

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF EMPLOYEE DISPUTE RESOLUTION**  
**DIVISION OF HEARINGS**

In the matter of Case No.: 12314  
Hearing Date: 30 September 2025  
Decision Issued: 27 October 2025

**DECISION OF HEARING OFFICER**

**PROCEDURAL HISTORY**

On 30 May 2025, Grievant was issued a Group I Written Notice of disciplinary action. In the written notice, the Agency described the nature of the offense as a Violation Codes 13 [Failure to follow instructions or policy] and 39 [Violation of Policy 2.25, Civility in the Workplace]. The Written Notice further specified that Grievant had violated DHRM policy 1.60 Standards of Conduct which outlines the minimum expectations for acceptable workplace conduct and performance.

On 26 June 2025, Grievant timely filed a Grievance Form A to challenge the Agency's action. On 25 August 2025, the Office of Employment Dispute Resolution assigned the instant matter to this Hearing Officer.

On 8 September 2025, the parties participated in a pre-hearing conference call scheduled by the hearing officer. The parties agreed to communication by email alone. During the pre-hearing conference, the parties agreed to the hearing date of 29 September 2025.

During the pre-hearing conference, Grievant informed the Hearing Officer that his residence was significantly more than 100 miles from the physical location of the Agency and that it would be a significant burden for him to travel to the location of the Agency for the Hearing. The Agency did not object to the hearing being held virtually, using the Teams Meeting virtual platform. Accordingly, the Hearing Officer held that good cause existed for the hearing to be virtual. with the Agency making all necessary arrangements for said Virtual Hearing.

Thereafter, on 11 September 2025, the Hearing Officer issued his Pre-Hearing Report and Order. The Grievant and Agency each submitted documents for exhibits that were accepted into the grievance record. Grievant's documents included an affidavit from a witness that was objected to by the Agency. The Hearing Officer considered the written arguments from both parties heard oral argument on the date of the hearing as to whether the document would be considered as evidence.

The document in question was an Affidavit from an individual offered as an expert witness. determined that a portion of it would be admitted in part and rejected in part. The Affidavit included a narrative of what transpired during a video conference between Grievant, his supervisor (“Supervisor”) and the administrative supervisor (“Administrative Supervisor”) of both Grievant and Supervisor; the document also included the witness’s observations and opinions of the meeting. The Hearing Officer ruled that the offered witness would not be considered an expert witness. The Hearing Officer further ruled that the portion of the Affidavit in which the witness described what transpired at the meeting would be accepted into evidence, but the portion of the Affidavit that included the witness’s opinions and observations would not be accepted into evidence. (A copy of the Affidavit as originally submitted is included in the record as is a copy of the Affidavit as originally submitted.)

On 29 September 2025 the hearing was held virtually using the Microsoft Teams virtual platform. The record closed at the conclusion of the hearing. The hearing officer has carefully considered all evidence and argument presented.

### **APPEARANCES**

Grievant  
Agency Representative  
Counsel for Agency  
Witnesses

### **ISSUES**

1. Whether Grievant engaged in the behavior described in the Group I Written Notice of disciplinary action.
2. Whether the behavior constituted misconduct.
3. Whether the Agency’s discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g. properly characterized as a Group II offense).
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances.

### **BURDEN OF PROOF**

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

The Grievant requested an administrative due process hearing to challenge the award of a Gropy I Written Notice issued by the Agency, as described by the Grievance Form A submitted by Grievant dated 26 June 2025.

### **FINDINGS OF FACT**

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

Grievant is an Apprenticeship Program Manager with the Facilities Management Occupational Training Department. Grievant had worked at the Agency for approximately two years. (*See* Written Notice.) No evidence was submitted that would lead to a conclusion that Grievant had previously been awarded any Written Notices by the Agency.

