



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12355

Hearing Date: December 10, 2025

Decision Issued: December 17, 2025

PROCEDURAL HISTORY

On August 18, 2025, Grievant was issued a Step 4 – Termination, Performance Improvement Counseling Form for:

displaying unprofessional and disruptive behavior, the use of profanity or offensive language and for making a threatening comment towards another employee which is a violation of the Employee Standards of Performance and Conduct Medical Center HR Policy, Behavioral Code of Conduct Medical Center Policy and ASPIRE Values Health System Policy.¹

On August 21, 2025, Grievant filed a grievance to challenge the University's action. On September 15, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On December 10, 2025, a hearing was held remotely using a video conferencing platform.

During the hearing, Grievant offered to provide as evidence a recording of a July 21, 2025, meeting between Grievant, Director, and University Advocate. The recording was not provided by the deadline for the exchange of exhibits. The University objected to the inclusion of the recording into the record. Grievant argued that the recording was relevant as evidence that the University did not interview the employees that Grievant identified as potential witnesses to the events of July 3, 2025. The Hearing Officer did not admit the recording into the hearing record. The Grievant had the opportunity during the hearing to present the testimony of the employees she identified as witnesses.

¹ University Ex. 1.

APPEARANCES

Grievant
University Advocate
University Party Designee
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Step 4 – Termination Performance Improvement Counseling Form?
2. Whether the behavior constituted misconduct?
3. Whether the University's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the University 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:

Prior to her dismissal, Grievant was an Anesthesia Technician in a Department of the University of Virginia Medical Center Facility. Grievant had been employed by the University for more than five years.

Anesthesia technicians work in shifts at the Facility. Employees assigned to the day shift work from 6:00 am to 2:30 pm and employees assigned to the evening shift work from 2:00 pm until 10:30 pm. The shifts overlap slightly so that the technicians can exchange information as needed to ensure continuity in room support and patient care. The Facility has a Work Room utilized by the anesthesia technicians. The Work Room contains two adjoining areas separated with an archway allowing movement between the two areas. One area of the Work Room is a smaller Supply-Area that includes a door to

enter the Work Room.² The other area of the Work Room, the Board-Area, is larger and contains the work assignment board for the anesthesia technicians.³ Witnesses testified that the technicians coming onto their shift are generally required to report to the Work Room by the beginning of their shift to review their room assignments and to receive information from the anesthesia technicians that are ending their shifts. Anesthesia technicians ending their shifts also report to the Work Room as part of the process to close out their shifts.

On October 24, 2024, Supervisor provided informal counseling to Grievant regarding Grievant's complaints about her shift assignments and allegations that her assignments were unfair. Supervisor also counseled Grievant to approach him privately if she had any issues rather than voicing opposition to her assignments in front of her co-workers.⁴

Sometime during December 2024, Grievant advised Director and CRNA of her concern that Supervisor was unfairly requiring Grievant to provide coverage for other anesthesia technicians during their breaks. Grievant did not believe that Supervisor was requiring other anesthesia technicians to cover breaks.

On February 17, 2025, Supervisor held a disciplinary pre-determination meeting with Grievant regarding an incident that occurred on January 10, 2025, when Grievant refused to cover another anesthesia technician's lunch break.⁵ Following the pre-determination meeting, Grievant sent an email to a University senior employee relations consultant (the University's Advocate) explaining that Grievant refused to cover the other anesthesia technician's lunch break because she believed that the assignment was unfair and that her Supervisor showed favoritism toward other employees. In her email to the University Advocate, Grievant also stated that:

I'm the one who should get HR for the favoritism he played and for the racist comments he made about the country I was visiting for vacation and about he is getting involved for so many things that's not his business. But I was acting like an adult and keep it to myself didn't want problem or drama but from todays on any inappropriate comments or behavior he will do towards me I will call HR and complain I will keep everything in records.⁶

On February 20, 2025, University Advocate replied to Grievant's email as follows:

Based on your concerns, please let me know if you would like me to share your email with [Director].⁷

² University Ex. 7C-1, 7C-3, and 7C-4.

³ University Ex. 7C-2.

⁴ University Ex. 6B-2. The University described this counseling as a "documented counseling." The counseling was "documented" by a single page of what appeared to be Supervisor's typed notes of the meeting. During the hearing, Supervisor testified that the counseling occurred on October 24, 2024, and the reference to October 23, 2024, was his typographical error.

⁵ University Ex. 6A and Grievant Ex. 6.

