

**COMMONWEALTH OF VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**DIVISION OF HEARINGS**

In the matter of: Case No. 11763

Hearing Officer Appointment: November 16, 2021  
Hearing Date: February 23, 2022  
Decision Issued: March 11, 2022

PROCEDURAL HISTORY AND ISSUES

The Grievant requested an administrative due process hearing to challenge the issuance of 3 Written Notices, each issued September 30, 2021, by the Virginia Department of Motor Vehicles (“DMV” or the “Department” or the "Agency"):

1. (Written Notice 1) Group III Written Notice- Violations of Written Notice Offense Codes 13, 14, 37, 51, 56, 77, & 99
2. (Written Notice 2) Group III Written Notice - Violation of Code 99
3. (Written Notice 3) Group II Written Notice - Violation of Codes 13, 56 & 99

Pursuant to the Written Notices, the Grievant’s employment was terminated September 30, 2021.

The Grievant has raised the issues specified in his Grievance Form A and is seeking the relief requested in his Grievance Form A, including removal of the Written Notices from his record, reinstatement, back pay, restoration of benefits and attorney’s fees.

In this proceeding the Agency bears the burden of proof and must show by a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. Of course, the Grievant bears the burden of proof concerning any affirmative defenses.

The Grievant, the Grievant's attorney, the Agency's attorney and the hearing officer participated in 2 prehearing conference calls at 2:00 pm on November 23, 2021, and at 11:00 am on December 20, 2021.

Pursuant to the Amended Scheduling Order entered January 21, 2022 (the "SO"), incorporated herein by this reference, the hearing was held in person at DMV, with some witnesses appearing remotely. The hearing officer recorded the hearing.

At the hearing, the Grievant was represented by an attorney and the Agency was represented by its attorney. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely exhibits 1-29 in the Agency's exhibit binder and exhibits 1-25 and a flash drive from the Grievant.<sup>1</sup> Both parties submitted post hearing briefs.

EDR issued Compliance Ruling 2022-5341 on January 7, 2022.

#### APPEARANCES

Representative for Agency  
Grievant  
Legal Counsel  
Witnesses

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<sup>1</sup> References to the agency's exhibits will be designated AE followed by the exhibit number. References to the Grievant's exhibits are designated GE followed by the exhibit number.

## FINDINGS OF FACT

To the extent the Findings of Fact contain conclusions of law, or the Conclusions of Law are findings of fact, they should be considered without regard to their given labels.

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as a Senior Special Agent in the Law Enforcement Division of DMV. AE 1 at 1.
2. The Grievant was employed by DMV as a law enforcement officer for over 10 years. AE 4 at 4. As a sworn law enforcement officer at DMV, Grievant had the authority to carry and discharge a weapon, arrest citizens and take away their liberties, drive a state cruiser, and testify under oath in court. AE 9.
3. As a law enforcement officer, the Grievant was charged with maintaining public trust and public safety. The Grievant was required to consistently use good judgment in enforcing laws and regulations; and to ensure that actions taken were appropriate for the circumstances. AE 9 at 3.
4. According to the Grievant's job description, he "**MUST** be able to render credible testimony in a court of law as well as any other forum required by job responsibilities." AE 9 at 2 (emphasis in original).
5. His job requires that he, "Appears for court hearings or administrative proceedings" and that his "[t]estimony is truthful and unbiased; is delivered in an articulate and understandable manner." Id. at 4.

6. In short, as a law enforcement officer, the Grievant was expected to exhibit exemplary judgment, conduct and ethics and to ensure that all applicable laws, Agency policies, guidelines, practices and rules were followed.
7. The Grievant's Employee Work Profile (EWP) stresses that the Grievant was required to be skilled at proper use and application of equipment commonly used in law enforcement to include firearms, less lethal force devices, and "safe operation of a motor vehicle under a variety of conditions including emergencies." Agency Exhibit 9 at 2.
8. The Agency can and did consider the "unique impact that a particular offense has on the agency." AE 5 at 23. The "unique" impact in this case concerned the Grievant's role as a member of law enforcement, where law enforcement, particularly in the current environment, must operate with the highest level of integrity and public trust, and because of *Brady v. Maryland*.
9. The compelling, uncontroverted testimony of the Assistant Commissioner and the HR Analyst Sr., as reinforced by the "Guide" to the Virginia Association of Chiefs of Police and the Commonwealth's Attorneys, is that *Brady v. Maryland* requires that "Officer integrity underlies every criminal investigation and prosecution. It is a critical component to every case." AE 27 at 1. The Guide adds, "If there is an issue with an officer's integrity, it must be addressed and possibly disclosed under *Brady v. Maryland* and related cases." Id.
10. The consequences of failure to disclose are significant, as explained by the Guide: "Failure to disclose material issues can have serious consequences, such as wrongful convictions, the reversal of otherwise valid convictions, the exclusion of