### **The Alleged Offenses**

The Written Notice dated 30 May 2025 along with the other documentary evidence referenced misconduct that allegedly occurred on 8 May 2025. (Written Notice dated 30 May 2025. *See also* Agency's Evidence, pages 5-1 and 5-3 thru 5-12.) Grievant had previously been verbally counseled by his direct supervisor ("Supervisor") about the tone (nature) of his communication with Supervisor. Supervisor explained that Grievant seemed condescending towards others and that he often talks down to people acting like he knows more than them even when they are a subject matter expert. (Agency's Supporting Documentation 5-13). Supervisor's notes of the counseling did not note that Grievant would receive formal sanction (i.e. Written Notice) or a Notice of Improvement Needed Form if his behavior did not change (*Id.*)

In his position as the Apprenticeship Training Program Manager, Grievant's responsibilities included sending out to stakeholders the Apprenticeship Program Rotation Schedule. (*See* Written Notice.) Grievant operates independently with little supervision. (*Id.*) Testimony of the Supervisor and Grievant both indicated that the two are not co-located and communication is accomplished by means of online communication that included email and a Microsoft Teams ("Teams") Chat page that is open to the Grievant and Supervisor as well as other agency employees. Grievant and Supervisor also engaged in periodic scheduled one-on-one "live" communication sessions via telephone or Teams.

On 6 May 2025, in the course of a Teams Chat that included, among others, Grievant and Supervisor, the chat discussion included an exchange regarding the upcoming need to communicate the "rotation log" to the Apprenticeship Program team. The communication exchange included the following:

From Supervisor at 5/6/2025 at 4:21 p.m.: We need to send the rotation log to the AP Advisory team (kind of like we did last time) as a quick let us know ASAP if you have any changes/questions. I was questioning who should send that from a relationship standpoint. I was leaning toward [Grievant] so he can continue to build his name in

association with the program and since we are trying to transition the role of “█” to be less administrative.<sup>1</sup> Regardless it comes from AP email. Thoughts?

From “█” at 5/7/2025 at 7:07 a.m.: I’m fine either way - I think that makes sense to come from [Grievant] and go to the Advisory team

From Supervisor at 5/7/2025 at 8:16 a.m.: Gosh I don't make sense. Advisory Team email it doesn't matter, but the email to the external teams is what I was meaning. That was a run-on thought at the end of the day.

From “█” on 5/7/2025 at 8:17 a.m.: . . . either way, my sentiment stands. I do think that would be a good way for [Grievant] to solidify/support his stance as program manager though.

#### Agency Evidence 5-1

From Grievant on 5/7/2025 at 4:41: I do to . . .gradually transitioning . . . when folks have been doing things for years ... the drawback is incremental. [emoji omitted] I appreciate the support.

#### Agency Evidence 5-12.

On the morning of 5/8/2025, moments before the email was sent out by “█” (instead of Grievant), Grievant posted on the Team Chat: “█ and I just chatted. Today she will send out the individual rotation emails (to apprentices and group supervisors). Starting on the next rotation I will. Between here and there, she will show me where she houses everything and transition the over the process.”

Thereafter, “█” sent out the email to the appropriate individuals. Minutes after the email was sent, Supervisor posted on the chat, that no more emails were to go out until further notice.<sup>2</sup>

Within minutes of the email being sent out, Supervisor posted on the Teams Chat an inquiry to Grievant asking why he had proceeded contrary to her direction. Grievant responded that he did not understand the nature of the communication to be a clear directive, noting that he had taken the tone of the chat to be something would be a good idea to do in the future, but that it was not a prohibition from him delegating (or requesting that a colleague) send out the email to the appropriate recipients. (Agency Evidence 5-12)

The Agency’s evidence showed that, in addition to the email being sent out by a colleague of Grievant, instead of Grievant, the email contained inaccurate information regarding proper classroom and rotation changes. (Agency Evidence 5-3) Minutes after Grievant sent out the offending email, Supervisor received an email from her own supervisor that questioned the

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<sup>1</sup> “█” position was not clearly identified, but she was clearly a colleague of Grievant who worked in the Occupational Training Department

<sup>2</sup> Grievant testified that the email was sent out at 10:03 on 5/8/2025.

