

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

**DIVISION OF HEARINGS**

In the matter of: Case No. 11990

Hearing Officer Appointment: July 10, 2023

Hearing Date: September 13, 2023

Decision Issued: October 4, 2023

PROCEDURAL HISTORY AND ISSUES

The Grievant requested an administrative due process hearing to challenge the issuance on June 6, 2023, of (1) a Group II Written Notice (violations of Written Notice Offense Codes 13, 37 and 56), and (2) a Group II Written Notice (violations of Written Notice Offense Codes 13, 37 and 39), with termination due to accumulation, effective June 6, 2023, by the Virginia Department of Environmental Quality (“DEQ” or the “Department” or the "Agency").

The Grievant has raised the issues specified in her Grievance Form A and is seeking the relief sought in her Form A, including rescission of the termination, reinstatement and attorney’s fees.

The Grievant, the Grievant’s attorney, the Agency’s attorney and the hearing officer participated in a first prehearing conference call at noon on July 17, 2023. The parties agreed that communication by email alone is acceptable. Following the call, the hearing officer entered a Scheduling Order on July 22, 2023, incorporated herein by this reference.

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.

At the hearing, the hearing officer received various documentary exhibits into evidence, namely exhibits 1-16 (bates-numbered 1-93) in the Agency's black exhibit binder and 1-22 in the Grievant's blue exhibit binder. <sup>1</sup>

The parties all agreed that email is acceptable as a sole means of written communication.

The hearing officer recorded the hearing.

#### APPEARANCES

Representative for Agency  
Grievant  
Legal Counsel  
Witnesses

#### FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as a Grant Accountant. AE 9.
2. The Grievant was assigned by her Supervisor, the Grant Accountant Manager, the important ministerial function of completing "draws" of funds pertaining to various grants.

---

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

3. On April 26, 2023, the Supervisor required another Agency employee (“T”) to create the draw documents for the CBIG and CBRAP draws. Being relatively new to the Agency, and still familiarizing herself with the grant accountant process for draws, the Supervisor asked another Grant Accountant (“D”) to review T’s documents, to compile the draw request and to submit the draw package for processing in ASAP. Grievant was not expected to perform and was not responsible for these tasks.
4. D completed his assigned tasks and digitally signed his work. AE 31 & 36. While compiling the documents to support the draw requests, Grievant questioned D, wanting to know if he pulled every AP voucher to verify each had been paid.
5. The Supervisor was asked to join the meeting and explained to Grievant that the General Ledger expenditure report, listing the expenses (summed), was sufficient for documentation to draw funds.
6. The Supervisor instructed the Grievant to combine the draw requests and submit the draw to the Supervisor for approval, which Grievant did. The Supervisor reviewed and approved the submission, instructing the Grievant to complete the draw.
7. At this point, the Supervisor thought Grievant was processing the actual draw from ASAP.
8. However, later in the afternoon, Grievant approached the Supervisor with a printout of the CBIG/CBRAP draw. Grievant again questioned the supporting documentation.

9. The Supervisor again explained to Grievant that the supporting documents were adequate, while attempting to answer Grievant's questions and to reassure her.
10. The Supervisor told Grievant, again, that Supervisor had approved the draw by electronic signature and instructed Grievant to proceed with the transaction ASAP. AE 30.
11. The certification concerning the draw made by the Supervisor read:  
"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)." AE 30.
12. By contrast to D or the Supervisor, Grievant was not required to sign or certify anything. However, upon an unfounded belief that Grievant could go to jail if she followed Supervisor's instructions, Grievant did not obey Supervisor's instructions to complete the draw.
13. Instead, Grievant went to the Fiscal Director (the Supervisor's immediate supervisor) with Grievant's concerns and informed the Fiscal Director that Grievant would not process the subject draw.
14. The Fiscal Director then instructed Grievant to complete the draw as instructed by the Supervisor.

15. The Grievant did not complete the draw as instructed.
16. Grievant later informed the Director of Finance that Grievant felt that Grievant was not supplied enough information to process the draw. Grievant provided the Director of Finance with several documents and a highlighted list of vouchers. While the Director of Finance was confirming with one of Grievant's co-workers the information that was provided to Grievant to make the draw, the Grievant confronted the Director of Finance, the coworker and the Fiscal Director.
17. The Fiscal Director again instructed the Grievant to complete the draw. In response, the Grievant raised her voice inappropriately and responded with rude, inappropriate, discourteous and unprofessional comments. The Director of Finance told the Grievant to stop and reminded the Grievant of the Agency's civility policy. The Director of Finance instructed the Grievant to complete the draw, which the Grievant finally completed.
18. After completing the task, the Grievant stated Grievant wouldn't complete draws in the future unless certain conditions were met by Grievant's co-worker.
19. Grievant was insubordinate and did not respect her supervisors or the Agency's hierarchal reporting structure.
20. The directive to complete the draw was a reasonable and lawful instruction given by the Supervisor, which Grievant refused to do.
21. There were no adverse civil or criminal ramifications concerning the subject draws. Grievant's behavior disrupted Agency operations.