⁶ Grievant Ex. 6.

⁷ Grievant Ex. 6.

Grievant responded that same day as follows:

[Director] knows about it. I been in her office different times complaining about his behavior against me for the break reason and for different reason. I just don't understand why there is no problem when I'm not there and the other 3 days and the breaks got covered without me I use to work with him only two days. Trust me [University Advocate] the problem is not the break coverage. And when I had the argument with him I remember that's no body was in the work room was just me and him. Thats why I refused to have the conversation with him and I ask him to have [Director] in our meeting. [Supervisor] want me out of the department. Now my shift change and he will see me only one day a week I will help with the break coverage. I don't want to give him any reason to attack me again. Thank you for your time and what you do for the our community.⁸

On March 10, 2025, Grievant received a Step-2 Formal Counseling for insubordination, refusing or failing to execute or perform responsibilities as reasonably requested, assigned, or directed, and for disruptive and unprofessional behavior in the workplace related to the January 10, 2025, incident.⁹

On July 3, 2025, Supervisor asked Tech-1 to schedule the room assignments for the anesthesia technicians coming onto the evening shift that day. After completing the schedule, Tech-1 had to revise the schedule because one of the anesthesia technicians on the evening shift called out for the shift. Tech-1 assigned Grievant to [Cardiac Rooms EE and FF, Lab room 3, and main OR rooms V and W]. Tech-1 and Supervisor testified that Grievant was provided with those assignments on that day due to patient needs and available staff that day and because Grievant was fully trained and capable of running a cell saver without supervision by another anesthesia technician. Supervisor approved the schedule and assignments prepared by Tech-1.

Sometime shortly before 2:00 pm, Grievant and Tech-8 arrived in the Board-Area. Tech-1, Tech-2, and Tech-4 also were in the Board-Area at that time.

Grievant reviewed the schedule and room assignments. Grievant believed the room assignments she received were unfair because Grievant was working an overtime shift to "help out" on July 3, 2025, but her room assignments constituted a heavy workload. Grievant believed that the rooms assigned to her were more appropriate for staff regularly scheduled to work that day. Grievant asked who prepared the schedule and Tech-1 stated that she had prepared it.

Grievant questioned Tech-1 about the room assignments and expressed concern about Grievant's assignments. Tech-1 told Grievant that she was needed to work in the rooms assigned and that Supervisor had approved the schedule. Grievant and Tech-1 continued to disagree about the schedule. At one point, Tech-1 told Grievant that if she

⁸ Grievant Ex. 6.

⁹ University Ex. 6A.

did not like the schedule, she could go home and Grievant told Tech-1 that she was not her supervisor and could not tell her what to do. Grievant told Tech-1 something along the lines of “shut it” (according to Grievant) or “shut your mouth” (according to Tech-1). Witnesses described Grievant as “upset” and speaking in a voice that was raised louder than Grievant’s usually loud voice.

There were varying recollections among the witnesses regarding how the exchange between Tech-1 and Grievant concluded and what happened next.

Tech-1 testified that she attempted to apologize to Grievant for telling Grievant she could go home if she did not like the schedule, but according to Tech-1, Grievant did not want to hear her apology and continued to tell Tech-1 that she was not her manager and could not tell her what to do. Tech-1 testified that after Grievant would not hear her apology and continued to be upset, Tech-1 left the Board-Area. Tech-1 recalled that she called Supervisor after she left the Work Room and she then tended to her assigned rooms. Records from the University’s radio system showed that Tech-1 called Supervisor at 2:01 pm. Supervisor and Tech-1 testified that Tech-1 told Supervisor that Grievant was upset about the room assignments.

Tech-2 recalled that she “pulled [Tech-1] out of the Board-Area to calm her down” and that they both later returned to the Work Room.

According to Tech-6, Tech-8, and Grievant, Grievant and Tech-8 exited the Work Room first and shortly after Tech-6 arrived at the Work Room. Tech-8 recalled that as they left the Work Room, he observed that Tech-1 was leaning against a counter in the Work Room and Tech-2 was telling her to call Supervisor. After they exited the Work Room, Tech-8 went to sign-in to his assigned rooms.