evidence, court sanctions, civil liability, and the accompanying embarrassment and distrust for all involved.” Id.

11. The Guide includes “[p]otential Brady [i]ssues” requiring a discussion about Brady with the prosecutor such as (a) intentional false or materially inaccurate statements or reports; (b) sustained findings of misconduct after an internal investigation related to untruthfulness or dishonesty; and (c) sustained findings of misconduct, on or off-duty, related to dishonesty.
12. This concern is not theoretical or academic. The Agency provided examples of situations where the Agency has received Brady requests, including for the Former Special Agent in Charge (“SAC”) and the Assistant Special Agent in Charge (“ASAC”), relating to evidence of “impeachment” information. AE 28.
13. The Grievant understood and agreed pursuant to his EWP that DMV would monitor his driving record. AE 9 at 5.
14. The Grievant received significant training concerning his position and the Grievant also had significant experience as a law enforcement officer with the Federal Government prior to joining to DMV.

**WRITTEN NOTICE 1:**

15. On March 4, 2020, the Grievant took two sedatives at one time at 8:15 am, after arriving at the medical facility where he had a MRI.
16. The Grievant’s doctor prescribed the medication for the Grievant to “Take 1 Tablet By Mouth Twice Daily.” GE4.
17. Contrary to the doctor’s prescription, the Grievant took it upon himself to take two tablets by mouth once daily.

18. The same prescription instructs to “use this drug as ordered by your doctor.” Id. It advises to “get medical help right away if you feel very sleepy or dizzy.” It further advises, “Avoid driving and doing other tasks or actions that call for you to be alert until you see how this drug affects you.” Id.
19. While the Grievant may have thought he was familiar with the drug because he had taken it previously, his own prescription cautions that as people get older, the side effects could change. His prescription states, “If you are 65 or older, use this drug with care. You could have more side effects.” Id. It states “very bad dizziness or passing out” as possible side effects of the medication. Id. It advises the user, “Call your doctor or get medical help if any of these side effects or any other side effects bother you or do not go away: Feeling dizzy, sleepy, tired, or weak.” Of course, doubling the prescribed dose exacerbated the problem.
20. Grievant chose to return home following the procedure after taking double the prescribed dose of the medication, to get into his state cruiser, and drive 1.25 hours to work until approximately 4:30 pm. He then recklessly got into his state cruiser to drive the approximately 1.25 hours home. Not surprisingly, the Grievant’s journey was interrupted when he recklessly drove his vehicle across the median line, hitting an innocent citizen.
21. Previously, Grievant experienced claustrophobia when undergoing MRI procedures. Grievant’s medical evidence provides, “If you have a fear of enclosed spaces (claustrophobia), you might be given a drug to help you feel sleepy and less anxious.” GE 23.

