025, the Grievant secured the services of an advocate. A hearing was held on July 1, 2025. In a decision dated July 12, 2025, the Hearing Officer upheld the Group III Written Notice with termination of employment. The Grievant appealed the Decision and requested that the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management (DHRM) administratively review the Hearing Officer's Decision in Case Number 12301. EDR remanded the matter to the Hearing Officer for further proceedings in an administrative review letter dated August 19, 2025. The document(s) on remand refer to a September 2023 incident. EDR directed the Hearing Officer to reopen the hearing record and hold a reconvened hearing for the admission of this documentary evidence and the testimony of witnesses about the 2023 incident. On remand, EDR directed the Hearing Officer to order the agency to make available the requested report of the 2023 incident so that it can be admitted into the record and considered in this matter. The agency be provided with an opportunity to present rebuttal evidence. Subsequently, the Hearing Officer sent an email with dates for a teleconference to schedule the hearing date, location and address the issues(s) in the ruling by EDR. The Grievant, the Agency's advocate, Grievant's advocate, and the Hearing Officer participated in the teleconference call at 4 p.m. on August 21, 2025. The hearing date was September 19, 2025, at 1 p.m. at 4601 Ironbound Road, Williamsburg, Virginia. The document was received by the advocate on or about August 22, 2025. The document was hand delivered to the undersigns office on or about August 25, 2025. Admitted into evidence was Grievant's Exhibit A, which is the report of the September 7, 2023, incident and also admitted was Agency Exhibit A, which was an email dated June 23, 2025. The Hearing Officer was directed to issue a Reconsidered Decision taking into account and addressing the additional evidence admitted into the record.

## Appearances

Grievant

Grievant Advocate

Agency Advocate

Witnesses: 2 for the Agency and 3 for the Grievant. All witnesses were sworn in at the time they were each called to testify.

### September 2023 Incident - Grievant Exhibit A

The document is a one page redacted report dated Thursday, September 7, 2023, with Complaint/Offense– Policy violation 021-14 – Potential for workplace violence. Gun on property. Dispatch time of 4:25 p.m. and arrival time of 4:25 p.m. Employee brought a gun on the property. The victim is a black male. Suspect is a black female. Narrative includes in part: *“On Thursday September 7, 2023, at approximately 4:25 p.m. while coming back to PSO, I.....approached by CPRT Supervisor and CPRT. CPRT Supervisor requested that both public safety officers escort CPRT to his vehicle. As we were escorting CPRT and CPRT Supervisor, I asked what the situation was that has occurred for our assistance. CPRT Supervisor advised that on Friday September 1, 2023, unknown time a person came onto the property with a gun and was looking for CPRT. I advised this should have been reported per Policy to public safety, at this time CPRT Supervisor advised me that it was reported today to Director of Human Resources(DHR). I asked CPRT to call CPRT back to the property so I could gather a written statement from him. CPRT Supervisor advised no that’s okay we have taken copies of the threatening text....has received and written statements to DHR. I asked again had anyone notified Public Safety Director and was told by CPRT Supervisor that General Admin Manager II was in the meeting also and that Director would be notified tomorrow 9/8/23. I then inquired of who the individual was that brought the gun onto the property and CPRT Supervisor.....advised me this individual was a female who works on POD 4....CPRT advised me that another employee.....apparently saw the weapon and told her to leave the property and take that smoke home, which according to CPRT Supervisor ....apparently took the gun back off property. CPRT Supervisor advised me that apparently Ms. set up for herself, her husband, and CPRT to all have sex together off property and she did not follow through with the plan, but her husband and CPRT continued the plan together and Ms. just found out last week”.*

Agency Written Notice May 21, 2025 (Agency Exhibit 3)

In Grievant’s case, the Agency Written Notice, issued on May 21, 2025, stated a Group III violation of workplace violence -Policy 2.35, with a disciplinary action of termination. Written Notice Offense Code 39. Section II – Offenses stated “On April 28, 2025, you placed notes on an employee’s vehicle which stated, ‘Don’t start your car. I know where you live. And I will kill you!’ These actions are defined as workplace violence. In accordance with Policy 2.35. You acknowledged these actions to the Chief Operations Officer and a Virginia State trooper via telephone. These actions resulted in significant distress to the employee impacted, as well as the VSP having to direct a VSP Bomb Technician with service dog to conduct a search of the employee’s vehicle.” The facts surrounding the Grievant’s April 28, 2025, incident were not disputed at the July 1, 2025, hearing.