Grievant testified that after she exited the Work Room, she walked to Director’s office. According to Grievant, when she realized Director was not in her office, Grievant attempted to call Director using the University’s radio system. Grievant then realized that Director was not at the Facility. Grievant said that, as she stood outside of Director’s office, she also attempted to call Supervisor over the University’s radio system, but Supervisor did not take her call. Records from the University’s radio system showed that Grievant attempted to call Supervisor at 2:02 pm. The records showed that Grievant attempted to call Director at 2:05 pm and then Grievant attempted to call Supervisor again also at 2:05 pm.¹⁰ Grievant and Supervisor both testified that Supervisor did not answer Grievant’s radio calls. Supervisor testified that he did not answer Grievant’s calls because he believed they were about the room assignments, and he was in the middle of work that did not provide an appropriate opportunity to discuss the assignments.

Grievant also called the University’s human resources department at approximately 2:10 pm. According to Grievant, she spoke with someone who took her information to pass along to an employee relations staff member. The phone call lasted more than two minutes.¹¹ According to Grievant, after she left Director’s office, she walked

¹⁰ Grievant Ex. 8 and 8-1.

¹¹ Grievant Ex. 9.

to a part of the Facility where she had more reliable cellular service in order to place the call to the human resources department.

Tech-5 spoke with Supervisor using the University's radio system at 2:14 pm. Tech-5 saw Grievant while he was speaking to Supervisor and knew that Grievant was trying to reach Supervisor, so he allowed Grievant to use his radio to speak to Supervisor. Grievant attempted to express her concerns about her work assignments to Supervisor, but Supervisor told Grievant that he would not discuss her concerns at that time and discontinued the call. Based on the evidence, Grievant immediately attempted to call Supervisor on the University radio system again at 2:15 pm and Supervisor declined the call.¹² Supervisor was assisting Tech-8 with the operation of a cell saver when Supervisor accepted the call from Tech-5 and spoke briefly with Grievant. After Supervisor discontinued the call with Grievant, Supervisor continued to assist Tech-8.¹³

According to Tech-1, before leaving for the day, she returned to the Supply-Area to retrieve an item that was needed in one of her assigned rooms. Tech-1 testified that Grievant was already in the Supply-Area when she entered. Tech-1 recalled that Tech-3 also was in the Supply-Area. According to Tech-1, Grievant looked at Tech-1 and said "Payback is a b*tch" and something along the lines of "I'm going to get you" or "I'm going to get it."¹⁴ Tech-3 testified that she was in the Supply-Area and heard Grievant tell Tech-1, "Karma is a b*tch, I got you." Tech-1 and Tech-3 both testified that they considered Grievant's statement to be a threat to Tech-1. Tech-1 testified that she did not know Grievant outside of work and did not know what Grievant might do to "get" payback on Tech-1.

Tech-1 recalled that after she left the Supply-Area she dropped off the item she had retrieved and she sent a text message to Supervisor's cell phone. The evidence showed that Tech-1 sent a text message to Supervisor at 2:18 pm. The text message that Tech-1 sent to Supervisor at 2:18 pm stated the following:

[Supervisor] she just [threatened] me saying payback is a b*tch
And that she is gonna get it.¹⁵

After they finished operating the cell saver, Supervisor and Tech-8 returned to the Work Room. While Supervisor was in the Work Room, Grievant also entered the Work Room and spoke with Supervisor expressing her concerns about her room assignments. Supervisor recalled that Grievant was still upset, animated, and using a raised voice. Tech-8 described Grievant as still "clearly unhappy."

Supervisor testified that it was later, after his discussion with Grievant in the Work Room, that he realized Tech-1 had sent him a text stating that Grievant had threatened Tech-1.

¹² Grievant Ex. 8 and 8-1.

¹³ See University Ex. 5B.

¹⁴ Agency Ex. 5A and 7A.

¹⁵ Agency Ex. 7A-1.

Tech-1, Supervisor, and Director testified that on July 3, 2025, Tech-1 sent an email to Supervisor and Director describing her interactions with Grievant that day. Although the University did not provide a copy of that email in its exhibits, Tech-1, Supervisor, and Director testified that the email Tech-1 sent to Supervisor and Director contained the same information as that Tech-1 provided in an email that she sent to the University's employee relations department at 2:25 pm on July 7, 2025. Supervisor and Director testified that an employee relations staff person instructed Supervisor to ask for statements from the employees that Tech-1 identified as having observed the incident with Grievant.

