

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

**Office of Employment Dispute Resolution**

**DECISION OF HEARING OFFICER**

**In re:**  
**Case Number: 11996**

Hearing Date: January 16, 2024  
Decision Issued: January 30, 2024

**PROCEDURAL HISTORY**

The Hearing Officer was appointed effective August 1, 2023. Upon being appointed, the Hearing Officer attempted to schedule a pre-hearing telephone conference but was advised by the Grievant that the Grievant was in the process of retaining counsel. Due to delays the Grievant encountered in securing counsel, the Hearing Officer received confirmation that Grievant had retained counsel on September 26, 2023. Due to the difficulties of scheduling between the Agency's Counsel, the Grievant's Counsel and the Hearing Officer, counsel agreed that the hearing in this matter would be conducted remotely on January 16, 2024, with a copy of all exhibits and a list of witnesses to be provided no later than January 9, 2024.

Grievant's Counsel did not provide the notebook of exhibits by January 9, 2024, but did provide the notebook prior to the hearing date. Counsel for the Agency objected to the Grievant being allowed to introduce the exhibits due to late submission. The Hearing Officer overruled the objection, reserving the right for the Agency to object to specific exhibits during the hearing.

The Grievance Hearing was conducted on January 16, 2024 as scheduled.

The grievance hearing addressed the following Written Notice:

Group III Written Notice issued on June 23, 2023 citing six violations of  
DHRM Policy 1.60, Ethical Misconduct (Agency Exhibit 2)

**APPEARANCES**

Grievant  
Grievant's Counsel



Agency Party Designee  
Agency's Counsel

### **ISSUES**

1. Did the Agency's evidence prove by a preponderance of the evidence that the Grievant's conduct was in violation of the alleged policy, procedure or directive?
2. Did the Grievant's conduct constitute a Group III violation under the Standards of Conduct?
3. Whether the Agency considered mitigating and aggravating factors as to the Written Notice?
4. Was the Written Notice 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 disciplinary action against the Grievant was warranted and appropriate under the circumstances. The Grievant has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual (GPM) section 5.8. a preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM section 9.

### **EXHIBITS**

The Agency Exhibits admitted into evidence are contained in one notebook with tabs 1-19. Agency Exhibit 10 was withdrawn as an exhibit during the hearing.

The Grievant exhibits admitted into evidence are contained in one notebook with tabs 1-30.

### **FINDINGS OF FACT**

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

The Agency employed Grievant as a Budget Analyst with such employment governed by the following:

- DHRM Policy 1.60 (Standards of Conduct (Agency Exhibit 3)
- DHRM Policy 1.25 Hours of Work (Agency Exhibit 4)
- VEC Ethics Policy (Agency Exhibit 5)
- VEC Information Technology Acceptable Use Policy and Procedures (Agency



Exhibit 6)

- VEC Agency Identification (ID) Badge Policy and Procedures (Agency Exhibit 8)
- VEC Personal Cell Phone Guideline (Agency Exhibit 9)
- VEC Information Resource Acceptable Use Policy (Agency Exhibit 10)

The Agency's first witness was ■ Budget Manager and Grievant's immediate supervisor. The witness testified that the Grievant started as a temporary employee on August 21, 2021 but was hired full-time on January 25, 2022. In that Grievant has claimed that Grievant's discipline was in part due to racial discrimination, it is noted that ■ is white and the Grievant is not white.

■ testified that although the Grievant's work schedule was set as 9:00 am to 5:30 pm (with a thirty minute lunch break) Monday-Friday, the Grievant was coming in late to work. As a result, a Memorandum of Counseling-Attendance/Excessive Tardiness was prepared and signed by the supervisor and the Grievant on December 6, 2022 (Agency Exhibit 12). The Memorandum set out guidelines in the event the Grievant was to be late reporting to work due to the Grievant's need to transport the Grievant's children to school in the mornings. The action plan set out in the Memorandum allowed the Grievant to arrive to work as late 9:30, understanding that the Grievant would make up the late arrival by leaving later in the day. However, the plan required the Grievant to notify ■ as soon as possible if the Grievant was going to be later than 9:30 arriving at work. In addition, the Memorandum set out that the Grievant would obtain approval to leave work for any purpose if the Grievant's absence would be in excess of the prescribed thirty minute lunch break.