22. On March 29, 2023, during the scheduled Grant Meeting, a coworker of Grievant ("K") was asked to describe a possible decision the grant unit would need to make.
23. During K's presentation, Grievant continuously interrupted and overtalked.
24. The Supervisor instructed Grievant to allow K to speak. However, Grievant continued to interrupt and talk over K, becoming louder and more adversarial.
25. As matters escalated, the Grievant shouted, "you've been talking too long" and at one point during her rant, Grievant cursed "G\*d D\*\* m". AE 26.
26. On March 30, 2023, K shaken and uncomfortable concerning this interaction, asked that her cubicle be moved away from that of Grievant. The Grievant admits that she could have handled this incident better. AE 9.
27. Grievant continued to exhibit a pattern of rude, inappropriate, discourteous and unprofessional behavior.
28. For example, on April 26, 2023, the Fiscal Director instructed Grievant to complete the "draw", a standard fiscal process.
29. Grievant raised her voice to the Fiscal Director exclaiming, "you do not know what you are talking about".
30. The Fiscal Director responded to Grievant that Grievant should not use that tone.
31. Grievant then yelled at the Fiscal Director, "you cannot tell me what to do" and "you should watch your tone".
32. The Director of Finance interceded, telling the Grievant to stop and reminding Grievant of the Agency's civility policy. This outburst occurred in the cubicle

area in front of most employees of the Agency's Office of Financial Management ("OFM").

33. The Director of Finance then instructed Grievant to complete the "draw" and informed Grievant that her behavior was inappropriate.
34. Grievant's multiple inappropriate, discourteous and unprofessional outbursts in the workplace were disruptive and had a negative impact on team moral and the OFM's work product.
35. Grievant's behavior was disruptive to Agency operations distracted from and impaired the mission of the Agency.
36. On June 6, 2023, Management issued 2 Written Notices to Grievant: (1) a Group II Written Notice (violations of Written Notice Offense Codes 13 <Failure to follow instructions and/or policy>, 37 <Disruptive behavior> and 56 <Insubordination>), and (2) a Group II Written Notice (violations of Written Notice Offense Codes 13, 37 and 39 <Policy 2.35 Civility in the Workplace>), with termination due to accumulation, effective June 6, 2023.
37. 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.
38. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
39. The Department's actions concerning this grievance were reasonable and consistent with law and policy.

40. 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 51. 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.

The Grievant did not follow state and agency policies concerning her work duties.

Specifically, the SOC state, amongst other things, that Group II level offences include acts of misconduct, violations of policy, or performance of a more serious nature that significantly impact the agency’s services and operations. AE 58.

Under the SOC, employees are expected to follow supervisor’s instructions and comply with written policy or agency procedures. Similarly, under the Agency’s Mission Statement and Code of Ethics (AE 90), cooperation with peers and supervisors and proactive resolution and avoidance of unnecessary conflict is stressed.

Concerning the first Written Notice, Grievant failed to follow the Supervisor’s and the Fiscal Director’s unequivocal instructions to complete the draw – it required the direct intervention of the Director of Finance to accomplish this important Agency function. The Grievant was insubordinate to both the Supervisor and the Fiscal Director and her behavior was disruptive to Agency operations.

Concerning the second Written Notice, Grievant failed to follow the Supervisor’s clear instructions to allow K to speak without interruption. The Grievant also violated the Agency’s

Code of Ethics and Policy 5-2019, Civility in the Workplace. Grievant's multiple inappropriate, discourteous and unprofessional outbursts in the workplace were disruptive and had a negative impact on team moral. Grievant's undermining of the authority of her supervisors, her heavy-handed behavior to supervisors and coworkers, Grievant's raising of her voice inappropriately to supervisors and coworkers, and her swearing at a coworker, all served to unsettle coworkers and supervisors alike and to disrupt and hinder the proper functioning and mission of the Agency.

Concerning both Written Notices, the Grievant's disciplinary infractions were reasonably classified by management as a Group II offense in each Written Notice and a second Group II normally results in discharge.

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 the various offenses are appropriately classified at the Group II level with the Agency appropriately exercising the discipline and ending the Grievant's employment due to accumulation of two Group II Written Notices.

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 a Group II offense concerning each Written Notice.

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 good 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 work environment;
2. the Grievant's tenure at the Agency;
3. the effect of the COVID-19 pandemic;
4. the Grievant's past good service to the Agency; and
5. the Grievant's lack of formal discipline prior to June 6, 2023.

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 policies are important to the proper functioning, appearance and reputation of the Agency, and the Grievant held an important position where management of necessity relied on her to complete the draws. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

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 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 10/4/ 2023

*John Robinson*

---

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).

---

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