The email Tech-1 sent to the University's employee relations staff on July 7, 2025, stated the following:

I just wanted to let you know what happened on July 3rd. I made the schedule for evening shift and put [Grievant] in cardiac due to the fact that I needed an experienced tech in those rooms. Well when she saw it she was hot, raised her voice and started saying that she isn't part of the numbers and that she shouldn't be in cardiac rooms. I explained to her that I needed her there and that [Supervisor] told me it was okay to put her in there because we need the experience tech there. Then she still upset and loud and saying that I needed to shut my mouth. I then said all I can say is that if you don't like it then go home. Granted after I said that I knew I shouldn't have and tried to apologize. She kept going off and saying I'm not the manager and I can't tell her what to do. I know I'm not and I did not mean to say it that way either.

I left the workroom and she still upset and speaking to [Tech-2] and [Tech-6] was there as well saying things. When I walked back in the workroom she was making her turn over bags and she looked at me and said, "Payback is a b*tch. And I'm gonna get you." I didn't say anything after that but I felt like that is a threat to me.

I have witness who witnessed the first [part] which was [Tech-4] and [Tech-2]. Then the threat was witnessed by [Tech-3].

I know I shouldn't have said, "If you don't like it then go home." I know I should have been considerate and not say it in the heat of the moment. But I don't want someone upset with me and telling me to shut up when I'm doing something that was asked of me. I don't ever have any issues with anyone else when I make the schedule than her. I don't want to have problems on the team because in the end we are all here for the patients but I also don't want to feel threatened and not knowing what she is gonna do to me makes me feel very uncomfortable.

As well she has been calling me a b*tch behind my back to other team members.¹⁶

¹⁶ Agency Ex. 5A-1 and 5A-2.

Following Supervisor's request on July 7, 2025, that Grievant submit a statement regarding the incident between Grievant and Tech-1, Grievant sent an email to Supervisor and Director entitled "Workplace Harassment and Unfair Treatment Concerns." Grievant's email stated the following:

I am writing to formally express my concern regarding ongoing issues of unfair treatment and harassment that I have experienced in the workplace.

On Monday, June 30th, while Tech-1 was making the schedule, she asked the morning shift staff who stayed for overtime which assignments they preferred for that evening she do it always she let them pick where they want to be when they are in overtime. Most were allowed to choose their assignments. When I asked if I could be placed upstairs in the offsites section, she said no, explaining that she wanted to keep the evening shift in their rotation, and since I was an extra person, I shouldn't rotate with them like I do on weekends with [Tech-7].

On Wednesday, July 2nd, while working overtime, I went to the workroom to get my assignment and wrote down my rooms. [Tech-1] and [Tech-2] began mocking the expression on my face and laughing at me, seemingly because I had more rooms than most of people who were regularly assigned to that shift. [Tech-2] said "look at that's b*tch she is so mad and she was laughing. I heard it while I was in the other side of the workroom. I did not respond to their comments, but they continued laughing, clearly trying to provoke a reaction. I left the workroom to complete my tasks professionally.

The next day, I was assigned to cardiac rooms also when I was on overtime. I asked [Tech-1] why I was there, given her earlier statement that I wasn't part of the regular evening rotation. She replied that it was part of my rotation. When I reminded her of what she told me the other day about the rotation part she said, "That's your assignment. If you don't like it, go home." I responded that she is not my supervisor or manager and should not be telling me to leave work.

This type of behavior is not new. I've noticed similar treatment toward other coworkers, such as [Tech-6]. I have personally overheard [Tech-2] and others telling [Tech-1] to assign him to specific rooms to upset him. This type of targeting and harassment creates a hostile and toxic work environment.

I am requesting that this matter be looked into seriously. I am committed to doing my job professionally and respectfully and I expect to be treated with the same respect. No one should feel bullied or intimidated at work. ...¹⁷

¹⁷ Grievant Ex. 7.

On July 9, 2025, Grievant sent Director an email regarding “Formal Concern: Workplace Harassment, Bullying, Targeting, and Unfair Treatment Involving [Supervisor].” In her email, Grievant stated that she was writing to

formally raise serious concerns about ongoing harassment, targeting, and inappropriate behavior I have experienced in the workplace – much of which involved [Supervisor]. These issues have persisted since before the start of this year and have now escalated to a point where I can no longer remain silent.¹⁸

Grievant alleged that Supervisor had supported targeting behavior from certain employees while overlooking unprofessional conduct and inappropriate comments made by others. Among other things, Grievant alleged that Supervisor and Tech-2 had warned Tech-8 (Grievant’s spouse) that if he traveled to Morocco, that “[Grievant’s] people” might kill him and that he should stay near a U.S. embassy. With respect to the events of July 3, 2025, Grievant stated the following:

On July 3rd, [Supervisor] made another inappropriate comment to [Tech-8], saying he was “going to heaven” just for marrying me, implying that I was hard to live with. These remarks were not only unprofessional, but also personally degrading and disrespectful.