■ reviewed the Grievant's employee work profile and performance plan (Agency Exhibit 11), pointing out the duty is to follow policies and procedures without exception and maintain confidentiality, ethics and integrity. ■ testified that Grievant's work performance during the probationary period was up and down, just the "bare minimum." ■ testified that due to the tardiness problem and other issues with Grievant's work, ■ wanted to extend the Grievant's probationary period but due to a procedural error by ■ the probationary period could not be extended and the Grievant became a full-time employee on January 24, 2023.

■ testified that on June 5, 2023, budget packets were already delayed and it was a "all hands on deck" situation to get the work completed. However, ■ testified that the Grievant called ■ at 11:21 requesting permission to return home to retrieve the Grievant's access badges which the Grievant stated the Grievant forgot. The witness then went on to review Agency Exhibit 17, page 3, where ■ set out that he spoke with the Grievant on June 7, 2023 at which time the Grievant said the Grievant had left on June 5 to get the Grievant's ID badge, came back to work, worked for about fifteen minutes, left at noon for lunch and only took the normal lunch period. ■ stated that ■ did not observe the Grievant at the Grievant's desk on June 5, 2023 at any time between 11:30 and 1:30. Due to the discrepancy in the Grievant's account and the observations made by ■ an investigation was conducted which included review of Grievant's



scan card use into the building and Grievant's security access into the Finance suite. ■ testified that due to the security information indicating that the Grievant had used the Grievant's scan card to enter the building the morning of June 5<sup>th</sup>, the Grievant lied when the Grievant said at 11:21 on June 5<sup>th</sup> that the Grievant needed to return home because the Grievant forgot the Grievant's scan card.

■ testified that ■ was ready to issue a Group II Written Notice due to Grievant's attendance policy violation and a Group III Written Notice for not being truthful. ■ testified that ■ was on vacation from June 9 to June 20, but upon return to work (and after consulting with Grievant's superior and HR) issued the Group III Written Notice on June 23, 2023.

■ went on to testify that before preparing the Written Notice an additional matter was included. ■ referred to Agency Exhibit 13, an email dated May 30, 2023 to ■ (Director of Finance) with a copy to ■ in which Grievant asked for a raise. In the email, the Grievant stated "I did some additional analysis and analyzed budget and grants department for the last three years, in 2021, ■ the former Budget and Grants Analyst that I replaced had a budget of \$70k...". ■ testified that Grievant was not given authorization to analyze employee pay at VEC. As a result, it was concluded that Grievant's use of internal departmental information, which Grievant had access to only through the course of his duties as a Budget & Grants Analyst) were used by the Grievant not for the purpose of executing his job duties but for Grievant's own personal gain. ■ concluded that such conduct was in violation of the Standards of Conduct and were examples of not acting with integrity or honesty.

■ testified that during a meeting that ■ had with the Grievant, the Grievant secretly recorded their discussion without the consent of ■ and in violation of Agency policy, referring to Agency Exhibit 9 which states "Use of personal phones for video recordings or sound recordings in the workplace is prohibited and is a breach of confidentiality." This conduct by the Grievant was also included as a separate violation of the Standards of Conduct in the Written Notice.

Next, ■ testified regarding the Grievant providing a password to a person who was not authorized to have the password. ■ testified that ■ emphasized to Grievant not to share the password with anyone due to the various serious harm that could be done to the Agency and those the Agency serves. This conduct by the Grievant was also included as a separate violation of the Standards of Conduct, failure to follow instructions.

Finally, ■ testified that before issuing the Written Notice the aggravating and mitigating circumstances were considered including the Grievant's time with the Agency, no prior discipline other than the Memorandum and the serious nature of dishonesty.

