

**COMMONWEALTH OF VIRGINIA
Department of Human Resource Management**

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

**In re:
Case Number: 11816**

Hearing Date: May 18, 2022
Decision Issued: May 27, 2022

PROCEDURAL HISTORY

By Written Notice issued February 11, 2022 the Grievant was issued five Group II Written Notices with Termination for failure to comply with written policies in violation of the Department of Human Resource Managements (DHRM) Standards of Conduct, DHRM Civility in the Workplace, (Agency) Expectations of Ethical Conduct, the (Agency) Code of Conduct, and (Agency) internal policies, specifically Written Directive Section 1-1 Code of Conduct, Section 1-2 Code of Ethics, Section 1-7 Use of Force and Section 3-12 Body-Worn Camera (BWC).

Grievant timely filed Grievance Form A to challenge the Agency's action. The Hearing Officer in this matter upon being appointed effective March 23, 2022, conducted a pre-hearing telephone conference on April 1, 2022 and set a hearing date of May 18, 2022.

In the letter from the Hearing Officer dated April 5, 2022, it was set out that a copy of exhibits, in the form of hard copy, a party intends to introduce at hearing and a list of witnesses to be called was to be provided to the Hearing Officer and the other party no later than May 11, 2022. Both the Agency and the Grievant provided a notebook with exhibits and a list of witnesses to be called.

APPEARANCES

Grievant
Grievant's Advocate
Agency's Party Designee
Agency's Advocate

ISSUES

1. For each of the five Written Notices, did the Agency's evidence prove by a preponderance of the evidence that the Grievant's conduct was a violation of the alleged policy, procedure or directive?
2. Whether for each of the five Group II Written Notices was any such violation a Group II violation under the Standards of Conduct?
3. Did the Agency violate the Grievant's right to due process, and, if so, should the Fourth and Fifth Group II Written Notices be removed or dismissed? Specifically, did the Agency violate section 9.1-502 of the Code of Virginia?
4. Whether the Agency considered mitigating and aggravating factors?
5. Whether the Agency's termination of the Grievant's employment was consistent with law and policy?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its termination of the Grievant's employment was warranted and appropriate under the circumstances. Grievance Procedure Manual (GPM) section 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not.

EXHIBITS

The Agency Exhibits admitted into evidence are contained in one notebook with tabs 1-27.

The Grievant's Exhibits admitted into evidence are contained in one notebook with tabs A-M.

Agency Exhibit 24, page 5 was not admitted into evidence and not considered by the Hearing Officer. The remainder of Agency Exhibit 24 was admitted for the limited purpose of showing that the Agency took the behavior of the Grievant seriously. Agency Exhibit 25 was

considered by the Hearing Officer only to the extent of the one page Written Notice issued January 9, 2015.

FINDINGS OF FACT

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

The Agency employed Grievant as a Police Officer. As such, Grievant's conduct is governed by the following:

1. Standards of Conduct, Policy: 1.60. (Agency Exhibit 3)
2. DHRM Policy 2.35 Civility in the Workplace
3. (Agency) Expectations of Ethical Conduct (Agency Exhibit 5)
4. (Agency) Code of Conduct (Agency Exhibit 6)
5. Use of Force Policy 1-7 (Agency Exhibit 7)
6. 1-1 Code of Conduct (Agency Exhibit 8)
7. 3-12 Body-Worn Camera (BWC) (Agency Exhibit 9)
8. 1-2 Code of Ethics (Agency Exhibit 10)

The Agency's first witness, the Lieutenant who supervised the Grievant has been a police officer for twenty years and a Lieutenant for two years. Referring to the police department's organizational chart (Agency Exhibit 12) the witness testified that the chain of command descended from the Chief of Police down through supervisory positions to the Sergeants, with patrol officers having no command or supervisory authority. The witness reviewed the Grievant's Employee Work Profile (Agency Exhibit 11) pointing out that 20% of the police officer's time is directed to enhancing community relations and public trust; 15% regulating and abiding by the laws of the Commonwealth of Virginia and rules and regulations of the Agency and Agency Police Department; and 10% maintaining good relations and cooperation in providing quality service. The Lieutenant testified that prior to the events of October 27, 2021, the Grievant was a good employee with fifteen years of service to the police department. However, the Lieutenant testified that on October 27, 2021 the Grievant was assigned to the pistol range for firearms qualification and then to a designated area for patrol. However, the Grievant first attended the "read off" conducted by another police officer who had no supervisory authority. Upon learning that a fellow officer and good friend of the Grievant had been injured in the line of duty and was at the hospital, rather than reporting to the range and then to the assigned patrol area, the Grievant went to the hospital to see the fellow officer.

