

COMMONWEALTH OF VIRGINIA

DHRM

Office of Employment Dispute Resolution

Re: Grievance of (Case No. 12365)

Decision

Grievant:

Administrative Hearing Officer:

Polly Chong, Esq.

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Grievant Advocate:

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Pro Se

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Advocate for Agency:

I. BACKGROUND

Grievant was an employee of the Agency with a job title of Traffic Controller. Grievant timely filed a grievance to challenge the Agency's disciplinary action by submitting the Grievance Form A on August 24, 2025, from the date of the discipline. The Grievant believes the discipline was not warranted. The Grievant requested relief was "If I prove concrete evidence will I be allowed to get my time back due all being to me." (Agency Exhibit 5 p.7). The Agency Written Notice, issued on August 9, 2025, stated a Group III violation of DHRM Policy 1.60 Standards of Conduct, with a disciplinary action of 10 working days unpaid suspension for sleeping during work hours.

EDR appointed the undersigned as Hearing Officer on October 14, 2025.

A teleconference call was conducted on October 17, 2025. Present were: the Hearing Officer; advocate for the Agency; and the Grievant. The purpose of the teleconference was to set the trial date, location and the date for the exchange of documents. A Scheduling Order was entered on October 18, 2025. The trial date was set for November 7, 2025, at the Hampton Roads District Office, located at 7511 Burbage Drive, Suffolk VA 23434 and the date for exchange of documents was October 31, 2025, by 5 p.m.

On November 7, 2025, a hearing was conducted at the Hampton Roads District Office, located at 7511 Burbage Drive, Suffolk VA 23434 starting at 9 a.m. The binder of exhibits from the agency was submitted at the outset of the hearing without objection. Note the Grievant did not provide a binder of exhibits; however, Grievant was allowed to present evidence from her phone. Case Number 12365.

II. APPEARANCES

Grievant

Agency Attorney

Agency Representative

Witnesses: 2 for the Agency and Grievant testified on her own behalf. Grievant also called the agency witnesses as her witnesses for her portion of the case. At the end of the Grievant's testimony, it was disclosed that a Civil Rights Representative from the agency was in the building who would be a witness for the Grievant.

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 the 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. FINDINGS OF FACT, DISCUSSION AND CONCLUSION OF LAW

All proposed exhibits submitted by the Agency and the Grievant were admitted. After reviewing the evidence presented, observing the demeanor of each witness, the Hearing Officer makes the following Findings and Decision:

Grievant has been employed at the agency with the title of Traffic Controller (TC) with a length of employment for approximately 4 years with the Agency and within that 4 years approximately 2 years as a TC.

Written Notice dated August 9, 2025, states "*July 21, 2025, you were assigned the 10:00 p.m. to 6:00 a.m. shift as a Traffic Controller at the Hampton Roads Bridge Tunnel. At approximately 3:00 a.m. in the Operations Control Center. I observed you at your work station '30'. You had not moved for an extended period and I heard what appeared to be a faint snoring. I walked to your station and observed your eyes closed, breathing, and unresponsive-consistent with being asleep. Shortly after, the climate data alarm at your station began to sound. You failed to acknowledge the audible alert. I then dropped an object to create a loud noise, at which you abruptly woke up and accidentally knocked the climate data panel into a nearby trash can. The traveling public depends on all of us to always provide security and situational awareness of our surroundings and to be alert to the many potential hazards we face.*" As a result of the Written Notice, the consequence was 10 working days unpaid suspension for sleeping during work hours in accordance with DHRM Policy 1.60. Under Section IV Circumstances Considered – Grievant "*was issued a Due Process on June 30, 2025.*

She provided me with a written statement which I reviewed and took into consideration when determining this disciplinary action. This documentation does not excuse the requirement that employees should devote full effort to job responsibilities during work hours and always be situationally aware to ensure we can mitigate any of the many potential hazards we face as one of the largest critical infrastructure operations in the region. In deciding to mitigate this disciplinary termination action and issuing a Group III Written Notice to include 10 working days unpaid suspension, I considered your personnel record, all documentation involving this incident and past disciplinary action taken for similar infractions within the Hampton Roads District. Going forward, it is imperative that you conduct yourself in an appropriate manner in the workplace pursuant to the Standards of Conduct. Any future instances of conduct similar to the behaviors described in this written notice may result in disciplinary action up to and including termination pursuant to the Standards of Conduct.” (Agency Exhibit 3)