Upon cross-examination, ■ admitted that the Grievant's six month performance review indicated that Grievant's performance met expectations and that ■ commented "[Grievant]



continues to gain understanding of [Grievant's] area and develop [Grievant's] skills and work." (Grievant's Exhibit 12) However, [REDACTED] pointed out that the issue regarding Grievant's use of Agency information to negotiate a raise occurred on May 30, 2023 and the attendance and dishonesty issues regarding the use of Grievant's scan card occurred on June 5, 2023.

Also in cross-examination counsel for Grievant had [REDACTED] review Grievant's Exhibit 18 which is an email thread which began on May 26, 2023 at 10:14 am with an email from [REDACTED] to the Grievant advising that "the rest of the budget packets for 2024 need to be built before the end of the day." Grievant's response at 1:53 pm "...Didn't you mention yesterday, when we spoke in your office, that we had an extension to complete this sometime next week...", followed by a response from [REDACTED] at 2:00 pm stating "Yesterday the deadline was before you left for the day, that was what changed." The email went on to point out that "I [REDACTED] will be working on them all weekend so that we can send out...I can't work on any that aren't completed so if there are any not completed today, it will prevent me from balancing the budgets to targets." The email then indicates that on Saturday, May 27, 2023 Grievant emailed [REDACTED] that the Grievant had completed in putting the information on all the budget packets and [REDACTED] responded "Thank you..."

Continuing on cross-examination, counsel for Grievant referred to Grievant Exhibit 19 to point out that the email from [REDACTED] to [REDACTED] on May 30, 2023 that stated "We were not able to get budget packets out by the end of last week.." does not attribute any delay to Grievant's mistakes. However, [REDACTED] testified that [REDACTED] told the Grievant verbally on the morning of June 5<sup>th</sup> of Grievant's mistakes.

Grievant's counsel next asked what [REDACTED] showed the Grievant in the way of Agency policies at the time Grievant was hired. [REDACTED] responded that [REDACTED] did provide all policies and procedures to the Grievant at the time of hiring. [REDACTED] also pointed out that the cell recording prohibition is contained in a stand alone one page policy statement. It was then pointed out that the Grievant signed an acknowledgement that Grievant received the VEC Information Resource Acceptable Use Policy on January 25, 2022 (Agency Exhibit 6) and acknowledgement that the Grievant had "seen and read" the Employee Handbook, also signed January 25, 2022.

The Hearing Officer notes that in the body of the Acknowledgement signed by the Grievant regarding the Acceptable Use of IT Resources, it states in part "I am prohibited from using or knowingly permitting use of any assigned or entrusted access control mechanisms...for any purpose other than those required to perform my authorized job functions..."

Next, Grievant's counsel referred to Grievant's Exhibit 28, the letter of intention to issue a Group III Written Notice dated June 22, 2023 directed to the Grievant by [REDACTED] which states "You have 24 hours to provide any written mitigating circumstances you would like to have considered pertaining to this action." Upon counsel suggesting that the 24 hours was an unreasonably short period of time within which to respond, [REDACTED] answered that the 24 hour requirement is policy. The Hearing Officer notes that the Standards of Conduct provide the following:



B. Employees must be given a reasonable opportunity to respond after receiving notification of potential disciplinary action. Typically, a 24-hour period is a sufficient period of time, however, a "Reasonable opportunity to respond" should not be based solely on the quantity of time provided but on also on the nature of the offense, the time period of which alleged events occurred, and the volume of evidence that may be presented. Based on this assessment more or less time may be granted to refute the allegations.

Regarding the allegations that Grievant does not follow directions with respect to the Grievant's work hours and one half hour lunch break, counsel for the Grievant referred to Grievant's Exhibit 21 which is a series of text messages ranging from May 31, 2023 to June 9, 2023 to indicate that the Grievant regularly kept [REDACTED] advised when Grievant's arrival at work would be delayed.