The Lieutenant further testified that while on the way to check on the injured officer, the Lieutenant encountered the Grievant who was moving away from where the injured officer was and the Grievant told the Lieutenant "I was assigned to him."

The video evidence viewed by the Hearing Officer showed a male (one of the two persons who had attacked the injured police officer) sitting quietly in a wheel chair, handcuffed, with two police officers standing nearby when the Grievant is seen walking up the hospital corridor, looking left and seeing the man in the wheelchair, pivoting and walking aggressively toward the man, thrusting a finger towards him and saying "You're lucky I don't kill you" and then walking off.

Another video segment shows extensive interaction between several police officers and the woman who assaulted the injured police officer with the woman screaming and resisting the police officer's efforts to transfer her to a gurney. The woman is heard to be repeatedly screaming that her handcuffs were too tight, that she was claustrophobic and that the officers were hurting her. The video shows that as the woman is transferred to the gurney, lying on her back, with her hands cuffed behind her, gloved hands from various police officers are shown holding her legs and shoulders down when the Grievant can be seen entering the area, putting on a single glove and then without saying anything ramming a fist with a knuckle extended into the shoulder/breast area of the woman with such force that the gurney is seen to depress. A sergeant standing directly across from the Grievant, on the other side of the gurney, is heard to repeatedly say "Let up" and then seen grabbing the Grievant's arm to push it away from the woman.

The evidence showed that the Grievant then left the area where the woman was on the gurney and went outside the hospital. Video from the Sergeant's BWC shows the Sergeant approach the Grievant who immediately says "I was just helping." Upon the Sergeant expressing concern with the Grievant's behavior, while initially saying "I am fine" the Grievant said "I'm fucking pissed" and is shown to be crying and clearly emotional.

The Lieutenant testified that after reviewing all that had happened, he spoke with the Grievant and took the Grievant's badge and gun, at which time the Grievant was placed on administrative leave for further investigation. The Lieutenant filed an incident report with the Chief of Police dated November 4, 2021 (Agency Exhibit 18) in which Incident #1 stated that the Grievant told him that the Grievant was assigned to assist the injured officer but in fact no supervisor on duty granted the Grievant permission to assist the injured officer or otherwise authorize the Grievant to change the Grievant's assigned post. Incident #2 regarded the statement "You're lucky I don't kill you" and Incident #3 involved the Grievant's physical contact with the woman on the gurney. Two days later, on January 6, 2022, the Lieutenant issued a due process letter to the Grievant for three Group II Written Notices with termination based on the three described incidents.

The Grievant responded by letter dated January 13, 2022 addressing each of the three Group II Written Notices. (Agency Exhibit 1, Pages 43-46).

On January 28, 2022, the Lieutenant issued an Amended Due Process for five Group II

Written Notices with termination. In addition to the first three violations, a fourth Group II Written Notice for violation of Written Directive Section 3-12 Body-Worn Cameras for not activating the BWC upon arrival at the hospital on October 27, 2021 and a fifth Group II Written Notice for failure to follow supervisor's instructions when the Sergeant told the Grievant to "Let up" when the Grievant was pressing the Grievant's fist into the woman on the gurney.

Following the Grievant's response dated February 4, 2022 (Agency Exhibit 1, Pages 25-30) the Agency issued the Written Notice on February 11, 2022 with five Group II offenses and termination of employment.

The Agency's second witness was the Sergeant who interacted with the Grievant at the hospital. The Sergeant had been with the police department since April 2015 and obtained the rank of Sergeant in June of 2021. The Sergeant testified that while on duty the Sergeant heard a "Mayday" call and upon responding found a male suspect sitting on a curb already calm and a female suspect screaming and out of control. The officer who was attacked by the two had had his glasses knocked off and a shoulder injury. The Sergeant testified that policy requires that in any event of force everyone involved, suspects and officers have to be medically cleared.

The Sergeant testified that when the Grievant arrived at the hospital and the woman was on the gurney, the woman was cuffed, under control and of no danger. The Sergeant testified that the officers were getting the woman into proper position and that there was no need for additional intervention. The Sergeant testified that although the woman had been screaming for quite some time her screaming that the Grievant was hurting her was different than her early screaming. The Sergeant testified that the Grievant's use of the fist was not proper procedure and was not needed.