In the Grievant response submitted July 31, 2025, Grievant advised “That night I’m honestly not sure if I was asleep or not. I feel like I was on my phone to stay awake. I feel like my eyes appeared to be closed due to me being on my phone. I feel like coming back from leave due to having a baby and hormones, taking medicine for prior condition after having the baby could have played a part. When I do doze off, I never abandon my job. I always catch myself and wake myself up. I have never fallen into a deep sleep. That night, I don’t feel like what D is saying is true. I spoke to someone else in the control room, they said that they never heard anything hard drop. If I were to pick up something up out of the trash can, I would use a glove. I don’t feel like D’s word can’t be trusted as far as sleeping because I never dropped anything into the trash can. I also feel like this is retaliatory. I feel like he’s stretching it and adding details. D was never close enough to confirm that I was sleeping. D never said anything or interacted with me. During my employment, I’ve never had any complaint until working with D.” (Agency Exhibit 2) In Grievance form A, Grievant states, “My supervisor is lying on me and I feel like I’m being targeted and retaliated by him. I’ve witnesses him watch other TCs sleep on numerous occasions and never wrote others up. I’ve written statement proving a lie within the statement. I feel like he is upset about a previous incident. I discussed with and I honestly feel like he told my supervisor to inspire this retaliation. If I prove concrete evidence will I be allowed to get my time back due to all being to on me.” (Agency Exhibit 5 p. 7)

AGENCY FIRST WITNESS

The first witness was the Maintenance Operations Manager (MOM). On direct examination, he testified he has been employed with the agency for approximately 5 and a half years and 4 months in his current role title. He is assigned as the overnight Operations Manager. He is familiar with DHRM Policy 1.60. He has known the Grievant for approximately 4 and a half years. Two of those years, the Grievant directly reported to him. He described Grievant’s role as a Traffic Controller responsible for dispatching units, monitoring the facility, monitoring CCTV cameras, monitoring radios and supplying entries into the 501 databases. It is a safety sensitive job. At the time of the Written Notice, Grievant’s shift was from 10 p.m. – 6 a.m. Grievant had been on this shift for about 6 months. He described the control room as having multiple desks with each desk having multiple computers along with screens. The supervisor has his own desk. Advocate for the agency asked him about Exhibit 3 where Grievant was issued a Group III Written Notice which Grievant refused to sign. As a result, the supervisor and MOM signed. He testified that he did not himself witness the Grievant sleeping while at work, but that he got a call on July 21, 2025, from the supervisor where the supervisor saw the Grievant’s eyes closed, snoring, and supervisor dropped a binder to wake her up. He then instructed the