Grievant's counsel next asked [REDACTED] to describe the events of March 3, 2023, a meeting between [REDACTED] and the Grievant in the office of [REDACTED] testified that at the meeting [REDACTED] was seated behind a desk and the Grievant was seated between [REDACTED] and the door to the office. [REDACTED] testified that Grievant raised Grievant's voice in such a manner that it was a violation of workplace conduct policy. However, the Hearing Officer notes that the voice recording that was played at hearing (Grievant Exhibit 26) did not demonstrate to the Hearing Officer that the Grievant's voice was raised but did indicate that [REDACTED] seemed to be upset. The Hearing Officer would further note that other than for the issue of credibility of the witnesses, the Hearing Officer will not consider this evidence since it is not one of the violations listed in the Written Notice. Upon being asked if [REDACTED] counseled Grievant on any of the matters included in the Written Notice before issuing the Written Notice, [REDACTED] answered that [REDACTED] did not counsel the Grievant due to the nature of the offenses.

The Agency's second witness was [REDACTED] Cost Accounting Manager, who reports to [REDACTED] and is a colleague of the Grievant. The witness testified with respect to the issue of Grievant's conduct on June 5, 2023 with respect to Grievant entering and exiting the workplace. [REDACTED] testified that on June 5, 2023 Grievant was in a group that went out to a planned lunch, leaving around noon and returning after 1:00. [REDACTED] testified that [REDACTED] did not see Grievant after returning from lunch. [REDACTED] testified that [REDACTED] came by [REDACTED] cubicle looking for the Grievant about twenty minutes after [REDACTED] testified that they had returned from lunch. [REDACTED] testified that [REDACTED] work area is approximately fifteen feet from Grievant's work area. [REDACTED] testified that the Grievant told [REDACTED] that Grievant had split Grievant's pants and went home to get new pants without telling [REDACTED] before leaving the workplace. With respect to Grievant's use of the entrance and the exit in the loading area rather than in front of the building, [REDACTED] testified that Grievant normally parked in front of the building and it was a good walk to get to the entrances at the loading dock. [REDACTED] further testified that he believes Grievant would normally enter and exit from the front of the building. [REDACTED] also testified that with respect to Grievant alleging that Grievant had been discriminated



against based on Grievant's race. [REDACTED] (who is not white) testified that [REDACTED] had never observed racial discrimination on the part of [REDACTED] directed at the Grievant or anyone else.

Upon cross-examination by Grievant's counsel, [REDACTED] testified that Grievant did not at first bring up the matter of racial discrimination with respect to any problems Grievant was having with [REDACTED]. [REDACTED] also testified that Grievant had never seemed aggressive and [REDACTED] had never heard Grievant speak disrespectfully about [REDACTED].

In redirect, counsel for the Agency showed a video of the Grievant and [REDACTED] entering the suite together at 1:09. [REDACTED] stated that [REDACTED] did not see the Grievant after that, i.e. during the time of Grievant's absence from work.

The Agency's third witness was [REDACTED] Compliance Officer, who testified regarding the security of the VEC building and the manner in which employees use scan badges to enter the building and elevators and personal fobs to enter work suites.

Referring to Agency Exhibit 16, the witness testified that the record of the Grievant's use of his badge to enter the building are consistent with what each video and summary introduced in evidence is Agency Exhibit 19. The records of June 5, 2023 from 9:10 am through 6:12 pm which indicate the following:

Grievant enters suite at 9:12 am

Grievant leaves suite and enters staircase at 10:34:59 am

Grievant returns from lobby 11:58:14 am

Grievant leaves suite at 12:05 pm

Grievant returns to suite at 1:09 pm

Grievant leaves suite at 1:15 pm to the hallway on the phone, enters restroom and returns 1:24:35

Grievant leaves suite at 2:39 pm to restroom and returns at 2:39:51

Grievant leaves suite 6:02:13 to restroom and returns to suite at 6:08:12 pm

Grievant leaves suite at 6:10:43 pm and leaves for the day

[REDACTED] testified that Agency Exhibit 16 demonstrates that the Grievant accessed the building at the loading dock at 11:56:24, exited the front of the building at 12:05:13 and returned through the front of the building at 1:08.