sending of the email, but queried Supervisor as to why the email did not include the proper information. (*Id.*) Upon receiving that email, Supervisor sent Grievant an email that stated:

Please clarify for me the following items related to the apprenticeship rotations:

- Did you have any conversation with [“T] to ensure the classroom and rotation changes occurred simultaneously?
- You sent an email yesterday to stakeholders letting them know the new plan and that notifications would be sent on 5/12, but you directed [“█████”] to send notifications before the end of this week
- You sent an email to the Advisory Committee yesterday. You have not given them an opportunity to give feedback before directing [“█████”] to start sending notifications.
- I specifically communicated that I wanted you to send all AP comm’s related to rotations, yet you directed Sarah to send the comm’s to supervisors.

Agency Evidence 5-4.

Later that day, Grievant emailed Supervisor a detailed response. Grievant’s response initially stated, *inter alia*, “Frankly, this email sent to me has the intent language of documentation for performance failures.” (Agency Evidence 5-4). Thereafter in the response, Grievant took issue with certain aspects of the facts alleged in Supervisor’s email to him and detailed, at length, his reasons for his actions taken. (Agency Evidence 5-4 through 5-9). Grievant’s response was direct and blunt but did not include any language that objectively could be described as obscene or engaging in name-calling or similar pejorative language.

The following day (5/9/2025), Supervisor responded to Grievant with an email that stated, in pertinent part, “The email was your supervisor asking straightforward questions to understand steps that were taken in a process that is under review. Your response was out of line and I do not appreciate your condescending tone (once again).” (Agency Evidence 5-9 through 5-10.)

Grievant responded to this email asserting that his tone was not condescending and further asserting that the detailed response was necessary due to the inaccuracy of statements made by Supervisor in her prior email. He stated, “No, my response was not out of line. It was necessary given the accusations that you were making and the falsehoods of the statements contained against me by you that could be used against me in an HR or performance evaluation situation.” (Agency Response 5-10.) In a subsequent email, he further stated, “You made false statements as if they were facts. . . . I demonstrated that your retelling was wrong and not factual. You do not like that. You have labelled it condescending and inappropriate to transfer accountability. That is wrong.” (Agency Evidence 5-11)

## **Agency Testimony**

Supervisor testified that she was the Assistant Director of Occupational Training for Facility Management, and that Grievant reported directly to her. Supervisor further stated that Grievant had been reporting to her since 29 July 2024.

The Agency Advocate directed Supervisor to Human Resource Management Policy (“HRM) 014 and confirmed that Grievant was expected to adhere to his policy. She identified as specifically relevant the section appearing on Agency Exhibit Page 3-4 that states an Agency employee must:

- Demonstrate respect for the University, coworkers, supervisors, managers, subordinates, students, suppliers, contractors, patients, and visitors.
- Resolve work-related issues and disputes in a professional and respectful manner, engaging with department management, utilizing University resources, and/or operating within established business processes.

(HRM 014 Page 3-4)

Supervisor further testified that she believes that her text message at 4:40 p.m. on 5/7/2025 clearly set forth her expectations of Grievant and that he failed to act in accordance with her direction. She noted that contrary to her direction (that the rotation message be sent by Grievant) the message was sent out by ■■■, a colleague of Grievant at 10:03 a.m. on the following morning. On cross-examination, she stated that it was Grievant’s responsibility to ask clarifying questions before taking actions if Grievant was unclear as to what was instructed.

Supervisor acknowledged that approximately five minutes before the message was sent out, Grievant sent an email informing her that it would be sent out by the colleague. She stated that she did not see Grievant’s email of intended action until after the action was taken.

Supervisor stated that she emailed an inquiry to Grievant asking him to clarify his reasons for his taking the subject action and Grievant responded with what she described as a “shocking diatribe.” (Grievant’s response was identified as Agency Evidence 5-4 through 5-9). She stated that she considered the response inappropriate and a violation of agency policy because she believed that her inquiry to Grievant was appropriate and professional and that his response was not.