supervisor to send an email narrative of what happened. An investigation ensued including gathering statements from another TC and a tow truck operator. All the statement(s) were consistent with the narrative of the supervisor. The advocate for the agency asked him about Exhibit 6 and 7 which were photos of the Grievant at the desk with what appeared to be closed eyes. The MOM found the statement of the supervisor to be credible and the pictures as supportive of the statement that Grievant was sleeping while on duty. Then he was asked to read the Due Process letter from Exhibit 1. He testified there was a Due Process meeting and a follow up meeting in which the Operations Program Manager (OPM), MOM and the supervisor met with the Grievant to issue the Due Process Memorandum and allow the Grievant to provide her version of the events as well as to present any mitigation. The agency needed a written statement. Advocate for the agency directed him to Exhibit 2. The Grievant did not provide a written statement so the MOM or supervisor typed up what Grievant verbally expressed, allowed her to review the typed statement for any revisions. Once the draft was final the Grievant signed and dated the statement. The MOM testified that the Grievant stated that she would never fall into a deep sleep that would prevent her from doing her job. That the Grievant insinuated that the discipline was retaliatory but there have been no prior claims of retaliation. Grievant went on maternity leave returning a couple of weeks prior to the incident and no request for accommodation was requested. The OPM offered accommodation but would need a doctor's note to support the request and approval by HR. When questioned as to whether Grievant's conduct was consistent with policy, the MOM responded that Grievant's conduct was contrary to policy. There is an expectation that the employee will stay alert and attentive. The MOM reiterated that this was a safety sensitive job. He testified to a similarly situated employee who had a similar fact pattern where the employee was working in the field, was observed in a state of sleep and they were conducting a radio check, but he did not respond. They sent someone to check on him as a safety precaution, but he was asleep and woken up. He was given a Group III with 10 days unpaid suspension. That employee was treated in the same fashion as the Grievant; that is, the issuance of a Group III Written Notice first offense mitigated down from termination. He was directed to look at Exhibit 11 - DHRM Policy 1.60 page 22 highlighting certain bullet points. The MOM cited "devote full effort to job responsibility during work hours." He interpreted that to mean that during the employees' shift they are expected to put best efforts into the job. He cited that employees are to use state time, resources, and equipment judiciously and as authorized. He interpreted that to mean that one is expected to do the job to the best of their ability in accordance to the job description. He then cited support efforts that promote a healthy work environment. He interpreted it to mean that employees must be mindful of the safety of others in the work environment since it is a safety sensitive job. All are expected to perform their duties and sleeping implies the employee is not fully alert. Then he was directed to Exhibit 10 regarding standard duties of a TC to "demonstrate safety behaviors, responsibility to provide a safe work environment.....emergency operations agency." He explained that TCs are the first ones to observe accidents on the CCTV and dispatch units and if needed contact the Virginia State Police. The job requires the employees to be alert and responsive. Grievant did not follow policy. Standard discipline for Group III is termination "but if it's a first offense the discipline is mitigated down to 10 days of unpaid suspension." The intent of the agency is to mitigate the first offense down. This is a standard practice across the board for all employees. Lastly, the MOM testified there was no bias or retaliation against the Grievant. On cross examination the MOM acknowledged that he had a conversation with the Grievant as to who was and was not allowed in the control room. Grievant asked about the cameras. Particularly, Grievant asked about desk

30 regarding if there is a camera directed at the desk. MOM responded TC was to monitor the CCTV camera, the TOC cameras, and the infrastructure cameras. It varies from training to training. TCs are trained in the monitoring of cameras. He did not believe a camera was directed at desk 30. Grievant then questioned about Exhibit 6 and 7 photos. MOM responded that the photos were forwarded to him by the supervisor as part of his statement. Grievant asked how the picture was produced since there was no camera directed at the desk. Grievant believes the supervisor broke policy to obtain the pictures. MOM responded that supervisors could take photos in the control room. Grievant asked if the cameras can take a still shot photo. MOM responded that cameras continuously record but snapshots can be taken of the screen. Desk 30 had access to cameras from the desk. The Grievant asked if it was proper procedure for someone to take pictures in the control room of her sleeping. MOM responded that supervisors are allowed to take pictures in the control room. Supervisors do not have access to the camera live feed but anyone can see the live feed. Only facility manager can pull up the live feed.