The Agency's next witness was [REDACTED] Director of Finance, who testified that all of those working in the finance suite have individual work areas that are within a short distance from each other. [REDACTED] testified that beginning in the fall of 2022 [REDACTED] started noticing that the Grievant would leave shortly after [REDACTED] would leave, usually between 4:00 and 4:15. [REDACTED] testified that [REDACTED] indicated that [REDACTED] had not given permission for the Grievant to leave early.



After reviewing the items in the Written Notice (Agency Exhibit 2) [REDACTED] testified that with respect to the Grievant's request for a salary increase based on the pay received by the former Budget and Grants Analyst, that the former employee had considerably more experience and valuable certifications which the Grievant did not have. [REDACTED] further pointed out that VEC Ethics Policy (Agency Exhibit 5) forbids an employee from using Agency resources for personal gain.

[REDACTED] went on to testify that [REDACTED] noticed on June 5, 2023 that the Grievant was gone for long periods of time. As a result, [REDACTED] initiated the review of the security information to indicate Grievant's times of entering and exiting the building and finance suite (Agency Exhibit 18). [REDACTED] testified that if Grievant did not have the scan badge to enter the front of the building, a whole separate procedure was required through security, with entrance in the security logs for Grievant to enter the front of the building. In an email from [REDACTED] to [REDACTED] on June 9, 2023 [REDACTED] indicated to [REDACTED] Human Relations Manager that Grievant did have Grievant's badge on Monday morning, June 5, 2023 and did swipe in "therefore lying that [Grievant] had forgotten [Grievant's] badge and needed to go home and get it" (Agency Exhibit 18, Page 3)

[REDACTED] further testified that the issue regarding Grievant giving an unauthorized person a password could have created huge security and integrity risks.

[REDACTED] further testified that when meeting with the Grievant the Grievant insisted on recording the meeting but when asked to stop, Grievant refused stating "Virginia is a single party consent state."

[REDACTED] concluded by testifying that before issuing the Group III Written Notice HR was consulted and mitigation was considered but did not off set the seriousness of the Grievant's violations.

Upon cross-examination by Grievant's counsel, [REDACTED] was asked to look at Grievant Exhibit 9 VEC Information Technology Acceptable Use Policy and Procedures, page 5, XI. Incidental Use, which reads in part as follows:

- A. Occasional and incidental personal use of VEC IT resources provided by the Agency is permitted, providing such use does not violate any Agency or Commonwealth of Virginia policies and procedures, interfere with the conduct of state business or job performance (based on volume or frequency)... or involve for-profit personal business.

[REDACTED] testified that it was management's position that the Grievant's use of the information was for the Grievant's personal profit, i.e. gaining a higher salary.

Counsel in concluding cross-examination of [REDACTED] had [REDACTED] review Grievant Exhibit 22,



Page 2 which was an email from [REDACTED] on June 13, 2023 to the Grievant reviewing the details concerning Grievant's failure to abide by the December 6, 2022 Memorandum of counseling for attendance but particularly the details of Grievant's comings and goings on Monday, June 5, 2023.

In addition, while reviewing Grievant Exhibit 27 regarding the Grievant sharing a password with an unauthorized employee, although the request was made by an email directed to the Grievant on June 13, 2023 at 3:06 pm, the Grievant did not provide the password until the Grievant's email directed to [REDACTED] Internal Audit Director on Thursday, June 15, 2023 at 9:58 am. The evidence indicated that the Grievant did not consult anyone ([REDACTED] being on vacation) before emailing the password to [REDACTED].

The Agency's final witness was [REDACTED] Human Relations Manager/State-Level Equal Opportunity Officer, who testified that that [REDACTED] had worked in the area of HR for over fifty years and assists with discipline, policy and procedures, including equal treatment of employees.

The witness testified that the witness reviewed all of the evidence presented regarding the grievance which was the basis for the Group III Written Notice. The witness also testified that the witness was involved in the Grievant's earlier grievance on June 12, 2023 and testified that [REDACTED] had received the Grievant's discrimination complaint but had advised the Grievant that the complaint did not provide a basis for an investigation. The witness then proceeded to testify as to each of the items listed in the Group III Written Notice and that a single Group III Written Notice with termination of employment, rather than multiple Group II Written Notices with termination of employment would be appropriate. The witness further testified that all prior cases involving other employees of VEC which involved unethical conduct have resulted in termination of the employee.