Supervisor testified that she believed that a “pre-determination meeting” was necessary because she wanted to confirm that Grievant had committed a policy violation in regard to “Civility in the Workplace” and that he had further committed a violation for failing to follow instructions. She stated that she believed that Grievant’s words and actions were damaging to trust and violated workplace decorum.

Supervisor stated that, thereafter and in accordance with Section 5a and 5B of HRM 014, she provided Grievant with Advance Notice of Potential Discipline and provided Grievant with

an opportunity to respond. She stated that in the pre-determination meeting, she explained her concerns to Grievant. She further stated that she wanted Grievant to accept that his actions were inappropriate, and for Grievant to show remorse and that he “accept responsibility” for his actions. She further asserted that the pre-determination meeting did not achieve the hoped for outcome since Grievant did demonstrate the responses for which she had hoped. (A recording of the pre-determination meeting was submitted into evidence by Grievant.)

Regarding the alleged violation of “Policy 2.35 Prohibited Conduct/Behaviors,” Supervisor asserted that Grievant had previously been counseled as to the tone and nature of his communications. (See Agency Evidence 5-15, 16.) She further asserted that his failure to accept responsibility for his actions necessitated formal disciplinary action. She further testified that she chose to use a less punitive Group I sanction instead of the more punitive Group II sanction because Grievant has historically performed his duties very well and she did not want the imposed discipline to have financial consequences for Grievant. She further stated that she hoped and expected that the Group I discipline would correct the behavior.

The Director of Occupational Programs Department (“Director”) also testified. She confirmed that she directly supervised “Supervisor” and, as such, indirectly supervised Grievant. She confirmed that she queried Supervisor when she saw the email from ■■■ that came out on 5/7/2025; she further noted that she was concerned because certain aspects of the email from ■■■ were not accurate in that the rotation schedule of the apprentices in the field did not align with classroom assignments. (See Agency 5-3.) Her emailed inquiry to Supervisor did not in any way address the sender of the email.

Director further testified that she was present at the predetermination meeting that was held on 5/14/2025. She stated that she normally attends pre-determination meetings to show support of both the supervisor and the employee. She further stated that she specifically wanted to show support to Supervisor because of the issues to be addressed in the meeting included behavior (i.e. Grievant’s communication style) that she, herself, had previously observed. She stated that she did not engage in the meeting until he continued to proceed in what she described as an accusatory tone, calling Supervisor a “liar,” and stating that she was dishonest and lacked integrity. She stated that she told him that such language was unacceptable and he would not speak to Supervisor in that manner.

Director acknowledged that there was a missed opportunity from both parties Supervisor and Grievant had both missed an opportunity to clarify issues. She further stated that, notwithstanding the missed opportunity by both parties, she considered it disrespectful for an employee to call the supervisor a liar.

On cross-examination, Director acknowledged that, after reviewing all email communication from Grievant, there was no evidence of him calling her a “liar” or any other derogatory name. (A review of the recorded meeting submitted by Grievant without objection from the Agency indicated that Grievant did not state that he considered Supervisor’s version of events to be untruthful, but he did not call her a liar.)

## **Grievant Testimony**

Grievant's testimony at the hearing was consistent with his written narrative in his Grievance. He emphasized that he did not believe that he had been given a clear direction to personally disseminate instructions to the stakeholders. He further noted that he believed that, at the time of the communication, he did not believe that he had sufficient training to immediately take over the communication responsibility. He further indicated that he believed that he was efficiently fulfilling his responsibilities by asking his colleague (who had traditionally sent out the message) to do so on 5/7/2025 and that, thereafter, he would personally take over the messaging.

Grievant acknowledged that he was the individual who sent the texts, emails, and other communications. He further acknowledged that he was the individual who sent the other communicative attributed to him in the Agency Evidence, but he denied that his actions constituted misconduct. He stated that his assertions were consistently accurate. He further confirmed that he considered what Supervisor had termed "simple questions" in her 5/7/2025 email was, in fact, accusatory statements that were factually incorrect.