Upon cross-examination, Grievant's Advocate pointed out to the Sergeant that BWC policy at page 3, D. 1. a. (Agency Exhibit 9) provides that BWC equipment shall not be used to record communications with other police personnel without the permission of the Chief or their designee. In response the Sergeant testified that the Sergeant's BWC was activated during the incident at the gurney and was continuing during the Sergeant's conversation with the Grievant outside the hospital.

The Agency's next witness was the police officer who conducted the "read off". He also testified that he was just reading the information provided to him to read and had no authority to change any assignments or otherwise command another police officer. The officer testified that when it was mentioned that the fellow officer had been injured, the Grievant asked for details and when none were available stated "I am going to East" (meaning going to the hospital). The officer further disputed the Grievant's statement at Agency Exhibit 1, Page 25 that the officer was the officer in charge and would notify dispatch and "Therefore, my change in location was authorized by proper authority and Disptach was advised."

The officer also testified that he was the field training officer for a trainee who was at the hospital standing near the man in the wheelchair who reported what the Grievant had said to the man resulting in the officer communicating what had been reported to him by the statement dated January 14, 2022 at Agency Exhibit 23.

The next Agency witness was the trainee from the hospital who testified that the behavior of the Grievant at the hospital was very disturbing and that the officer couldn't believe what the Grievant said to the man handcuffed in the wheelchair.

The Agency's next witness was the Director of Employment Success and Development. The witness testified that after the Commonwealth's Attorney's office first reviewed the evidence and the Police Chief was consulted, the Director conferred with Agency counsel resulting in the first due process charging three Group II offenses. The witness testified that after reviewing the Grievant's response to that due process letter and a further review of the evidence, it was concluded that two additional Group II offenses were justified. The witness proceeded to review the five offenses as follows:

First: Grievant's leaving duty post and going to the hospital was a violation of Code of Conduct (Agency Exhibit 8, Page 5) which would be considered "failure to follow policy" and should be considered as a Group II offense.

Second: The Grievant's statement to the man in the hospital was considered not to be a threat but unprofessional and therefore a "civility in the workplace" violation which could have been considered a Group I, II or III offense.

Third: Grievant's physical contact with the woman on the gurney was considered to be a violation of the "use of force" policy and therefore also a Group II offense.

Fourth: Grievant's failure to activate the BWC in the hospital was a violation of the Body-Worn Cameras policy and therefore a Group II offense.

Fifth: When the Grievant did not immediately "let up" the Grievant failed to follow supervisor's instructions, also a Group II offense.

The witness testified that mitigation was considered by way of the Grievant's mostly good employment record but also considered the aggravating circumstance of the events in the hospital, the Grievant's responses to the initial due process notice and the Grievant's inactive notice (Agency Exhibit 25).

The Agency's final witness was the Chief of Police who has been a police professional for thirty-eight years and hired from outside the Agency as Chief of Police in 2010. The Chief testified that upon becoming chief, the goal was to completely transform the police department

which now has ninety-five positions. The Chief testified that the policies regarding civility in the workplace, expectations of ethical conduct, the code of conduct, use of force policy, body-worn cameras policy and code of ethics are all intended to set high standards for policing and interaction with members of the community. The Chief testified that the Grievant's statement "you're lucky I don't kill you" moves the Agency backwards.

The Chief testified as to the Chief's extensive experience involving "use of force" training and that the Grievant's use of the fist on the woman was unnecessary. The Chief testified that an officer's goal is to prevent the suspect from injuring herself or the officers. The Chief referred to the Use of Force policy (Agency Exhibit 7) which calls for use of "Only that force that is reasonable and necessary to accomplish lawful objectives, based upon the circumstance of the situation...when evaluating any situation involving an officer's use of force...utilize a two-prong test: (1) Was the use of force necessary, and (2) was the use of force justified." The Chief testified that the Grievant's use of force was neither necessary nor justified. The Chief further testified that the BWC footage demonstrated that the Grievant failed to follow instructions when the sergeant commanded the Grievant to "Let up". The Chief referred to Agency Exhibit 27 regarding the Active Bystandership for Law Enforcement (ABLE) Project regarding first responders doing a better job intervening when necessary to prevent their colleagues from causing harm or making costly mistakes.

The Chief of Police concluded testimony for the Agency stating that mitigation was considered but did not result in the reduction of the charges against the Grievant. The Chief testified that although the Grievant is highly trained in de-escalation, the Grievant's behavior was the opposite of what was expected. The Chief testified that the Grievant's behavior erodes public trust in and the reputation of the police department and damaged the reputation of the Grievant as a police officer.