[REDACTED] testified that as to the VEC policy prohibiting video or sound recordings of the workplace (Agency Exhibit 9), the policy would have been provided to the Grievant at the time the Grievant was employed and that the Grievant would have received an email as a new employee listing all of the policies the employee was required to review and abide by.

The Agency rested its case.

The Grievant testified that the Grievant did on June 5, 2023 arrive at work with Grievant's badge entering the front door at 9:10:52, through the turnstile at 9:11:11 and then into the work suite at 9:11:35, all as indicated by Agency Exhibit 16. The Grievant testified that the Grievant then split the Grievant's pants and that he called [REDACTED] and told [REDACTED] "I have to go home" with no reference at that time regarding leaving Grievant's badge at home. Grievant testified that Grievant left about that time exiting through the stair door. Grievant testified that it was only upon returning to the building and realizing Grievant had left Grievant's badge at home that he called [REDACTED] and said he had left his badge at home. Grievant testified that it takes approximately thirty to thirty-five minutes to go to the Grievant's home and return to the building, entering the



building through the loading dock at 11:56:24, then proceeding up to the finance suite.

Grievant testified that it was normal for Grievant to take about an hour for lunch with other employees and that it was never an issue. Grievant admitted that Grievant had been told that day (June 5, 2023) that it was crunch time due to the budgets being behind schedule but that every morning Grievant stops by the office of [REDACTED] to check in. Grievant went on to review Agency Exhibit 19 to explain that Grievant did not misrepresent the facts to [REDACTED] regarding leaving Grievant's badge at home and did not enter or leave through the loading dock doors for any deceptive purpose.

Grievant testified that Grievant was not aware of the prohibition against audio recording in the workplace and that he never saw the one-page policy statement. The Grievant also testified that regarding the deadline for the work (Grievant Exhibit 18) Grievant believed that the deadline had been extended to the following week, not just Thursday to Friday as represented in the email from [REDACTED] dated May 26, 2023. Grievant further testified that Grievant believed that Grievant needed to record meetings due to Grievant's earlier problem regarding the probation extension.

As to sharing the password, the Grievant testified that the Grievant does not recall being told by [REDACTED] not to share the password. The Grievant pointed out that two days elapsed between the time [REDACTED] requested the password and when the Grievant provided the password (Grievant Exhibit 27).

Grievant denied any aggressive behavior when Grievant met with [REDACTED] and noted that there was a third person in the meeting. Grievant testified that Grievant recorded the meeting to rebut any allegations that the Grievant was aggressive. The Grievant also testified that the Grievant never told [REDACTED] that the Grievant records everything.

Upon cross-examination by Agency's counsel, Grievant testified that Grievant took the badge off while at home changing his pants but did not explain why that would be necessary. The Grievant was asked why the Grievant was gone from the workplace from 10:34 until 11:57 when the Grievant's residence is only 3.3 miles from work. The Grievant testified the amount of time as normal. The Grievant also denied that Grievant told [REDACTED] before leaving at 10:35 that Grievant had left Grievant's badge at home. Grievant testified that before leaving at 10:35 Grievant told [REDACTED] that Grievant was leaving for a "personal issue".

Upon conclusion of the Grievant's testimony both Agency's counsel and Grievant's counsel gave closing statements.

## CONCLUSIONS

Unacceptable behaviors are divided into three types of offenses, according to their severity. Group I offenses "include acts of minor misconduct that require formal disciplinary



action.” Group II offenses “include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action.” Group III offenses “include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.” (Standard of Conduct)

Virginia Code Section 2.2-3005.1 authorizes Hearing Officer’s to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “accordance with rules established by the Department of Human Resource Management...”. Under the rules for Conducting Grievance Hearings “[a] hearing officer must give deference to the agency’s consideration in the assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency’s discipline, the hearing officer shall state in the hearing decision the basis for mitigation.” A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees and (3) the disciplinary action was free of improper motive.