Grievant acknowledged that the language in his communication (both written and oral) to Supervisor (and to others) was direct, but he asserted that he never used words or language that was disrespectful or insulting. He acknowledged that he believes that Supervisor's communication to him regarding his actions was inaccurate and dishonest and he communicated his belief to her. He further noted that, notwithstanding testimony to the contrary, he never called Supervisor a liar or engaged in any other name calling.

## **Additional Evidence**

All evidence submitted by the parties was reviewed and considered. I note below certain evidentiary items specifically considered in reaching a determination.

Agency Evidence Tab 2-6 thru 2-7 is the Third Resolution Step - Management Grievance Response." The document stated that the Group I Written Notice would be upheld. The document further stated, *inter alia*:

Considering the information presented, I can understand your position that because the assignment was not explicitly stated, you believed you had some autonomy in determining how to complete the work. While there may have been areas for further clarification. . . . any evidence to support your claim that your manager changed their guidance or lied about what they expected you to do. Rather than using professional tactics to resolve the incident as a simple misunderstanding and refocus on the success of the team's work, your behavior escalated the exchange and included numerous examples of disrespectful comments unbecoming of any University employee.

Agency Exhibit Tab 3A is HRM-014: Standards of Conduct for University Staff Employees. The Standards provide, *inter alia*, that an Agency employee must:

- Demonstrate respect for the [Agency], coworkers, supervisors, managers, subordinates, students, suppliers, contractors, patients, and visitors.
- Resolve work-related issues and disputes in a professional and respectful manner, engaging with department management, utilizing [Agency] resources, and/or operating within established business processes.

Agency Exhibit Tab 3B is Attachment A to Policy 1.60 Standards of Conduct and provides Examples of Offenses Grouped by Level. Examples of Group I offenses include “use of obscene or disrespectful language.” Examples of Group II offenses include “failure to follow supervisor’s instructions.”

Agency Exhibit Tab 3C is Policy 2.35 Civility in the Workplace. Among actions considered prohibited conduct are: “Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable.” The policy further provides that, “Managers and/or supervisors who allow observed or reported prohibited conduct addressed in this policy to continue upon becoming aware of the behavior may be considered parties to the offense and subject to disciplinary action . . . .”

Agency Exhibit Tab 3D is Policy Guide - Prohibited Conduct/Behaviors as they apply to Civility in the Workplace. Among the listed examples of prohibited conduct is:

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest; and
- Behaving in a manner that displays a lack of regard for others . . . .

Recording of Pre-determination meeting dated May 14-2025. The recording was submitted Grievant without objection from the Agency. Both parties and the Hearing Officer acknowledged that they had listened to the recording. By agreement of the parties, it was accepted into the record.

### **Analysis and Discussion**

As previously stated, the agency’s burden is to show upon a preponderance of evidence that the discipline of the Grievant was warranted and appropriate under the circumstances. Pursuant to applicable policy, management has the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior.

EDR’s *Rules* provide that in disciplinary grievances, if the hearing officer finds that:

- (i) the employee engaged in the behavior described in the Written Notice,
- (ii) the behavior constituted misconduct, and
- (iii) the agency’s discipline was consistent with law and policy,

the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.

*Rules* § VI(B).

### **Whether the employee engaged in the behavior described in the Written Notice**

Grievant acknowledged that he was the individual who sent the texts, emails and other communications that were the subject of the Written Notice. There is therefore no issue that employee engaged in the behavior described in the Written Notice.

### **Whether the behavior constituted misconduct**

For the reasons detailed below, I find that Grievant's behavior did not constitute misconduct.

#### **a. Whether Grievant failed to follow Supervisor's instructions.**

I find that Supervisor did not provide a clear direction to Grievant that he was responsible to personally send the message to the relevant individuals regarding the upcoming rotations. The documentary evidence showed that at 4:40 p.m. on 5/7/2025 Supervisor stated that, "I think all rotation comm's should come from [Grievant] as the AP manager." Immediately thereafter, Grievant generally agreed, but further stated, "I do . . . gradually transitioning. . . when folks have been doing things for years . . . the clawback is incremental." There was no immediate response from Supervisor. Moreover, five minutes prior to his colleague, identified as ■■■ sending out the questioned email Grievant provided Supervisor advance notice of his actions, noting that ■■■ would be sending out the rotation emails that day, and that before the next rotation ■■■ would instruct him regarding the proper process and he transition the responsibility to him. (See Agency Evidence 5-12.)