### GRIEVANT'S FIRST WITNESS

Grievant's first witness was the CPRT Supervisor from the September 7, 2023, incident. He testified on direct, cross, redirect and recross examination. CPRT Supervisor reviewed the report during the hearing and read from parts of the report. He testified the matter involved workplace violence and it was credible enough that he had to request the CPRT to have an escort to his vehicle. He recalled the name of the CPRT but could not recall the name of the Suspect except "she works in the PODS". CPRT Supervisor did speak to the Director and it was said that if the two employees did not get along, they would both be terminated. That the incident occurred at an unknown time when a person came onto the property with a gun looking for CPRT. Once CPRT Supervisor found out about the incident, he reported it immediately. On cross examination CPRT Supervisor was then questioned as to the exact date of the incident, which was 9/1/23. He responded that he could not recall the exact date but after clarification, he acknowledged the date was a week prior to the reporting of the incident and he reported it as soon as he found out. CPRT Supervisor testified that he was told that someone may have brought a gun onto the property. CPRT Supervisor did not see a gun. On 9/7/23, he requested Public Safety to escort the CPRT to his vehicle. When questioned, CPRT Supervisor testified that as far as he knew, the Administration was involved. In resolving the situation, the Suspect and the CPRT were advised that if they did not get along, they would both be terminated. CPRT Supervisor testified that no one in the September 2023 incident was disciplined. When questioned about the 6 day gap from the actual date of the incident and the date the report was done, CPRT Supervisor stated "that is a good question. But I reported it when I found out" which was on September 7, 2023. After reviewing the report, he testified that the date of the incident was 9/1/23 and he was told of the incident on 9/7/23 and reported it on 9/7/23. CPRT Supervisor was then questioned about paragraph one where it states, "on Friday September 1, 2023, unknown time a person came onto the property with a gun looking for CPRT." CPRT Supervisor was asked to read from the second paragraph of the document stating, "CPRT Supervisor advised no that's ok we have taken copies of the threatening text....has received and written statements to DHR...I asked again had anyone notified the PSD and was told by CPRT Supervisor that General Admin Manager II was in the meeting also and that Director would be notified tomorrow 9/8/23." (Grievant Exhibit A) CPRT Supervisor acknowledged that it has been 2 years ago, he could not recall details, and some of the people involved are no longer working at the facility. CPRT Supervisor then testified that he- CPRT Supervisor was not there on September 8, 2023. He was unaware if anyone had questioned the Suspect, but the Suspect was told to leave the property and take the gun off the property. In the report, the officer asked who the woman was and CPRT Supervisor advised that she worked in POD 4. However, CPRT Supervisor did not know who the person was who saw the gun and told the Suspect to "take that smoke home." Although CPRT Supervisor was not sure if the meeting referenced in the document was about the incident, he believes that it might have been about the incident but could not say for sure. Someone was to inform the General Admin Manager II of the incident. On redirect examination, CPRT Supervisor was questioned about the 6 day gap from the date of the incident on 9/1/23 to 9/7/23. CPRT Supervisor testified that he himself is off on Friday, Saturday, and Sunday. Other staff have differing schedules. After an objection, it was clarified the CPRT Supervisor was not a witness to the incident. He reported it after someone told him of the incident stating, "if the Director is not here then I would report it to Public Safety Director." CPRT Supervisor reiterated that he did not know what the meeting was about. Although he gave a name, he was unsure of the person's title. CPRT Supervisor was not sure who the General Admin Manager II was at the time. CPRT Supervisor believes he followed all the procedures per protocol.

He did not know about Policy 021-14. On recross examination, CPRT Supervisor was asked why the Suspect was not called back to get a statement as the report cites "CPRT Supervisor said no....." CPRT Supervisor responded he did not remember "saying no to anything". He testified that the document is "subject to interpretation." Lastly, CPRT Supervisor testified that the incident involved the Suspect, her husband and the CPRT. "Apparently Ms.set up for herself, her husband, and CPRT to all have sex together off property and she did not follow through with the plan but her husband and CPRT continued with the plan together and Ms. found out last week." (Grievant Exhibit A)