AGENCY SECOND WITNESS

The agency's second witness was the supervisor. On direct examination, the supervisor testified that he had prior experience in law enforcement, that he currently supervises 15-20 individuals, and has been with the agency for approximately 16 months. He testified that all employees are required to read DHRM Policy 1.60. Grievant as a TC directly reported to him. He described the job as safety sensitive requiring monitoring cameras, feeding the information into 511, monitoring critical systems and communicating with staff in the field. Agency advocate directed him to Exhibit 10 which he described as an outline of a job posting. Core responsibilities are to provide information into system 511, record keeping, control the traffic lights to manage traffic during an incident, as well as relaying and receiving information with crews and those in the field. He stated, "there is zero room for delay." He described the control room as 4 desks with a supervisor desk. The TCs rotate desks. Supervisor sits in the back side area and everyone faces the same way. He issued the Group III notice for Grievant sleeping on duty as violation of policy. Agency advocate directed him to Exhibit 3. He testified that on July 21, 2025, he was working the 10 p.m. – 6 a.m. shift. There were other employee(s) in the control room. Grievant was seated at desk 30 while he sat at desk 50. He had a direct line of sight and noticed Grievant had not moved for a while, heard a faint snoring, eyes closed and head down. The Grievant did not look up. The climate data alarm, which is a critical device, sounded off which is located to the left of the Grievant's desk. The alarm goes off every night around 2:30 a.m. Supervisor walked around and stood about 4-5 feet away. Every TC must silence the alarm. He noticed the Grievant did not react or move. He then took a binder and dropped it on the desk to make a loud noise. The Grievant abruptly woke up looking right to left. While trying to turn off the alarm, Grievant knocked the alarm into the trash can. Agency advocate asked him to look at Exhibit 6 and 7 which were photos of the Grievant. Supervisor took the pictures of the Grievant to be used as evidence of her sleeping around 2:30 a.m. He testified that her eyes were closed at the time of the picture. He notified MOM and was instructed to file a statement. There was an investigation to include MOM and OPM. He submitted his statement along with the photos. He testified that he had seen Grievant sleeping on other occasions. Agency advocate then asked him about Exhibit 14 which was another incident dated 10-10-25 of the Grievant sleeping during duty hours. The 10-10-25 incident involved a different supervisor. The Due Process meeting was July 31, 2025. Grievant articulated a statement in response. Supervisor typed it up for her to review and make any revisions. Grievant signed and dated the statement.

Supervisor denies any retaliation. He was aware of Grievant having been on maternity leave but Grievant never notified of a need for any accommodation. Agency advocate asked him to look at Exhibit 11 DHRM Policy 1.60 and he testified that “staying alert is part of the job. It’s a safety sensitive position.....sleeping on the job leads to a Group III with termination but if it’s a first offense the offense level is mitigated down to 10 days of unpaid suspension. The agency will always check to see if the sleeping is due to a medical issue. The discipline was consistent with the practice of the agency.” Lastly, he denied that he had any bias against the Grievant. On cross examination, Grievant asked the Supervisor if there was disciplinary action for taking pictures or recordings of anything in the control room. Supervisor responded that pictures can be taken on a state issued device and the supervisor admitted that he was the individual who took the picture of the Grievant while at her desk. He submitted them to the MOM along with his statement. Grievant questioned him about the timing of the incident as to whether it was before or after 3 a.m. and if there was a gap. He responded that it was approximately 3 a.m. Grievant then asked if TCs have knowledge of the cameras inside the control room as the timing of when the alarm sounded should have been between 2:30-2:36 a.m. Supervisor responded that the data alarm fell into the trash can after the alarm went off and that he dropped the binder after the alarm went off. He denied that he ever “slammed” the binder. Grievant then testified that she did not feel like the supervisor was giving a direct answer to her questions. Supervisor was asked how the data alarm fell into the trash when Grievant’s purse and the desk fan were in the same area. He responded that the data alarm fell into the trash and he dropped the binder after the alarm went off. Grievant asked if he was aware of any retaliation complaints against him and he said no. Grievant asked about Exhibit 2 statement as to how she looked while sleeping; that is, could she have been looking down at her phone. He said she appeared to be sleeping and that he did not see a phone.