The Agency's evidence included a statement by ■■■. ■■■ statement provided, *inter alia*, that on 5/8/2025 ■■■ and Grievant discussed the rotation communication email process. ■■■ statement further asserted that "[Grievant] instructed [■■■] to send the email for that cycle." (Agency Evidence 5-2.) As noted above, however, Director testified that ■■■ was a colleague of Grievant and does not report to him. Grievant therefore did not have authority to direct her to send out the questioned email. ■■■ was a participant in the Teams Chat that took place on 5/7/2025. No evidence provided to the effect that ■■■ had objected to sending the email. The evidence that she sent the email without any noted objection suggests that she did not understand from the Teams Chat that Grievant was directed to personally send the email.

The grievance hearing is a *de novo* review of the evidence presented at the hearing, as stated above. The Agency has the burden to prove that the Grievant is guilty of the conduct charged in the written notice. I find that although Supervisor may have intended to direct Grievant to personally send out the emails the available evidence does not support a finding that she clearly communicated this intention to Grievant. I further find that there is insufficient

evidence that to support a finding that Grievant understood that he was required to personally send the emails or that he failed to take proper action to clarify Supervisor's direction.

There were significant errors in the rotation email that was sent out by ■ in that there had not been proper coordination of the apprentice rotation schedule with the classroom rotation schedule. Supervisor asserted in the Written Notice that "[Grievant's] failure to follow instruction resulted in passing work to a colleague that was scheduled for vacation and had limited capacity. This rushed the communications to get done before the colleague left on vacation and resulted in communications that were sent before important details were confirmed, including program dates and classroom rotation schedules." (Written Notice.) No evidence was provided to support this assertion. Moreover, as was detailed above, Grievant consistently asserted that his reason for asking the colleague to send out the necessary emails was to avoid error as he believed that he was not yet trained to accept the responsibility.

Accordingly, and for the reasons detailed, I find that the Agency has not proved by a preponderance of the evidence that Grievant committed a Group I Offense Code # 13, Failure to follow instructions or written policy.

**b. Whether the Grievant violated Policy 2.35, Civility in the Workplace.**

Immediately after the questioned email was sent out, Supervisor questioned Grievant's actions in directing or allowing ■ to send the email. Grievant responded with a text in which he clearly stated that he did not understand that he was going against her direction. He asserted that in order for her assertion to be accurate, the direction should have been clear and it was not. He included in said email a detailed explanation of his understanding of his responsibilities in regard to the subject communication and his reasons for his actions. He further asked Supervisor to not reprimand him for failing to follow her direction when she did not provide such clear direction.

Supervisor's initial query to Grievant, in which she said, "I need to understand why you are proceeding against my direction . . .," was in the "open" Teams Chat. (Agency Evidence 5-12.) Its tone was clearly critical in nature. Grievant's response, also in the open Teams Chat, directly responded to her question. In this "open" forum, Grievant clearly stated he believed that her accusation was incorrect, but he did not question her accuracy or integrity.

Thereafter, Supervisor sent a further email in which she requested that Grievant explain his actions. (Agency Evidence 5-9.) Grievant responded with an email in which he stated that he considered her email to be accusatory and with the intent of establishing a record to document performance failures. (Agency Evidence 5-10.) Nevertheless, he provided a detailed response to her request in which he again stated that, in order for her assertion that he failed to follow her direction to be accurate, the direction should have been clear, and it was not. His response also provided a detailed explanation of his understanding of his responsibilities in regard to the subject communication and his reasons for his actions.