#### GRIEVANT'S SECOND WITNESS

Grievant's second witness was the CPRT who acknowledged he was the victim in the September 2023 incident. CPRT testified that there were text and email threats about what Suspect was going to do to him. Agency raised an objection as the document does not reveal the details of the text, nor has any text been introduced. Grievant's advocate responded that he did not have any text nor is he introducing any text. Instead, Grievant's advocate was relying on the witness' testimony. CPRT was then allowed to review the document. CPRT testified that there was no face to face confrontation between himself and the Suspect. He testified that the text did not refer to a gun but he was told by someone that there was a gun. He felt threatened. CPRT reported the matter to CPRT Supervisor and to HR. He was escorted to his vehicle by Public Safety. As a result, both employees were told if they cannot work together, both would be terminated. The Suspect is still employed at the facility and he saw her this morning. On cross examination, CPRT was asked about the 6 day gap from 9/1/23 -9/7/23. CPRT testified that the text message came through when he was off from work. In the gap period he was on vacation so nothing happened until he got back. CPRT notified CPRT Supervisor on 9/1/23 and when he came back on 9/7/23 the comment was made about a gun stating, "it was told to me." CPRT clarified that he had no interaction with the Suspect stating, "I never saw her physically" and CPRT never saw a gun. He then testified that the Suspect still works at the facility and there has been no negative interaction between them. On redirect, CPRT testified that on 9/1/23 he was not on the property. As a result of the incident, he was taken off the unit and his shifts as well as weekends were moved around. Currently, he sees the Suspect at work. CPRT testified, "I didn't want to work with her but I have to. I do talk to her now."

#### GRIEVANT'S THIRD WITNESS

Grievant's third witness was the officer who authored the report on 9/7/23. Grievant's advocate asked the officer about the Policy 021-14/Potential workplace violence cited in the report. Officer responded that the policy is about workplace violence. The incident occurred on Friday 9/1/23 but officer was notified on 9/7/23. Officer was notified of the incident by the CPRT Supervisor that 2 employees were involved where one threatened the CPRT with a gun. Officer reported it to her Chief (now retired). Officer testified that she asked the Chief about the matter because it appeared to her that policy had not been followed as to the reporting of the incident. The Chief was not aware of the incident but would talk to the Administration. When officer returned the next day, the Chief told her Administration would be handling it and to cease her investigation. When questioned about who the General Admin Manager II was she identified another person to hold that title. Officer referred to the CPRT Director. Officer described the threat as credible because "we were summoned to escort him to his vehicle". CPRT Supervisor had the text(s) and officer was told that the text was threatening although officer did not see the

text herself. CPRT Supervisor told her that the Administration also had the text(s). Officer was told to cease her investigation on 9/8/23, Officer never questioned the Suspect, nor did officer ever see the weapon noting that the Suspect was off the property. Officer spoke with CPRT. On cross examination, officer clarified she was told what had happened 6 days later. Officer testified that “if a gun was not brought onto the property, I would not have been involved. I would not have had to escort him. Admin told me to halt the investigation. I halted the investigation.” Officer reiterated that she did not talk to the Suspect nor did officer see a weapon. On redirect examination, officer reiterated that she spoke to CPRT as he was still on the property. Officer testified the report was factual at the time. Officer saw the Suspect last week at the facility.

Note that Agency’s witnesses were in another room so we waited for them to come into the hearing room.

#### AGENCY’S FIRST WITNESS

Agency’s first witness was a Chief of Public Safety (CPS) in charge of retrieving the document for the September 19, 2025, hearing. CPS identified the email of June 23, 2025, where it states, “Who is DR? I don’t see a case 23062 in my database; can you give me details so I can pull up the report?” (Agency Exhibit A) CPS testified that the report number did not provide a date or time associated with the report. CPS assumed it was a recent report so he did a query and scrolled down but did not find anything. Agency advocate stated that the purpose of the witness was to show that the Grievant’s advocate did not provide the date and time of the report in his request for the document. On cross examination, CPS testified he had no knowledge of the September 2023 incident. As far as finding reports, there is a logbook and the paper copies are in the Supervisor’s office.