GRIEVANT TESTIMONY

Grievant testified on her own behalf. Note that Grievant named some other employees but that she did not call them as witnesses because she “did not think of it” and she was concerned that they would be subject to retaliation. Grievant testified that she confided in the MOM regarding a misunderstanding of policy she had with the supervisor. Grievant was asking the MOM who could be in the control room. Grievant described times when a tow truck driver was allowed in the control room, who Grievant alleges is good friends with the supervisor often talking about football. Grievant testified that she asked multiple times as to who is allowed in the control room. Grievant testified that the supervisor “felt some kind of way because I asked about who could be in the control room.” Grievant described an incident where the tow truck driver bought pizza and drinks for everyone in the control room except Grievant then “within a week I am called into the office for sleeping. This was retaliation to get me off the project and the tow truck driver is not allowed to be up there. Supervisor kept antagonizing me and writing me up. On that day, I was looking down at my phone. I saw supervisor taking pictures in the control room.” Grievant stated the pizza incident happened about a week prior to the July 21, 2025, incident. Grievant felt like this was discrimination by management even though it was the tow truck driver (who is not an employee of the agency) who bought the pizza and drinks. Grievant then testified that she has photos of the supervisor sleeping while on duty. The undersigned asked her to pull them up on her phone. Grievant testified that she did not take the photos herself but that a coworker sent them to her. Grievant also testified that she did not report the photos of the supervisor in an alleged state of sleep. The photo was shown to all the parties. Grievant also showed pictures of her looking down at her phone, which she alleges is the same

type of view as the picture offered by the agency; that is, that on July 21, 2025, she was not sleeping but looking down at her phone. Grievant denies snoring. As far as Exhibit 2, which is her signed statement, she testified that it was mostly correct and that she did review and sign it. Grievant testified that she had a direct conversation with the MOM and she believed the pizza incident was an act of discrimination. Grievant was concerned regarding the response she got from the supervisor as to the policy of who can and cannot be in the control room stating that it was in the policy. The undersigned asked her to look through the policy in the binder to find the language regarding the control room. Grievant could not find it but reiterated that the policy was told to the employees on other occasions and that is how she is familiar with it. When asked by the undersigned what policy was articulated to her by supervisors, she could not articulate the policy other than to state that the tow truck driver is not allowed in the control room. Grievant has been with the agency for 4 years; of those 2 years as a TC. On cross examination, agency advocate asked when the pictures were taken and Grievant responded that the pictures were taken after the alarm went off. Grievant stated, "the alarm will not go off after 2:36 a.m....I turned it off....I never put my hands in the trash can." Grievant denies knocking over the alarm. Grievant testified that there should be a time stamp on the picture with the accurate time. Grievant testified that she observed the supervisor "sneakily" taking pictures of her. Grievant inquired as to the policy of taking pictures in the control room which was answered by the MOM and supervisor that pictures can be taken from a state issued phone. Grievant denied that the climate data alarm fell into the trash. Agency advocate asked the Grievant about her resignation letter. (Agency Exhibit 9) Grievant resigned from the agency effective October 13, 2025, because she felt like she was being "targeted and provoked." Agency advocate then asked her about Exhibit 8 regarding a 10-10-25 incident where Grievant was written up for sleeping while on duty by a different supervisor. Grievant explained that she felt like the two supervisors were working together because "some of it is not true." The undersigned asked the Grievant to read Exhibit 8 and describe what is not accurate. Grievant testified that she never heard the radio, nor did anyone call out her name, but she admitted that she was sleeping.

GRIEVANT FIRST WITNESS

Grievant called the MOM who acknowledged that the pictures were sent to him. He did not know how they were taken. As part of the investigation, he gathered statements but clarified that the tow truck driver was not an employee. The other TC he questioned as part of the investigation, corroborated the supervisor's account of the incident. As far as the inquiry by the Grievant as to who is allowed in the control room, he responded that he told her of a directive and that supervisors determined who is allowed in the control room. He further stated that although there is a policy to not record in the control room, pictures can be taken from a state issue phone. No personal devices can be used. MOM testified that employees and contractors are allowed into the control room. MOM denies any retaliation and testified that HR was involved in both of the Due Process incidents. MOM was made aware of the pizza incident but he did not investigate it as he advised it was not presented as a violation of policy but more as a "feelings" issue. Grievant stated that no tow truck drivers have ever been allowed in the control room until the supervisor allowed it. Grievant feels like the supervisor "broke a lot of rules." Grievant admitted she was the individual in the pictures from Exhibit 6 and 7 but alleged that she was looking at her phone and not sleeping. "I honestly not sure if I was sleeping or not but I believe I was on my phone."