Additionally, I want to revisit the break coverage issue from seven months ago, which I now believe may have been a deliberate setup to get me terminated. It appears that [Supervisor] is attempting something similar now – assigning me unfair tasks or creating unnecessary conflict in hopes that I will refuse and provide grounds for disciplinary action.

On July 3rd, I tried to discuss my concerns regarding [Tech-1’s] scheduling decision with [Supervisor]. At first, he refused to speak with me. When he eventually agreed, he sided with [Tech-1] and told me, “if you don’t like your assignment, go home.” I want to be clear: I never refused any assignment. I explicitly stated that my concern wasn’t about the task, but about the way I was being treated. I reiterated that I was fully prepared to carry out my duties and provide patient care.¹⁹

Grievant further alleged that:

These repeated actions by [Supervisor] have created a toxic and unsafe work environment. I no longer feel comfortable voicing concerns, as I fear retaliation, gossip, or being dismissed entirely.

I am bringing these matters to your attention in the hope that meaningful steps will be taken to restore fairness, respect, and professionalism within

¹⁸ Grievant Ex. 1.

¹⁹ Grievant Ex. 1.

our workplace. No employee should have to endure harassment, cultural insensitivity, or favoritism.²⁰

On July 10, 2025, the University placed Grievant on administrative leave to allow the University time to investigate the allegations that Grievant had engaged in unprofessional conduct in the workplace.”

Director testified that Supervisor was removed from the investigation into Grievant’s conduct because of the allegations Grievant made about Supervisor’s conduct that were the subject of a separate investigation. According to both Director and Supervisor, at some point on July 10, 2025, Director advised Supervisor that he would not be a part of the investigation into the allegations against Grievant.

Director testified that she worked with the University’s employee relations staff to investigate the allegations regarding Grievant’s conduct on July 3, 2025. Director testified that following the investigation, she consulted with the employee relations staff and determined that discipline at the Step 4 level with termination was appropriate.

On August 18, 2025, the University issued Grievant, a Step 4 – Termination, Performance Improvement Counseling Form for:

displaying unprofessional and disruptive behavior, the use of profanity or offensive language and for making a threatening comment towards another employee which is a violation of the Employee Standards of Performance and Conduct Medical Center HR Policy, Behavioral Code of Conduct Medical Center Policy and ASPIRE Values Health System Policy.²¹

CONCLUSIONS OF POLICY

The University Medical Center has adopted an Employee Standards of Performance and Conduct policy.²² The Medical Center expects each employee to perform their duties and conduct themselves in a manner which enables all employees to work together in achieving Medical Center goals. The Employee Standards of Performance and Conduct policy sets forth the expectation that all employees shall:

- Treat others with respect, courtesy, and dignity, and shall conduct themselves in a professional and cooperative manner.
- Adhere to all Medical Center policies; Medical Center and departmental clinical practice guidelines, protocol orders and standard operating procedures; and to such Health System and University policies as applicable.
- Adhere to the [University] Code of Ethics.
- Perform job duties as assigned by the supervisor, spending the workday efficiently and effectively performing such duties while demonstrating an awareness of priorities.

²⁰ Grievant Ex. 1.

²¹ University Ex. 1.

²² See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. 3A).

- Perform their tasks safely and responsibly in accordance with department and supervisory expectations.
- Maintain professional boundaries with patients, their families, and Medical Center employees and other colleagues.

The Employee Standards of Performance and Conduct policy also sets forth the University's progressive performance improvement counseling process that the University utilizes to address deficient performance and misconduct. The University's progressive performance improvement counseling steps include, informal counseling (Step One), formal written counseling (Step Two), performance warning and/or suspension (Step Three), and termination (Step Four). Serious Misconduct generally will be addressed at Step 2 or Step 3 and Gross Misconduct generally will be addressed at Step 4 and result in termination.²³

Gross Misconduct refers to acts of omissions having a severe or profound impact on patient care or business operations. Gross Misconduct normally will warrant termination.²⁴

Whether Grievant engaged in the behavior and whether the behavior constituted misconduct

The University asserted that Grievant was disciplined and terminated from employment for making a threatening statement to Tech-1 on July 3, 2025.