#### AGENCY’S SECOND WITNESS

Agency’s second witness was the Chief Operations Officer (COO). He reviewed the document. COO identified himself as the General Admin Manager II as referenced in the 9/7/23 report. When questioned about the 9/7/23 incident, he testified that he was not notified of this incident. On cross examination, COO was asked when he first saw the document, COO testified that he saw the document a few weeks ago when it was found. COO was questioned about his testimony on July 1, 2025. COO reiterated he had no knowledge of the 9/7/23 incident. On redirect examination, COO testified he would have done something about this had he known. In clarification, it was asked what steps he would have taken had he known. COO testified that he would coordinate with Public Safety, follow up and have the staff questioned. In addition, he would have directed a search of the suspect’s car, search of the person to make sure no weapon was present and conduct a full investigation. He had concerns that the report was written a week later. On recross examination, COO testified that all he knew about the 9/7/23 incident is what is in the report. He knows the officer authored the report. When questioned about HR and Public Safety, COO testified that he did not know about the 2023 incident, but answered the hypothetical as to what he would have done had he known.

#### CLOSING

Grievant’s advocate argues that federal and state law requires that policy be applied consistently, fairly, and equitably. CPRT testified that he was a victim in a workplace violence. Officer was told to cease her investigation. HR told the parties if they do not get along, both would be terminated. No one was disciplined in September 2023. Although, COO and officer

testified there is zero tolerance for workplace violence, tolerance is determined by HR. The advocate admits he did not have any text(s) and that the text(s) may or may not exist but argues that the CPRT testified as to the text(s). The advocate argues that when a person is off from work they are off – “that’s hospital policy.” Although some individual(s) were not present to testify, there was an incident that was investigated. The investigation was incomplete because the Chief told the officer to cease her investigation. In comparison, Grievant admitted to making the statements by self-reporting, no one saw a bomb because it was a joke, and 4/28/2025 is workplace violence. Grievant’s advocate argues that this was the inequitable application of policy. At the July 1, 2025, hearing, COO testified that CPRT/DSAs were not under his purview but Grievant was under his purview. The outcomes of the two incidents are different.

Agency advocate argues that the facts are clear. The 9/7/23 report was never completed, an investigation was never completed, whether or not someone is on vacation is immaterial as an investigation would still go on. He argues that in April 2025, the parties were called in to talk about the incident whereas in the September 2023 incident, the parties were not called in. Advocate argues that CPRT never saw the suspect, no one saw a gun, no one produced a text, there was no context as to the tone of the text, or what the text even said and whether or not a text actually exists. The agency advocate argues that the CPRT Supervisor was not sure of the dates nor was he sure about statement in the 9/7/23 report arguing, “it’s not the way you handle workplace violence....if a gun is brought on property, it is not on hold for 6 days”. Further, the advocate argues that there is no pattern of inconsistencies, no comparison between the two incidences, no direct correlation, no validity to the 2023 incident and what happened. That the officer’s report states that the matter needed further investigation yet on 9/7/23, the officer never spoke to the suspect. The advocate argues “there’s no there – there.” COO was notified in April 2025 but was not notified in September 2023. The hierarchy of the facility is that there is a Director over the facility and the COO is the General Administrative Manager II - COO is second in command. COO has command over the entire police department at the facility. Because of the nature of the hierarchy, the COO would have been notified about the September 2023 incident.

## DISCUSSION

This matter was remanded to determine if the agency treated Grievant differently from another employee who is comparable in relevant/material respects; that is, to discern if the treatment of a similarly situated employee is attributable to any form of discrimination or was the decision made for legitimate business reasons. In evaluating the alleged differential actions, the undersign would need to determine if the treatment of an employee is either discriminatory, prejudicial or if policy was applied inconsistently. Relevant factors should be considered to discern whether the comparison is appropriate. Section VI(B)(2) of the Rules for Conducting Grievance Hearings provides that mitigating circumstances may include “whether the discipline is consistent with the agency’s treatment of other similarly situated employees.” As with all affirmative defenses, the grievant has the burden to raise and establish any mitigating factors. Grievance Procedure Manual § 5.8; Rules for Conducting Grievance Hearings § VI(B)(1). Analogous precedent from the Merit Systems Protection Board (MSPB) on this issue provides that a grievant must show that the agency improperly considered the “consistency of the penalty with those imposed upon other employees for the same or similar offenses.” Singh v. U.S. Postal Serv., 2022 M.S.P.B. 15, at 6, 13-15 (2022) (overruling the “more flexible approach” EDR has

cited in the past from Lewis v. Dep't of Veterans Affairs, 113 M.S.P.R. 657 (2010), and instead going back to a more rigid analysis that requires the relevant offenses to be of the same or similar kind). DHRM Policy 1.60 addresses that management must consider issues with similarly situated employees and how they have been addressed. There may be circumstances when an employee's conduct requires immediate disciplinary action without employing progressive discipline. In making a determination of whether inconsistent treatment supports mitigation, a Hearing Officer must assess, for example, the nature of the charges, the comparability of the employees' positions (including their positions within the organization and whether they have the same supervisor(s) or work in the same unit), and, crucially, the stated explanation for why the employees are allegedly treated disparately. See, e.g., EDR Ruling No. 2024-5672.