22. Grievant took the medication to “help him feel sleepy and less anxious”, namely, to sedate him. According to his own medical evidence, Grievant could resume his usual activities immediately following the MRI, only “[i]f you haven’t been sedated.” GE 23.
23. Grievant told officers responding to the accident, “I was driving on my way home on Brooks Gap Road. I don’t remember making the left on Hopkins Gap Road (Route 612). I don’t remember driving southbound or the accident. My first memory of the crash was driving in a corn field and my cruiser stopped.” State Vehicle Crash Report, GE 8 at 5. Grievant admitted “at 8:45 AM he was given Lorazepam prior to having an MRI and he believes that Lorazepam is what caused him to blackout.” Id. at 6.
24. Grievant admitted that “in the afternoon, when he started working, he had limited recall of events until the next day at about 2:00 pm with some outstanding memories. He stated he remembered being at the office in Waynesboro but doesn’t remember leaving, he remembered the bang of the crash that ‘it woke him up.’” DMV Investigator’s Report, GE 24 at 7. Grievant didn’t remember talking to the other driver, although the agency produced a recording of that conversation. AE 13.
25. Grievant admitted to the ASAC, “Having taken medication, I know when you don’t feel right. I could feel the signs and I knew I should not be driving the cruiser – but I did anyways.” GE 14 & AE 14 at 2. Grievant also admitted to the ASAC, “I knew better.” Id.

**WRITTEN NOTICE 2:**

26. On August 3, 2021, a citizen called 911 to report her concern that the Grievant was conducting an unsupervised burn at a property he owned.
27. The 911 operator spoke to the Assistant Fire Marshall (the “Fire Marshall”), to convey the concern. The Fire Marshall recalled that he personally issued the subject burn permit to the Grievant.
28. The applicable Fire Prevention Code requires a person with a burn permit to stay close to a smoldering fire and if he wants to leave it, to extinguish it.
29. Ultimately, the Fire Marshall spoke to the Grievant and reminded the Grievant of this obligation. The Fire Marshall was acting in his official capacity pursuant to his official duty to protect the public when he spoke to the Grievant. The Fire Marshall reasonably expected the Grievant to be forthright and honest in his communications.
30. However, at a time when the Grievant was miles away at the Ruritan Club, the Grievant misrepresented to the Fire Marshall that he was at home, in his kitchen, looking out his window at the fire. The Fire Marshall relied on the Fire Marshall’s misrepresentations and closed out the matter.

**WRITTEN NOTICE 3:**

31. On March 3, 2020, while the ASAC and the SAC were having lunch, the SAC spoke on the phone to the Grievant and specifically instructed him not to drive his state cruiser to the MRI appointment and not to return to work on March 4, 2020, because of the medication he would be taking for his MRI.

32. Following instructions is critical in any employment scenario, but particularly so in a law enforcement paramilitary organization. It is also clearly articulated in the Rules of Conduct for law enforcement. AE 7 at 4 (V.B.3 & 4) at 5 (V.C.2.b) at 6 (V.D.1).
33. The Grievant did not follow the SAC's instructions resulting in the crash.
34. The SAC noted the orders and course of events within days of the incident. AE 15.
35. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.
36. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
37. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
38. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

#### APPLICABLE LAW, ANALYSIS AND DECISION

The General Assembly enacted the *Virginia Personnel Act, Va. Code § 2.2-2900 et seq.*, establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with

the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

*Va. Code* § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the Agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (the "SOC"). AE 9. The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

EDR Case Number 9240 states, "The Agency may consider any unique impact that a particular offense has on the department, and the fact that the potential consequences of the

performance or misconduct substantially exceeds agency norms.” Trust, accountability, honesty and judgement .... these are important policy considerations for an Agency like DMV and particularly in the Division of Law Enforcement.

The Grievant's disciplinary infractions were reasonably classified by management as 1 Group II offense and 2 Group III offenses. Failure to follow instructions and/or policy is listed in the SOC as a Group II offense and a second Group II “normally results in discharge.” AE 5. Similarly, lack of candor as exhibited here by Grievant, which undermined his position, the Agency core values and severely impacts the Agency’s activities, is appropriately classified by management as a Group III offense. Additionally, concerning the other Group III offense, the Rules of Conduct for DMV Law Enforcement Officers requires of Grievant, “While on duty, employees shall remain alert and awake, unencumbered by alcoholic beverages, *prescription drugs*, illegal narcotics, or conflicts arising from off-duty employment.” AE 7 at 8 (Section V.G.2) (emphasis added).

The policy further requires, “Employees using any prescribed drug or narcotic or any patent medicines that could possibly induce impairment of their performance shall notify their supervisor.” Id. at 10 (Section V.K.1.1).

The policy further provides, “Employees shall operate Department vehicles and other equipment in such a manner as to avoid injury to persons or damage to property.” Id. at 11 (Section V.N.2).