As detailed above, Grievant clearly believed that he was never directed that he must personally send out the rotation emails for the then-current rotation cycle and he clearly

expressed that belief to Supervisor. He further clearly expressed to her that he believed that she was blaming him for her failure to provide clear direction.

Grievant's communications were blunt and direct. He expressed to Supervisor that he considered it disingenuous and unethical for her to reprimand him for what he considered to be her failure to use clear and concise language, but he did not use any obscene or offensive language. It must also be noted that his communications to that effect were not unilaterally volunteered, but offered in response to his Supervisors assertions of his misconduct. One must note that Supervisor's (allegedly) accusatory email was a private email communication to Grievant only and that Grievant's response was similarly sent in private communication (i.e. to Supervisor only).<sup>3</sup>

Grievant expressed similar sentiment in the course of the pre-determination meeting. He did not apologize for his actions or his communication and consistently stated that he believed that he was being wrongfully accused. He explained, in detail, why he believed that Supervisor's actions towards him were dishonest and disrespectful. Notwithstanding his blunt statements to the effect that he considered Supervisor's actions to be dishonest and unethical, he did not call resort to name-calling or other similar personal attacks. I further note that the concept of "notice and opportunity to respond" is meaningless if the employee is not permitted to disagree, even in strong terms, to the allegations leveled against him.

Supervisor asserted in her testimony that Grievant called her a "liar." A review of the evidence submitted by both parties reveals that no such name-calling occurred. Supervisor asserted that Grievant's multiple statements to the effect that her allegations against him were dishonest are the same thing. I do not agree with Supervisor's assertion. I find that a firm statement of one's opinion of another individual's honesty in a specific given situation is not the same as name calling.

Supervisor expressed the opinion that Grievant's language in his emails to her was "condescending," but the evidence did not provide any indication of language that could objectively be considered rude, inappropriate, discourteous, unprofessional, or dishonest. I find that a subjective belief that a statement was "condescending" does not rise to the level of a violation of "Civility in the Workplace" as described in the Policy. Whereas Supervisor was clearly offended by Grievant's expressed belief that her actions were disingenuous and dishonest, these opinions were expressed only in response to her direct accusatory statements to him regarding his alleged misconduct. Moreover, as noted above, this response was in a private email to the supervisor, not a public forum.

It is self-evident that, in a work situation, one must maintain an appropriate level of decorum in all communication, but "appropriate" is contextual in nature. The communication between Grievant and supervisor was not a shouting match in the hallway, or even a private office where others may have overheard raised voices. The Agency provided no precedent that would support a finding that a frank discussion between an employee and a supervisor that did

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<sup>33</sup> I refer to the email communication as "private," but not "personal." In describing the communication as "private" I note that the communication was between the sender and receiver only. No third parties could "overhear" the private communication.

not involve any shouting, threats, ongoing harassment, or name-calling can or should be considered a violation of the Civility in the Workplace policy.

I do not endorse the nature and tone of Grievant's response to Supervisor. Different and less inflammatory language could have been used. As has been detailed throughout this document, Grievant's employed direct and blunt language in his disagreement with Supervisor regarding the allegations leveled against him. I note that Grievant works remotely and must frequently communicate with his supervisor(s) using text or emails. I would encourage him to develop communication skills or avenues such that, if he does disagree with his supervisors, he does so in a non-disagreeable manner. Nevertheless, I find that his communications as alleged in the Written Notice used no language that could objectively be described as violating Policy 2.35 (Civility in the Workplace.)

Accordingly, and for the reasons detailed above, I find that the Agency has not proved by a preponderance of the evidence that Grievant committed a (Group I) Code # 39 violation, to wit, Violation of Policy 2.35 Civility in the Workplace.

### **DECISION**

For the reasons stated herein, the Agency's Group I Written Notice must be hereby DISMISSED.

### **APPEAL RIGHTS**

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution  
Department of Human Resource Management  
101 North 14th St., 12th Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.<sup>3</sup> [See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

I hereby certify that a copy of this decision was sent to the parties and their advocates shown on the attached list.

ENTERED: 27 October 2025



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