The Grievant called as the Grievant's first witness a fellow police officer who was at the read off and heard the Grievant say that the Grievant was going to the hospital. The officer testified that she told the Grievant that she would take the Grievant's spot at the firing range after the officer's supervisor authorized her going to the range. The officer also acknowledged that the officer who was doing the "read off" had no authority to make any changes in assignments and assumed that the Grievant had called the Grievant's supervisor. When asked by the Grievant's Advocate if the officer doing the read off would have been considered the "officer in charge", the witness testified that a patrol officer would only be considered in charge in "certain circumstances."

A second officer called as a witness by the Grievant testified that that officer on one occasion went to the firing range after the read off and was not disciplined for going to the read off before reporting to the range.

The Grievant's next witness was the officer who had been injured and was the good

friend of the Grievant. The officer testified that at the time of the incident he had served as an Agency police officer for ten years. He testified that when he was attacked by the man and the woman he issued a "Mayday" call for other officers to assist. The officer testified that while investigating a hit and run, a female suspect started yelling, spitting and being belligerent. Suddenly the woman charged at him and he was grabbed from behind by the male suspect, struck in the front of the head, went to the ground, lost consciousness briefly, came to with the male on him. The officer testified that his injuries included a scratched cornea, black eye, scrapes and aches and pains. The officer testified that he reached out to the Grievant with whom he had an agreement that if either of them was hurt the other would come to their aide and contact their spouse. The officer testified that he wanted the Grievant to see him so that the Grievant could confirm with the officer's wife that the officer was okay. He further testified that after the Grievant saw him and left, the officer called the Grievant again and asked for the Grievant to come back because the officer was emotional and needed to talk.

An additional officer was called as a witness by the Grievant. This officer testified that the officer was one of the officers involved with trying to control the woman suspect at the hospital. When asked by Grievant's advocate if she said "Thank you" to the Grievant for intervening with the attempt to subdue the woman, the witness said "I don't recall saying that but I can't deny it." Upon being cross-examined, the witness testified that the witness heard the Sergeant tell the Grievant to "Let up" more than once.

The Grievant next testified. The Grievant first addressed the charge of going to the hospital rather than the firing range without approval from a supervisor. The Grievant distinguished between a "duty post" and "assignment." The Grievant said that the Grievant was not leaving anything without patrol because the Grievant was to be at the firing range, not on patrol. Further, the Grievant testified that the Grievant had been the head of "read off" on a prior occasion and as the senior officer would have been considered the "officer in charge." The Grievant testified that when her fellow officer and friend sent her a text saying that he needed her to come to the hospital, the Grievant recalled telling dispatch the Grievant was "ten-six" and going to East (hospital). The Grievant emphasized that later at the hospital after the incident with the woman suspect, when the Sergeant told the Grievant to "ten-six", the Grievant replied "I already am."

The Grievant testified very emotionally that since the incidents of October 27, 2021, the Grievant has been in therapy. Upon questioning by the Hearing Officer, the Grievant stated that the Grievant still thinks that the use of the fist was appropriate, that the Grievant was not out of control at the hospital and that the statement "You're lucky I don't kill you" was no more than improper. The Grievant also made reference to Grievant Exhibit D the January 6, 2022 due process letter in which the Lieutenant stated that when the Lieutenant asked the Grievant why the Grievant was not at the Grievant's assignment location, the Grievant responded that the Grievant had been assigned to officer (Grievant's friend at the hospital). The Grievant denied that Grievant said that to the Lieutenant.

As to the “use of force” charge the Grievant reviewed the BWC footage and testified that the Grievant did not know that the woman was the one who had attacked her friend and fellow officer. The Grievant testified that the Grievant heard the commotion, came over saw what was happening, that nobody was on the right side and felt that the woman might bite the officer who was reaching over. The Grievant stopped the footage of the BWC repeatedly to demonstrate that in the Grievant’s opinion the Grievant’s fist was pressed into the woman for only one second. The Grievant also testified that the Grievant removed the Grievant’s fist before the Grievant heard the Sergeant say anything.

The Grievant further testified that regarding the BWC footage of the conversation between the Sergeant and the Grievant outside the hospital, the Sergeant did not ask the Grievant for permission to record their conversation, in violation of policy. The Grievant challenged the Sergeant’s testimony that the Sergeant’s BWC had been kicked off of her by the woman and that when the Sergeant put the BWC back on the Sergeant’s uniform and reactivated the BWC, the recording continued and recorded the conversation as well. The Grievant stopped the BWC footage at 21:17:25 to show that the Sergeant had the BWC on the sergeant’s uniform.