Grievant generally denied that she made a threatening statement to Tech-1 on July 3, 2025. Grievant argued that the written statements and testimony provided by the University's witnesses were inconsistent and not credible.

This Hearing Officer found the testimony of Tech-1 to be credible and consistent. Tech-1 testified that sometime after her initial argument with Grievant, she returned to the Supply-Area. According to Tech-1, it was at that time that Grievant told her that "payback is a b*tch" and either "I'm going to get it" or "I'm gonna get you." Tech-1's testimony was consistent with the text message she sent to Supervisor following the incident and with her emailed statement to the University's employee relations department on July 7, 2025. Although not identical, Tech-1's testimony was generally consistent with the statement Tech-3 provided regarding her observation that Grievant made a threatening statement to Tech-1.²⁵ Tech-1 testified that she was concerned by Grievant's statement and considered it to be a statement of threat to her.

Whether the statement was "payback is a b*tch, and I'm gonna get you" or "payback is a b*tch, and I'm going to get it," the statement reasonably was interpreted as a threat when considered in the context of Grievant's prior interaction with Tech-1 when Grievant was "upset" and raising her voice to argue with Tech-1 about what Grievant

²³ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. 3A).

²⁴ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. 3A).

²⁵ Agency Ex. 5D.

considered to be an “unfair” work assignment. Such statements are never acceptable in the workplace and constitute misconduct.

This Hearing Officer does not dismiss or doubt the testimony of Grievant and her witnesses that the room assignments Grievant received on July 3, 2025, represented a heavy workload that may have been perceived as unfair for someone working overtime to “help out” on the evening shift. This Hearing Officer also does not doubt or minimize the frustration that Grievant may have felt at receiving the room assignments from Tech-1, a peer, and then being unable to immediately discuss her concerns with Supervisor or Director. Grievant’s concerns and frustrations might explain the context of her behavior, but those concerns and frustrations do not justify or excuse such behavior.

The University has met its burden of proving by a preponderance of evidence that Grievant engaged in misconduct when she made a threatening statement to Tech-1 on July 3, 2025.

Whether the University’s discipline was consistent with law and policy

The Employee Standards of Performance and Conduct policy provides that an employee may be terminated (issued Step 4 performance improvement counseling) when their Gross Misconduct has a significant or severe impact on patient care or Medical Center operations.²⁶

The policy defines “Gross Misconduct” as acts or omissions having a severe or profound impact on patient care or business operations. The policy also makes clear that threatening an employee is “Gross Misconduct.”²⁷

In this case, Grievant engaged in Gross Misconduct when she made a threatening statement to Tech-1. By its nature, and as defined by the University, such behavior is disruptive and has a significant impact on business operations.

The University’s discipline was consistent with law and policy.

Retaliation and Discrimination Defenses

Grievant argued that the University’s actions were discriminatory and retaliatory. The University showed that it had business reasons for its discipline of Grievant based on Grievant’s threatening statement to Tech-1 and Grievant has not met her burden of proving that those reasons were mere pretext for discrimination or retaliation.

Due Process

Grievant argued that the University did not properly investigate the allegations against her and that the University made up its mind without giving proper consideration to her response to its allegations, including speaking with potential witnesses identified

²⁶ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. 3A).

²⁷ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. 3A).

by Grievant. Grievant essentially argued that the University did not afford her with sufficient due process. The hearing process cures any such deficiency. Grievant had the opportunity to present any evidence and arguments she wished during the hearing.

Eligibility for Rehire

Grievant appeared to argue at one point that the University should not prohibit her from being rehired by the University in another University department or facility. Grievant provided no evidence, however, to show that the University violated law or policy with respect to its determination regarding Grievant's eligibility for rehire.

Mitigation

Virginia 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...."²⁸ 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.

Other Issues

During the hearing witnesses for both parties described their observations of behavior in the workplace that were outside the scope of this proceeding, but which, if true, may not meet expectations of professionalism and civility in the workplace. Some of the witnesses' observations and allegations may have been investigated and addressed by the University through its investigation of the allegations Grievant made on July 9, 2025. The University may wish to consider whether further investigation or measures (including training) are warranted to ensure professionalism and civility among employees in the Department.

DECISION

For the reasons stated herein, the University's issuance to Grievant of a Step 4 – Termination Performance Improvement Counseling Form with termination is **upheld**.

²⁸ Va. Code § 2.2-3005.

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, 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.²⁹

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

²⁹ 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.