It must be determined whether the September 2023 Suspect, used as a point of comparison, was given differential treatment; that is, whether the similarly situated employee was subject to differential treatment based upon a protected character like race, gender, age or disability. From Grievant's Exhibit A, the Suspect in the 2023 incident was noted as a woman who worked on POD 4 whereas in the April 2025 incident the Grievant is a Trade Technician. From Grievant's Exhibit A as well as the testimony from both hearings, it is unclear if the Suspect and the Grievant had any similarities in job performance, had similarities in tasks, worked on the same unit, had similar qualifications, skillsets, experience, responsibilities, similar disciplinary histories, had similar lengths of employment or if they had the same supervisors. Notably, there was no testimony that the 2023 Suspect was treated differently because of age, gender or protected class. Through testimony, it was disclosed that no one was disciplined in the September 2023 incident. There is no evidence as to how management came to that decision other than Grievant's advocate argues that tolerance is determined by HR. (presumably a subjective standard)

The next question is whether the agency improperly considered the "consistency of penalty with that imposed on the Grievant for the same or similar offense." Grievant's advocate argues that federal and state law requires that policy be applied consistently, fairly, and equitably. The facility has a zero tolerance for workplace violence but the advocate concludes that tolerance is based on HR (presumably a subjective standard). It is not clear from Grievant's Exhibit A and the testimony of witnesses that Grievant was treated differently from the Suspect in the 2023 incident. Grievant's advocate argues that the outcomes are different. That argument alone is not enough. Grievant in the April 2025 incident was cited for violation of Policy 2.35, and Policy 2.35 was submitted at the July 1, 2025, hearing as an exhibit whereas at the September 7, 2023, the report cited that the Policy violated was 021-14/Potential for Workplace violence and there was no submission of Policy 021-14 except that the officer stated it was a policy regarding workplace violence. There was no evidence presented at the September 19, 2025, hearing as to the how decisions were made in the 9/7/23 incident, no production of the Policy 021-14, no production of the text(s), and the testimony by CPRT Supervisor and CPRT did not explain how the decision was made other than "if you both do not get along, then you both will be terminated." It cannot be determined if the policies are the same. Grievant's advocate argues that the agency applied penalties differently in each case when they involve the same offense. In the 2023 incident, it is unclear if a gun was ever presented to the CPRT. The only person who saw the gun was an unnamed person who saw the gun and told the Suspect to "take that smoke home." It is unclear if that person was interviewed. The 9/7/23 incident was disclosed to the CPRT Supervisor 6 days after the actual event. As the initial investigation began, little information was gathered to come to any conclusion. Also, the manner in which

each incident was handled was different. The 9/7/23 incident report does not provide enough details. In comparison, the 4/28/25 incident, there was clarity and details as to how management came to their decision, what policies applied and what penalty would result. The COO testified that the Group III decision was based upon the “egregiousness of the notes”. The 4/28/25 investigation was thorough even after the Grievant admitted to the notes. Facility officers, VSP, bomb dogs were called (though later called off but still in route) Grievant’s outcome supported a Group III finding which “shall be subject to corrective action, up to and including termination. (DHRM Policy 2.35: Agency Exhibit 17)

Grievant’s advocate argues that the word “also” would indicate that the meeting referenced in the 9/7/23 report was about the incident. However, the report does not indicate that the meeting was about the incident as the CPRT Supervisor testified that “it might have been but I am not for sure.” Even if the meeting was about the incident, there is no evidence as to what was said or whether decisions were being made as to the Suspect. Also, the facts in each case is different. The 9/7/23 incident surrounds a sexual encounter whereas the 4/28/25 incident involves the Grievant placing notes on an employee’s car stating, “Don’t start your car. I know where you live. I will kill you!” In his confession, the Grievant explains the notes as a “joke”. Interestingly, the Suspect still works at the facility but was not called as a witness. What is clear is that in September 2023, an incident happened but it was not thoroughly investigated and COO was not notified. Although the officer testified that the 9/7/23 report was factual at the time, the report does not provide enough clarity. Grievant’s advocate argues that the 9/7/23 report is incomplete because the officer was told by her Chief to cease her investigation as Administration would take care of it. There is no evidence of how the Chief came to that decision. No evidence of what the Administration did as a result. In addition, there was a 6 day gap in the September 2023 incident whereas in the April 2025 incident, once the notes were found, there was immediate action taken.