The Commonwealth of Virginia provides certain protections to employees Chapter 30 of Title 2.2 of the Code of Virginia. Among these protections is the right to grieve formal disciplinary action. The Department of Equal Employment and Dispute Resolution has developed Grievance Procedure Manual (GPM). This manual sets forth the applicable standards for this type of proceeding. Section 5.8 of the GPM provides that in disciplinary grievances the Agency has the burden of going forth with the evidence. It also has the burden of proving, by preponderance of evidence, that its actions were warranted and appropriate. The GPM is supplemented by a separate set of standards promulgated by the Department of Employment Dispute Resolution, *Rules For Conducting Grievance Hearings*. These Rules state that on a disciplinary grievance a Hearing Officer shall review the facts *de novo* and determine:

- A. Whether the employee engaged in the behavior described in the written notice;
- B. Whether the behavior constituted misconduct;
- C. Whether the discipline was consistent with law and policy; and
- D. Whether there were mitigating circumstances justifying the reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances.

After reviewing all of the Exhibits, the testimony of all of the witnesses and the arguments made, the Hearing Officer concludes as follows:

In that the Agency issued a single Group III Written Notice based on six separate events recited in the Written Notice the Hearing Officer recites conclusions as to each, in the



order recited in the Written Notice.

1. DHRM Policy 1.25-Hours of Work/DHRM Policy 1.60-Standards of Conduct: The Agency proved by a preponderance of the evidence that the Grievant failed to follow instructions or policy on June 5, 2023 by leaving the office building in excess of the thirty minute lunch break, without obtaining approval. The Agency did not prove by a preponderance of the evidence that such conduct was unethical conduct but did prove by a preponderance of the evidence that in light of the memorandum of counseling issued on December 6, 2022, the violation could be charged a Group II offense.
2. VEC Ethics Policy/DHRM 1.60-Standards of Conduct: The Agency proved by a preponderance of the evidence that the Grievant's use of the salary information the Grievant had access to only through the course of Grievant's official duties was in violation of the Standards of Conduct, as unauthorized use of state property or records and as abuse of state time, constituting a Group II offense. The Agency did not prove by a preponderance of the evidence that such conduct was unethical.
3. VEC Information Technology Acceptance Use Policy/DHRM Policy 1.60-Standards of Conduct: The Agency proved by a preponderance of the evidence that the Grievant's act of sharing a password was in violation of the Standards of Conduct as failure to follow instructions or policy. The Agency proved by a preponderance of the evidence that due to the serious nature of the conduct, the conduct is a Group II offense.
4. VEC Agency Identification (ID) Badge Policy/DHRM Policy 1.60-Standards of Conduct: The Agency proved by a preponderance of the evidence that the Grievant intentionally circumvented security procedures for entering and exiting the building and that such conduct was ethical misconduct and a Group II offense.
5. VEC Cell Phone Use Policy/DHMR 1.60-Standards of Conduct. The Agency proved by a preponderance of the evidence that the Grievant made sound recordings of the workplace in violation of the policy, as such conduct represents a failure to follow instructions or policy and that such conduct is Group II offense. The Agency did not prove by a preponderance of the evidence that such conduct was unethical.
6. VEC Ethics Policy/DHMR Policy 1.60-Standards of Conduct. The Agency did not prove by a preponderance of the evidence that the Grievant was willfully dishonest on June 5, 2023 as alleged in the Written Notice.

The five Group II violations of the Standards of Conduct charged as a single Group III, was consistent with law and policy.



The Agency considered mitigating and aggravating circumstances and the Agency's conclusion that the combination of the violations justified a Group III Written Notice with termination is consistent with law and policy.

### DECISION

For the reasons stated herein, the Agency's Group III Written Notice with termination of employment is upheld.

### 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 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


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



EEDR Consultant].

ENTERED: 1/30/24  
Date

  
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John R. Hooe, III  
Hearing Officer