The Grievant testified that after leaving the hospital the Grievant continued on patrol until the Lieutenant called the Grievant in to confront the Grievant about the Grievant’s behavior. At this point of the Grievant’s testimony at the hearing, the Grievant became emotional and left the hearing for a few moments and then returned. When asked about the Grievant telling the Sergeant that “I am pissed”, the Grievant explained that the Grievant was upset about the Grievant’s fellow officer being injured.

On January 6, 2022 the Lieutenant issued a due process letter to the Grievant for three Group II written notices with termination. In the Grievant’s response dated January 13, 2022 (Agency Exhibit 1, Page 43) the Grievant stated that “further, I knew that (the officer doing the read off) as the officer in charge, would notify dispatch. Had he told me to check with command staff, I most certainly would have. Therefore, my change in location was authorized by proper authority and Dispatch was advised.” The Grievant argued that “as my assignment was to qualify at the range, no citizens were left without security and other arrangements were made prior to my absence. As such, I believe that at most, this should be reduced to a Written Letter of Counseling.”

Further, as to the Second group II written notice, the Grievant wrote “as I rushed through the corridor leading to the Critical Care Hospital elevator lobby, I looked at the suspect who stared at me. ... I remained approximately six feet from him. I did not approach the suspect but took a mere one or two steps out of my path and said “You’re lucky I don’t kill you.” ... I understand how my intent could be misconstrued. However, as evidenced by his questions of what I meant to others present, he does not communicate he had a fear for his safety.” The Grievant went on to state that “a Group I Violation is one that has a relatively “minor impact on

agency business operations but still requires management intervention”... as such I believe that at most this should be reduced to a group I violation with counseling.”

As to the third Group II written notice regarding use of force, the Grievant argued that “it was objectively reasonable under my evaluation of the situation, that force was required to effectively restrain the female. ...when force on a pressure point is effective, it causes pain. This is not unreasonable to allow you to gain control. I was able to gain control of the situation and cease within three seconds of being told to stop.”

Upon the Lieutenant issuing an amended due process letter for five Group II written notices dated January 28, 2022 (adding the fourth Group II of violating the body-worn cameras policy and the fifth Group II written notice for failing to follow supervisor’s instructions regarding the female suspect), the Grievant responded by letter dated February 4, 2022 (Agency Exhibit 1, Page 25). In the Grievant’s response, the Grievant stated as to the BWC notice “as to this violation, I do take responsibility for not activating my BWC. However, there were other officer’s who were involved in the incident, who did not activate their BWC including Sergeant ... my total involvement of five seconds is not a flagrant violation that should be elevated to the level of a group II violation.”

As to the fifth Group II written notice regarding the Sergeant’s command to the Grievant to “Let up”, the Grievant states “I would argue that at no time did I fail to follow my supervisor’s instructions. When (the Sergeant) says my name I move my hand, when I can actually hear (the Sergeant) say “Let up”, I let up and when I am told to leave, I leave. At no time do I show any intent to disobey (the Sergeant). The screaming female patient made it extremely hard to hear what anyone was saying without screaming.”

CONCLUSIONS

The Agency’s evidence established by a preponderance of the evidence that all of the relevant policies, standards and written directives (Agency Exhibits 3,4,5,6,7,8,9 and 10) were in force on October 27, 2021 and that the Grievant was aware or should have been aware of all of said requirements and standards.

Contrary to the argument of Grievant’s Advocate, the Hearing Officer does not find that the Agency violated Section 9.1-502 of the Code of Virginia. The evidence indicates that upon the Agency issuing the original due process notice setting out three Group II offenses, the Grievant was given the opportunity in accordance with the statute to respond. The evidence shows that after the Agency received the Grievant’s response and further investigation, the Agency then issued an amended due process notice adding two additional Group II offenses and as required by statute, The Grievant was given the opportunity to respond. Upon receipt of the Grievant’s response to the amended due process notice, the Agency then issued the Written

Notice dated February 11, 2022 with the five Group II offenses and termination. The Grievant was not denied due process by this procedure.