The Standards of Conduct DHRM 1.60 require that employees,

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Meet or exceed established job performance expectations.
- Support efforts that ensure a safe and healthy work environment

- Maintain the qualifications, certification, licensure, and/or training requirements identified for their positions.
- Make work-related decisions and/or take actions that are in the best interest of the agency.
- Report circumstances or concerns that may affect satisfactory work performance to management, including any inappropriate (fraudulent, illegal, unethical) activities of other employees.
- Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.

AE 4 at 2-3.

The Agency's core values are:

- **Trustworthiness:** Inspiring the confidence of others through our reliability, dependability and honesty
- **Respect:** Creating an inclusive work place and recognizing and appreciating the value and importance of other individuals and the agency
- **Accountability:** Taking ownership for our actions and decisions
- **Integrity:** Always doing the right thing
- **Teamwork:** Working together to achieve common goals and understanding what belonging feels like for your team.

AE 6.

The hearing officer agrees with the Agency that the Grievant's actions, recklessness, failure to accept any measure of accountability in this case and to recognize responsibility for his shortcomings has essentially undermined his position, and DMV's core values, and the trust and confidence that DMV has a right to expect from every employee, especially those who are in law enforcement positions.

The Grievant engaged in a Group III level offense when he committed the offenses of “willfully or recklessly damaging state records/property,” “endangering others,” “violating safety rules (where threat of bodily harm exists)” and committing serious policy violations. AE 5 at 9 and 22-23.

The Grievant and all law enforcement officers at DMV are bound by the obligations to remain unsullied in their life and avoid acts of moral turpitude and maintain good moral character. AE 7 at 2.

The Code of Ethics requires that Grievant be “Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.” Id.

The Code of Ethics requires that law enforcement officers obey federal and state laws and “all ordinances of the municipality in which the employees may be present.” Id. at 3.

As “General Conduct”, Grievant was expected to “display good moral character in on and off duty contexts and apply [his] judgment accordingly.” Id. at 6 (Section V.D.1). It states, “Employees shall always display absolute honesty.” Id. at 7 (Section V.D.4).

The Standards of Conduct, DHRM 1.60, state employees must:

- Perform assigned duties and responsibilities with the highest degree of public trust.  
Devote full effort to job responsibilities during work hours.
- Maintain the qualifications, certification, licensure, and/or training requirements identified for their positions.
  
- Demonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers. Use state equipment, time, and resources judiciously and as authorized.
- 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

- Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.

Agency Exhibit 5 at 2 and 3.

The Grievant argues that the Agency has not carried its burden of proof, has misapplied policy and acted unjustly in issuing the discipline. However, the hearing officer agrees with the Agency's attorney that Written Notice 3 is appropriately classified at the Group II level with the Agency appropriately exercising the discipline and ending the Grievant's employment due to accumulation. Similarly, termination is also warranted under each of the enumerated 2 Group III offenses.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated numerous policies, including Policy No. 1.60 and that the violations rose to the level of 1 Group II offense and the 2 enumerated Group III offenses.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4<sup>th</sup> Cir. 1988).

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past exemplary service to the Agency.

DHRM's *Rules for Conducting Grievance Hearings* provide in part:

DHRM's *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." *Rules* § VI(B).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant.

The Grievant has asserted that the discipline was unwarranted. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below, the hearing officer considered a number of factors including those specifically referenced in the Written Notice, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the demands of the Grievant's job and work environment;
2. the Grievant's exemplary job performance leading up to the discipline and stellar evaluations;
3. the effect of the COVID-19 pandemic;
4. the Grievant's acquittal and exoneration in any criminal proceedings; and
5. the length of the Grievant's service to the Agency.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the policy is important to the proper functioning, appearance and reputation of the Agency, and the Grievant held a position of trust where management of necessity relied on him

to perform his duties in strict conformity with Agency policies, as he had been trained and undertaken to do. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4<sup>th</sup> Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given 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. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