GRIEVANT SECOND WITNESS

Grievant called the supervisor and asked about the climate data alarm and supervisor responded that the data panel was knocked into the trash can by the Grievant when Grievant woke up. Grievant asked if the alarm was the only thing that had been dropped since there were a fan and her purse on the desk as well and supervisor responded that the data alarm was knocked over by the Grievant when she woke up. Grievant then testified that she believed that if she knocked over the alarm she would have also knocked over the fan and the purse. Grievant mentioned another employee who could testify that the other supervisor in the 10-10-25 incident was not truthful and when asked why she did not subpoena them she responded that she “did not think to ask” and alleged retaliation. Grievant admitted that on the 10-10-25 incident she was sleeping. Grievant asked could she have been looking at her phone instead of sleeping. The supervisor clarified that he did not see Grievant on the phone nor did he see a phone in the area or Grievant holding a phone. Supervisor testified that he had a clear view of the Grievant and that there was no phone. Lastly, he denied retaliation. Grievant then showed pictures of the supervisor that she got from a coworker which Grievant stated is a depiction of the supervisor sleeping while on duty. The picture was a side view of his head.

At this point Grievant testified that she spoke to HR in the building where the hearing was held. Grievant testified that she spoke to this individual a few days after the pizza incident. Grievant further stated that this individual told Grievant that the pizza incident was an act of discrimination and that there had been about 3-4 retaliation complaints against the supervisor. Grievant alleges that the HR lady told her she was tired of all the complaints. The undersign asked why the pizza incident was a discriminatory act and Grievant responded that it was discriminatory because she was not given any pizza or drink while others in the control room did. Grievant alleges that the agency “normalizes sleep” and reiterated that she has seen the supervisor sleep. Grievant alleges that she has seen the supervisor sleeping multiple times particularly on July 21, 2025, around 1-2 a.m. However, she never reported him sleeping. The undersigned asked if Grievant wanted the individual in the building to testify on her behalf and Grievant said yes. Grievant went to the front desk to see if the witness could come to the hearing room. Front desk staff knew the witness and asked her to come down to the hearing room. The representative was available and willing to testify.

GRIEVANT THIRD WITNESS

Grievant called the individual who is a representative from the Civil Rights Division of the agency. Grievant asked about their conversation via phone in July 2025 about the pizza incident, her supervisor, and how everyone got pizza except Grievant. Remarkably, the representative remembered the phone call, names of individuals, and clarified that she told Grievant that the circumstances may have been an exclusion but was not defined as discrimination. The representative testified, “I remember this conversation. I did not use the word discrimination. I did not know what they were celebrating since there was some sharing and what the occasion was for the pizza. I told you it was not discriminatory and that you should talk to the supervisor. It was not discriminatory so I suggested you communicate with your chain of command.” Grievant questioned her about the 3-4 retaliation complaints and the representative responded that Grievant mentioned that Grievant talked to others regarding concerns. “You had mentioned to me that you had talked to some other people and other people told you that they had concerns about the supervisor. I told you to reach out to the leadership. I did hear from leadership that they were addressing your concerns.” The representative again

directed Grievant to utilize her chain of command as she could not comment on policy. Representative has been with the agency for 4 and a half years in the Civil Rights Division. There was no investigation of the pizza incident as a civil rights matter. The representative also testified that she-representative did reach out to Grievant's command to let them know that Grievant felt excluded.

CLOSING ARGUMENTS

In closing the parties agreed to submit post hearing statement due November 14, 2025, by 5 p.m. However, on November 14, 2025, the agency advocate emailed the undersigned informing that the agency had elected not to file a post hearing statement. The Grievant neither submitted a post hearing statement, nor responded to the email.