On April 28, 2025, Grievant placed notes on the coworker’s vehicle which led to a full investigation. Policy was submitted as exhibits and the decision rationale explained by the COO on cross examination on July 1, 2025, where COO reiterated the termination was based upon the “egregious nature” of the notes authored by the Grievant. In regard to the September 2023 incident, the COO testified at the July 1, 2025, hearing as well as in the September 19, 2025, hearing that he did not have knowledge of 9/7/23 incident. He could not say that there were inconsistencies in application of the Policy due to his not being involved in the September 2023 incident. At the 9/19/25 hearing, the COO was not questioned about Policy 021-14/Potential for Workplace violence. COO stood by the Written Notice. (Agency Exhibit 3) At the July 1, 2025, hearing, Grievant testified that COO wanted him to grieve the 4/28/25 incident as COO could not afford to lose him. However, COO was not cross examined at either hearing date as to this statement that he instructed the Grievant to grieve the termination or that “he cannot afford to lose me.” Grievant’s advocate argues that Grievant self-reported to prevent further damage, it was a joke and no bomb was ever found. However, Grievant’s actions led to the calling of facility officer as well as VSP, bomb dogs, and the parking lot being secured for about 5 minutes. Grievant has not shown that the agency abused its discretion. Grievant has not shown by a preponderance of the evidence that he was treated differently from the Suspect. Just because the outcomes are different does not mean the agency applied its policy inequitably, unfairly, or inconsistently.

## FINDINGS

Pursuant to the EDR Ruling, this Hearing Officer reopened the proceedings to give the Grievant additional leeway to submit documentary evidence. The September 2023 report was admitted as Grievant Exhibit A. The agency provided evidence. The Hearing Officer does not find that policy was implemented inconsistently between the September 2023 incident and the April 2025 incident. These are not similarly situated incidences as noted above. The Hearing Officer acknowledges that Grievant is an employee of lengthy duration, liked by his coworkers, that he took responsibility for authoring the notes and was otherwise competent in performing his duties.

The Code of Virginia provides that a Hearing Officer's duties include:

"[r]eceive[ing] and consider[ing] evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [EDR]." Va. Code § 2.2-3005(C); see also Grievance Procedure Manual § 5.7. Section VI(B)(2) of the Rules for Conducting Grievance Hearings provides that mitigating circumstances may include "whether the discipline is consistent with the agency's treatment of other similarly situated employees." Rules for Conducting Grievance Hearings § VI(B)(2). As with all affirmative defenses, the Grievant has the burden to raise and establish any mitigating factors. Grievance Procedure Manual § 5.8; Rules for Conducting Grievance Hearings § VI(B)(1). Analogous precedent from the Merit Systems Protection Board (MSPB) on this issue provides that a grievant must show that the agency improperly considered the "consistency of the penalty with those imposed upon other employees for the same or similar offenses." E.g., Singh v. U.S. Postal Serv., 2022 M.S.P.B. 15, at 6, 13-15 (2022) (overruling the "more flexible approach" EDR has cited in the past from Lewis v. Dep't of Veterans Affairs, 113 M.S.P.R. 657 (2010), and instead going back to a more rigid analysis that requires the relevant offenses to be of the same or similar kind). Once such an inference is presented, the MSPB precedent holds that the burden shifts to the agency to prove a legitimate explanation for the disparate treatment. E.g., Singh, 2022 M.S.P.B. at 7; Lewis, 113 M.S.P.R. at 665. Similarly, the Rules provide that while it is the burden of the Grievant to "raise and establish mitigating circumstances," the agency bears the burden of demonstrating "aggravating circumstances that might negate any mitigating circumstances." Rules for Conducting Grievance Hearings § VI(B)(2). Therefore, in making a determination whether inconsistent treatment supports mitigation, a Hearing Officer must assess, for example, the nature of the charges, the comparability of the employees' positions (including their positions within the organization and whether they have the same supervisor(s) or work in the same unit), and, crucially, the stated explanation for why the employees are allegedly treated disparately. See, e.g., EDR Ruling No. 2024-5672.