In EDR Case No. 8975 involving the University of Virginia ("UVA"), a grievant received a Group III Written Notice with removal for falsifying records on five (5) separate dates. Although the evidence supported only one of those instances, the hearing officer upheld the disciplinary action. The grievant appealed to EDR asserting that the disciplinary action was inappropriate in that the grievant did not engage in as much misconduct as alleged by UVA. The Director upheld the hearing officer's decision:

The grievant's arguments essentially contest the hearing officer's determinations of fact as they relate to the proper sanction for the misconduct. Such determinations are within the hearing officer's authority as the hearing officer considers the facts *de novo* to determine whether the disciplinary action was appropriate. In this case, while it appears that the hearing officer did find that the grievant did not engage in as much misconduct as alleged by the University, it was still determined that the grievant had falsified a state record with the requisite intent, generally a Group III offense under the Standards of Conduct. [footnote omitted] Upon review of the record, there is no indication that the hearing officer abused his discretion in making these findings or that the facts were not supported by the hearing record. Consequently, this Department has no basis to disturb the hearing decision.

EDR Ruling Number 2009-2192; February 6, 2009.

Accordingly, if only 1 of the Group III offenses is warranted, termination by the Agency was still appropriate.

While the Grievant, by counsel, complained at the hearing that he did not receive certain phone records from the Agency, these records were not requested from the hearing officer. If they had been, the hearing officer could have issued an order for documents and sent it to counsel for the Agency, for follow up on the matter, if it was that important.

Similarly, the hearing officer agrees with counsel for the Agency that the hearing officer has offered counsel for the Grievant many accommodations and dispensations both at the hearing and during the prehearing stage.

For example, Grievant submitted his exhibits after the deadline in the SO. In *City of Hopewell v. County of Prince George, et als.*, 240 Va. 306, 314, 397 S.E.2d 793, 797 (1990), the Virginia Supreme Court specifically left open the question whether the trial judge in that case even had the discretion to allow a rebuttal witness to testify where Petersburg had not previously named such witness in accordance with the court's pretrial order entered January 30, 1989. In any event, the Court decided that the trial judge clearly had not abused his discretion in refusing to allow such witness to testify even under circumstances where Petersburg was arguing that

there were good reasons why the witness was not named on the witness list filed by the deadline in the pretrial order. By contrast, in this proceeding the Grievant advanced no good reasons for his failure. Nevertheless, in keeping with certain EDR Rulings, the hearing officer allowed the Grievant's submission and ultimately admitted all the Grievant's exhibits.

It should be noted that the Virginia Supreme Court looks with favor upon the use of stipulations and other pre-trial (or in this proceeding, pre-hearing) techniques which are designed to narrow the issues or settlement of litigation. *McLaughlin v. Gholson*, 210 Va. 498, 500, 171 S.E.2d 816, 817 (1970). The Scheduling Order in this proceeding and, specifically, the parties' stipulated deadline concerning exchange of witness lists and exhibits, was a set of rules which the parties agreed to live by and constituted precisely such a pre-hearing technique.

In an email of January 10, 2022, Grievant's counsel stated that a hearing date was no longer available because a colleague's schedule had changed, and the colleague now had a conflict. However, ultimately, that colleague did not participate in the hearing.

Similarly, the SO set the ground rules for the hearing, to which there was no objection by the parties:

Unless the hearing officer otherwise amends this Scheduling Order upon motion of the parties or finds unanticipated exigent circumstances exist (e.g., non-appearance of witness ordered by hearing officer to attend the hearing), the hearing shall be completed in one (1) day. Accordingly, each party has an aggregate maximum of four (4) hours to present his, her or its case, including direct examination, cross-examination, rebuttal testimony, etc. In addition, each party has thirty (30) minutes to present both an opening statement and closing argument.

SO, at 2.

The hearing began at 10 am and ended after 6:30 pm, with most time allowed to the Grievant and very few breaks. The Grievant had ample opportunity to present his case in keeping with the stipulated SO parameters.

In this proceeding, the Agency's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer.

The hearing officer decides for the offenses specified in the written notice (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct; (iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

### DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the written notice and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

### **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 and Dispute Resolution  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> 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>[1]</sup>

ENTER 3/ 11 2022

*John Robinson*

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John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

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<sup>[1]</sup> Agencies must request and receive prior approval from EDR before filing a notice of appeal.