



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12347

Hearing Date: November 20, 2025

Decision Issued: November 21, 2025

PROCEDURAL HISTORY

On July 18, 2025, Grievant was issued a Group II Formal Written Notice for Special Privileges in the workplace and standards of conduct violations. On July 18, 2025, Grievant was issued a Group III Formal Written Notice with removal for fraternization in the workplace and standards of conduct violations.

On July 22, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On September 2, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing officer. On November 20, 2025, a hearing was held in-person.

APPEARANCES

Grievant
Department of Corrections Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice Form 129-01-004 for a Group II Violation?

An Equal Opportunity Employer

2. Whether Grievant engaged in the behavior described in the Written Notice Form 129-01-004 for a Group III Violation?
3. Whether the behavior constituted misconduct?
4. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?
5. 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 employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. *Grievance Procedure Manual* ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

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

The Department of Corrections' Virginia Correctional Center for Women in Goochland County ("Goochland") employed Grievant as a Cognitive Counselor. On July 18, 2024, a Written Notice of Group II violations was provided which Grievant signed. On July 18, 2024, a Written Notice of Group III violations was provided which Grievant signed.

Grievant received training and notices regarding privileges and fraternization in the workplace and standards of conduct. Goochland provided a manual instructing Grievant on the proper policies and procedures regarding privileges and fraternization.

Grievant claimed she did not know she was not to hold items for inmates. Grievant admitted she knew not to provide personal documentation to inmates. Grievant knew fraternization and special privileges were not allowed at Goochland. Grievant admitted to holding items for inmates and providing personal documentation to inmates. Grievant disputed if those actions were sufficient for written violations.

CONCLUSIONS OF POLICY

Operating Procedure 135.1 sets forth the Agency's Standards of Conduct. OP 135.1 I A 7(m) states employees, "Conduct themselves at all times in a manner that supports the mission of the DOC and the performance of their duties." Operating Procedure 135.1 A 7(k) establishes DOC employees, "Support efforts that ensure a safe and healthy work environment." Operating Procedure 135.2 II A establishes, Employees of the DOC will exercise professional conduct when dealing with inmates or probationers/parolees to ensure the security and integrity of the correctional process and to promote a Healing Environment within the DOC." OP 135.2 F 3 states, "Employees are encourages to interact with inmates and probationers/parolees on an individual and professional level while maintaining and reinforcing appropriate professional boundaries to promote and accomplish DOC goals."

On July 18, 2025, Grievant provided personal identifying documentation to inmates. On July 18, 2025, Grievant held personal items for inmates including potential contraband.

Goochland provided Grievant a Group II Written Notice of Offense Code 13. Goochland provided Grievant a Group III Written Notice of Offense Code 55. Grievant signed both Written Notices.

Grievant argued she was not aware she was not to hold property of inmates. She admitted she received the necessary training to not hold such items. Grievant admitted she was trained and knew not to provide personal identifying documentation to inmates.

Va. Code § 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 Resource Management..." Va. Code §3005. Under the Rules for Conducting Grievance Hearings, [a] hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a 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 officer shall state in the hearing decision the basis for 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 motive. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II, Written Notice Form 129-01-004 is UPHELD. For the reasons stated herein, the Agency's issuance to the Grievant of a Group III, Written Notice Form 129-01-004 is UPHELD.

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 Street, 12th Floor
Richmond, Virginia 23219

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

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

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

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.¹

/s/ James Bradley Winder, Jr.

James Bradley Winder, Jr., Esq.
Hearing Officer

¹ 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.