

Issue: Group I Written Notice (unsatisfactory performance); Hearing Date: 06/18/19;  
Decision Issued: 06/28/19; Agency: DOC; AHO: John R. Hooe, III, Esq.; Case No.  
11356; Outcome: No Relief – Agency Upheld.

**COMMONWEALTH OF VIRGINIA  
Department of Employment Dispute Resolution**

**DIVISION OF HEARINGS  
DECISION OF HEARING OFFICER**

**In the matter of: Case No. 11356**

Hearing Date: June 18, 2019  
Decision Issued: June 28, 2018

**PRELIMINARY MATTERS**

Upon being appointed as the Hearing Officer in this matter, effective May 13, 2019, the Hearing Officer contacted the Grievant and the Agency Advocate. The grievance hearing was scheduled to be conducted on Tuesday, June 18, 2019 beginning at 10:00 am at Western State Hospital, 103 Valley Center Road, Staunton, Virginia, Room A1085.

In accordance with the letter notice, the Agency provided to the Grievant and to the Hearing Officer a single notebook of exhibits and designated the Warden as the Agency's only witness. The Grievant did not provide any exhibits or call any witnesses.

**APPEARANCES**

Agency Advocate  
Warden, Agency Witness

Grievant

**ISSUES**

1. Did the Grievant damage an Agency vehicle the Grievant was operating on Agency premises?
2. If so, was the accident preventable?
3. If so, did the Grievant's conduct warrant a Group I Written Notice for "unsatisfactory job"?

**EXHIBITS**

The Agency Exhibits admitted into evidence are contained in one notebook with the following contents:

1. Group I Written Notice and attachment
2. Grievant's Form A and attachments
3. Operating Procedure 323.1 Vehicle Acquisition, Operations, and Maintenance
4. VADOC Notice of "Preventable" Accident
5. Operating Procedure 135.1, Standards Of Conduct

The Grievant did not provide any exhibits.

### **FINDINGS OF FACT**

The Agency's only witness, the Warden, testified that in his capacity as Warden he was notified that on October 5, 2018 the Grievant was operating an Agency vehicle, backed out of a parking space at the power plant and collided with a forklift, causing extensive damage to the Agency vehicle.

The Warden testified that in compliance with Operating Procedure 323.1 (Agency Exhibit 3), at page 8 of the Operating Procedure, it provides at F. Accident Review. 3. a. Preventable Crash: "it shall be considered a Preventable Crash when the operator of the vehicle state-owned vehicle is determined by the committee to have been guilty of contributory negligence." The Warden testified that when the committee determined that the accident was in fact preventable the Warden reviewed the matter with the Grievant who signed the form indicating that the Agency would take the action of deeming the Grievant's conduct as "unsatisfactory job performance." (Agency Exhibit 4)

The Warden further testified that the Warden's supervisor recommended that the Grievant receive a Group II Written Notice. However, the Warden considered all of the circumstances and mitigated the discipline to a Group I Written Notice.

Finally, the Warden testified that other circumstances surrounding the accident, could have resulted in the Grievant receiving more serious discipline, i.e. the Grievant exited his vehicle for a brief time leaving one or more weapons in the vehicle.

The Grievant testified that he did not dispute the facts testified to by the Warden. The Grievant testified that he believed two other officers had damaged Agency vehicles in October, 2018 and neither officer received a written notice. However, the Grievant did not call either officer as a witness.

### **APPLICABLE LAW AND OPINION**

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).

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.

The Standards of Conduct, Operating Procedure 135.1 (Agency Exhibit 5) provides that a Group I offense is a level offense that generally has a relatively minor impact on Agency business operations but still require management intervention.

Operating Procedure 323.1 provides that a preventable crash may result in the Agency taking action against an employee pursuant to the Standards of Conduct.

In considering all of the evidence, it is the Hearing Officer's opinion that the Grievant's conduct did constitute a Group I offense. The Warden testified that although the Warden's supervisor recommended that the Grievant receive a Group II Written Notice, the Warden mitigated the discipline to the Group I notice.

## **DECISION**

The Hearing Officer upholds the Group I Written Notice.

## **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 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.[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].

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John R. Hooe, III  
Hearing Officer

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