Based upon the facts of the case, exhibits, and when considering the proffered mitigating factors, Grievant did not establish mitigating circumstances justifying a reduction or removal of the disciplinary action at issue and the Grievant did not meet the burden of establishing that the agency abused its discretion. The entry of the September 7, 2023, document does not change the outcome of the Decision made on July 12, 2025. Instead, on July 1, 2025, the Grievant testified that "If I didn't confess, I would still be working here. The punishment was not right for the crime." He equated this incident to an example that if he "stole a lollipop" and then got "life in prison".

Aggravating factors are considered in this case. Specifically, the wording of the notes in the Written Notice, "Don't start your car. I now where you live and I will kill you!" is chilling. At

the July 1, 2025, hearing, the advocate questioned facility officer about Agency Exhibit 29 – the offense report/Code of Virginia 18.2-60. Facility officer took the incident seriously because the threats were in writing. Facility officer testified that “once they found out it was a joke; my demeanor was here I’m dealing with a serious threat that someone thought was a joke.” and “this is not a joke (while looking at the notes) as there was no identification on the notes. Facility officer acknowledged that “facility did not shut down any roads, but did shut down the parking lot for about 5 minutes”. Another facility officer from the July 1, 2025, hearing testified that he was present on the date of the incident and “took it very seriously.” VSP had the bomb dogs in route, and VSP “had quite a team lined up”, but after speaking with Grievant they called off the bomb squad. The dogs were still in route. Victim testified that later, she discovered that Grievant put the notes there as a joke but she testified “no one has ever joked with me like this. I did not take it as a joke.” Victim further testified that she was physically and visibly distraught. The undisputed facts of April 28, 2025, are that the Grievant placed notes on the employee’s vehicle which stated, “Don’t start your car. I know where you live. I will kill you!” (Agency Exhibit 3) The Grievant’s actions set in motion a chain of events that led to management’s decision to terminate.

### **Order**

After reviewing the evidence presented, observing the demeanor of each witness, and based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer renders the following Reconsidered Decision:

1. That the facility employed the Grievant as a Trade Technician III.
2. That by a preponderance of the evidence, under the facts of this case and the applicable regulatory standards, stated herein, that the Grievant engaged in the behavior described in the Written Notice (by his own admission), that the behaviors constituted misconduct, significantly impacted the agency’s services and operations (VSP involvement to include trooper, bomb dog(s) and securing the parking lot); that the agency’s discipline was consistent with law and policy.
3. The Grievant violated agency and department regulation and policy regarding workplace violence.
4. The Agency Written Notice, issued on May 21, 2025, stated a Group III offense of workplace violence – Policy 2.35 with a disciplinary action of termination is warranted. The Policy clearly states, “conduct shall be subject to corrective action, up to and including termination”. The agency decision of termination was consistent with law and policy.
5. Va. Code Section 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resources Management.” Va Code § 3005. Thus, the Hearing Officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the Hearing Officer mitigates the agency’s discipline, the Hearing Office shall state in the hearing decision the basis for the mitigation.” A non-exclusive list of examples 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 motives. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action. Grievant has been employed with the agency for over 25 years. There was no evidence that that he did not have adequate notice. He admitted to authoring the notes. There was no evidence that the circumstances of 2023 and 2025 are similarly situated as noted above. COO's motives were not questioned. The officer in the September 19, 2025, hearing had no direct knowledge of the 4/28/25 incident to compare to her involvement in the September 7, 2023, incident. There is no evidence that the agency's discipline exceeded the limits of reasonableness.

For this reason, stated herein, the Agency's issuance to the Grievant of a Group III Written Notice with termination is upheld.

So Ordered.

Dated September 28, 2025.

Polly Cheng/s/  
Hearing Officer

#### **NOTICE OF APPEAL**

Both parties will have the opportunity to request administrative review of the hearing officer's reconsidered decision on any new matter addressed in the reconsideration decision (i.e., any matters not previously part of the original decision).<sup>35</sup> Any such requests must be received by the administrative reviewer within 15 calendar days of the date of the issuance of the reconsideration decision.. Grievance Procedure Manual § 7.2(c).