Considering each of the charged offenses, the Hearing Officer concludes the following:

First: Leaving Duty Post: The Agency proved by a preponderance of the evidence this offense when considering all of the evidence, the Hearing Officer finds the Grievant's written responses and testimony not consistent and not credible. In written response, the Grievant stated that the Grievant had called dispatch. The Grievant also stated that the Grievant assumed that the "officer in charge" would contact dispatch, even though the Agency chain of command testified that there is no such position as "officer in charge" and that the officer conducting the "read off" did not have any authority to change assignments. The Agency decision to charge as a level II is found to be consistent with law and policy.

Second: Civility in the Workplace: The Agency proved by a preponderance of the evidence that the Grievant's statement to the male suspect at the hospital with other members of the public present "You're lucky I don't kill you" is a violation of Policy 2.35 Civility in the Workplace. Specifically, the Agency's evidence demonstrated that the Grievant conduct was one or more of the prohibited conducts listed at Agency Exhibit 4, Page 9, i.e. engaging in behavior that creates a reasonable fear of injury to another person; making threats to injure another person; demonstrating behavior that is inappropriate and unprofessional; and behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs and/or offends others. The evidence indicated that the male suspect was seriously disturbed by the Grievant's behavior, as was at least one police officer in training. Again, classifying the Grievant's behavior as a Group II offense is consistent with law and policy.

Third: Use of Force: The Agency proved by a preponderance of the evidence that the Grievant's contact with the female suspect in the hospital violated the Written Directive Section 1-7-Use of Force. The Hearing Officer did not believe the Grievant's testimony that the Grievant did not know that the female was the same female who had attacked the Grievant's friend and co-worker. The Grievant appeared to be aggressive and to intentionally inflict pain. Again, the Agency's decision to charge this behavior as a Group II offense is consistent with law and policy. The Grievant's written responses to the due process notices and the Grievant's testimony did not convince the Hearing Officer that the Grievant was simply "offering assistance" and using an accepted method of briefly inflicting pain to gain control of the woman.

Fourth: Body-Worn Cameras (BWC): The Agency proved by a preponderance of the evidence that the Grievant violated the BWC policy. The Grievant in responding to the due process notice stated "as to this violation, I do take responsibility for not activating

my BWC.” (Agency Exhibit 1, Page 28) However, during the Grievant’s testimony at hearing, through argument of Grievant’s Advocate, the Grievant suggested that the policy was ambiguous due to the language “NOTE: there is a heightened sensitivity to activating BWC equipment in pediatrics, psychiatry, and emergency room clinical areas.” (Agency Exhibit 9, Page 4). The Grievant also argues that even if the Grievant was in violation of the policy, other officers were also in violation for not activating BWC equipment but were not disciplined. The Hearing Officer does not find the cited language ambiguous and that the BWC equipment should have been activated. The Grievant did not produce convincing evidence that other officers failed to activate their BWC equipment.

Fifth: Failure to Follow Supervisor’s Instructions: The Agency proved by a preponderance of the evidence that the Grievant failed to follow the Sergeant’s instructions, repeated multiple times, to “Let up.” Interestingly, the Grievant in the Attachment to Grievant’s Form A, (Agency Exhibit 1, Page 18) states “Also, Failing to Follow my Supervisor’s Instructions means failing to follow instructions of an actual supervisor of mine, and in this case the Sergeant involved was not my supervisor.” The Agency witnesses, namely, the Sergeant, the Lieutenant, and the Chief of Police all testified that any officer who is a commanding officer, such as a Sergeant, is considered a supervisor in the officer’s interaction with a patrol officer.

In reaching the Hearing Officer’s Conclusions and Decision, the Hearing Officer gave consideration to the arguments of the parties Advocates, including reference to Section 9.1-502 of the Code of Virginia, the Barton case (39 Va. App. 439), the Administrative Review (Ruling Number 2020-4966) and the Second Administrative Review (Ruling Number 2020-5022).

DECISION

For the reasons stated herein, the Agency’s issuance of each of the five Group II Written Notices is upheld. Accordingly, the Agency’s termination of the Grievant’s employment is upheld as consistent with law and policy and may not be mitigated under the record evidence because the discipline does not exceed the limits of reasonableness.

APPEAL RIGHTS

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

Please address your request to:

Office of Equal Employment and Dispute Resolution
Department of Human Resources 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.

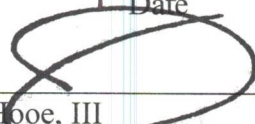
You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

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.[1]

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation or call EEDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EEDR Consultant].

ENTERED: 5/27/2022
Date



John R. Hooe, III
Hearing Officer

[1] Agencies must request and receive prior approval from EEDR before filing a notice of appeal.