DISCUSSION

In agency Exhibit 11, the agency sets forth DHRM Policy 1.60 Employee Standards of Conduct: Employees covered by this policy are employed to fulfill certain duties and expectations that support the mission and values of their agencies and are expected to conduct themselves in a manner deserving of public trust. The Standards of Conduct are intended to illustrate the minimum expectations for acceptable workplace conduct and performance. Is it the policy of the Commonwealth to promote the well being of its employees by maintaining high standards of work performance and professional conduct with an overall emphasis on diversity, equity and inclusion that promotes equitable treatment of all employees. As part of the Standards of Conduct, employees who contribute to the success of the agency's mission will:

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Demonstrate respect for the agency and behave in a civil and professional manner towards agency coworkers, supervisors, managers, subordinate, students, and customers.
- Support efforts that ensure a safe and healthy work environment.
- Meet or exceed established job performance expectations.
- Make work related decisions and/or take actions that are in the best interest of the agency.
- Comply with the letter and spirit of all state and agency policies and procedures and Commonwealth laws and regulations.
- Work cooperatively to achieve work unit and agency goals and objectives.
- Always conduct themselves in a manner that supports the mission of their agency and the performance of their duties whether on duty or off duty.

Furthermore, the Standards of Conduct Attachment A describes Discrimination, Disparate Treatment or Hostile Work Environment as behaviors, conduct or decisions that are founded upon unjustified distinctions between people based upon the protected groups, classes, or other categories to which they belong or are perceived to belong. Legally protected classes or categories include race, ethnicity, national origin, age pregnancy, disability, religion, veterans, gender, gender expression or sexual orientation/identification. Disparate treatment involves intentional actions, decisions, or conduct directed towards a member(s) of a legally protected class that results in negative outcomes such as hiring practices. Hostile work environment is unwelcome or offensive behaviors that denigrate, alienate, intimidate or abuse/bully an individual (colleague, customers, and other stakeholders) such that performance or services

received are negatively impacted. (Agency Exhibit 11)

Grievant engaged in the behavior described on the Written Notice. Although Grievant testified that on July 21, 2025, she was looking at her phone and not sleeping, the supervisor testified that he never saw the Grievant holding a phone nor was a phone present in her vicinity. Grievant argues that the supervisor as well as other employees sleep while on duty. Grievant showed a picture of the supervisor sent to her by another individual in what she described as him sleeping. Grievant did not testify that she or anyone else heard him snoring or saw his eyes closed. There was no description as to whether or not he was in any form of movement or sitting still. Grievant mentioned other employees who could corroborate her allegations, but when asked as to why she did not subpoena them, Grievant responded that she “did not think of it” and was concerned about retaliation. In Exhibit 1, the supervisor gave a description of the Grievant stating “you had not moved for an extended period and I heard what appeared to be a faint snoring. I walked to your station and observed your eyes closed, breathing, and unresponsive-consistent with being asleep.” Interestingly, the Grievant admitted that she was sleeping in the 10-10-25 incident in which a different supervisor issued a Written Notice. In addition, Grievant’s own statement indicated she was not sure if she was sleeping or not. In this statement, Grievant states “when I do doze off, I never abandon my job. I always catch myself and wake myself up.” (Agency Exhibit 2)

Grievant’s behavior constituted misconduct. Both the MOM and supervisor testified to the job requirements and the safety element of this job which requires the employees to be alert and monitor cameras for emergencies. Grievant failed to meet the requirements as outlined in Exhibit 10 as well as to violate the DHRM Policy 1.60 of supporting efforts that ensure a safe and healthy work environment. (Agency Exhibit 11)

The agency’s discipline was consistent with law and policy, and the agency’s discipline does not exceed the limits of reasonableness. Grievant repeatedly argued that she felt like she was discriminated against, a victim of retaliation and targeted; however, Grievant did not articulate specifics as to what was the discriminatory act other than the pizza incident where she argues that pizza was given to everyone except her. Grievant testified that the pizza incident was a result of her inquiry as to who is allowed in the control room. That the retaliation is from her inquiry. Grievant’s third witness was a representative from the Civil Right division of the agency. The representative clearly told the Grievant that the pizza incident was not discrimination. The representative testified that it might be exclusion but clarified stating, “I remember this conversation. I did not use the word discrimination. I did not know what they were celebrating since there was some sharing and what the occasion was for the pizza. I told you it was not discriminatory and that you should talk to the supervisor. It was not discriminatory so I suggested you communicate with your chain of command.” The DHRM Policy 1.60 Standards of Conduct - Attachment A p.4 describes “Discrimination, Disparate Treatment or Hostile Work Environment” as behaviors, conduct or decisions that are founded upon unjustified distinctions between people based upon the protected groups, classes, or other categories to which they belong or are perceived to belong. Legally protected classes or categories include race, ethnicity, national origin, age pregnancy, disability, religion, veterans, gender, gender expression or sexual orientation/identification. Disparate treatment involves intentional actions, decisions, or conduct directed towards a member(s) of a legally protected class that results in negative outcomes such as hiring practices. Furthermore, the agency’s Exhibit 12 under the EEO portion states “...provides equal opportunity to all employees...without regards to race, sex, color, national origin, religion....goal is to keep the workplace free of all

unlawful discrimination to include harassment and retaliation....” Grievant never testified to any of the above. Grievant felt like she was discriminated against because she was not included in the pizza event and Grievant alleges that she was not included because she asked about the policy of who was allowed in the control room.

MITIGATION

The Grievant requests mitigation of the discipline as Grievant did not believe that the discipline was warranted. Grievant testified that she felt like she was being targeted. Grievant argues that she was a recipient of retaliation and discrimination. Note that the Grievant voluntarily resigned from the agency. (Agency Exhibit 9)

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 undersigned finds by a preponderance of the evidence that the Grievant engaged in the behavior described on the August 9, 2025, Written Notice and the behavior constituted misconduct. (Agency Exhibit 3) The agency witnesses testified credibly.

Grievant’s conduct constituted misconduct.

The agency’s discipline was consistent with law, policy, and properly characterized as a Group III. The testimony of the MOM and the supervisor supported that all employees are treated equally in the same fashion as far as discipline. 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. During the hearing, mention was made of a similarly situated employee who was caught sleeping while on duty and that he was given Group III with 10 days of unpaid suspension. The MOM testified that this employee was asleep during a radio check. As a result, this employee received a discipline of 10 days of unpaid suspension. The MOM testified that there are very few incidences of employees sleeping on the job, but that the Grievant's incidences and this other employee were consistent in the discipline. Grievant argues that the supervisor as well as other employees sleep during work hours. Other than her stating this, there was no documentary evidence to support her claim other than 2 photos sent to her by another individual where Grievant described the pictures as depicting the supervisor sleeping. Agency's Exhibit 5 Grievant states, "my supervisor is lying on me and I feel like I'm being targeted and retaliated by him....I've witnesses him watch other TCs sleep on numerous occasions and never wrote others up. I've written statement proving a lie within the statement. I feel like he is upset about a previous incident, I discussed it with MOM and I honestly feel like he told my supervisor to inspire the retaliation...." Grievant was asked by the undersigned about the other TCs and why she did not subpoena them. Grievant responded that she "did not think of it" and that she felt like they would suffer retaliation for testifying.

There are no aggravating factors to consider as none were addressed during the hearing.

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:

1. That agency employed the Grievant as a Traffic Controller.
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, that the behaviors constituted misconduct, significantly impacted the agency's services and operations and that the agency's discipline was consistent with law and policy.
3. The Grievant violated agency policy.
4. The Agency Written Notice, issued on August 9, 2025, stated a Group III offense of DHRM Policy 1.60 with 10 working days of unpaid suspension is warranted and consistent with law and policy. The Grievant resigned after the second incident of alleged sleeping. Note the Grievant admitted to sleeping during the second incident.
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.

The Grievant received adequate notice. The agency has consistently applied discipline among similarly situated employees. The disciplinary action was free of improper motives. Other than the Grievant saying that she felt that she had been treated unfairly and targeted, there was no evidence to support this claim. The Civil Rights representative clearly testified that she told the Grievant that the pizza incident was not an act of discrimination.

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

So, Ordered.

Dated November 21, 2025.

Polly Cheng/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 14th Street, 12 Floor
Richmond, Virginia, 23219

Or send email to:

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 have 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,