



# **COMMONWEALTH OF VIRGINIA**

*Department Of Human Resource Management*

*Office of Employment Dispute Resolution*

## **DECISION OF HEARING OFFICER**

In re:

**Case number: 12038**

**Hearing Date: January 24, 2024**

**Decision Issued: February 21, 2024**

### **PROCEDURAL HISTORY**

On October 12, 2023, Grievant was issued a Group III Written Notice of disciplinary action with termination for inappropriate and disruptive behavior in violation of DHRM Policy 1.60, Standards of Conduct and DHRM Policy 2.35, Civility in the Workplace.

On October 31, 2023, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On November 20, 2023, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On January 24, 2024, a hearing was held at a University facility.

### **APPEARANCES**

Grievant  
Agency Representative  
Witnesses<sup>1</sup>

### **ISSUES**

1. Whether Grievant engaged in the behavior described in the Group III Written Notice?

---

<sup>1</sup> At the request of the Grievant, an interpreter was available during the hearing to assist witnesses as needed. The interpreter participated in the hearing only during the testimony of witnesses who requested the assistance of the interpreter.

2. Whether the behavior constituted misconduct?

3. Whether the University's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g. properly characterized as a Group I, II or III offense)?

4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

### **BURDEN OF PROOF**

The burden of proof is on the University to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee 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") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

### **FINDINGS OF FACT**

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

Prior to his removal, George Mason University employed Grievant as a Janitorial Services Quality Assurance Inspector. Grievant was employed by the University for almost two years. Grievant received a performance evaluation for the performance period 10/25/2022 – 3/31/2023 that gave Grievant an overall rating of "Successful."<sup>2</sup>

When Grievant was first hired by the University, his work included inspecting the work of the contractor that the University had hired to perform housekeeping services for the facilities at Campus A.

In early 2023, the University decided to end its contract for housekeeping services for Campus A and to hire University employees to perform housekeeping services at Campus A. During the Spring of 2023, the University set up operations, purchased equipment and supplies and started hiring staff so that the University could begin performing housekeeping services for the facilities at Campus A by May 31, 2023.

---

<sup>2</sup> University's Ex. at 43-58. "Successful" is described as "This rating level encompasses a range of expected performance and engagement that consistently has a positive impact. It includes employees who exhibit competency in work behaviors, skills, and assignments, and accomplished performers who consistently exhibit the desired performance capabilities and engagement with their team and campus constituents effectively and independently. These employees are meeting all the expectations, standards, requirements, and objectives on their performance plan and may exceed them at times throughout the evaluation year. This is the employee who reliably performs the job assigned and may even have a documented impact beyond their regular assignments, job functions, and performance objectives that directly support the mission of the institution.

Although Grievant's official job title and description did not change, Grievant was tasked with overseeing the set-up and operation of housekeeping services at Campus A. Grievant also was tasked with training the Custodial Supervisor who would manage the housekeeping staff at Campus A. University management considered this appropriate because Grievant had been overseeing the work of the contracted housekeeping services prior to the University's decision to hire its own staff to perform the housekeeping services at Campus A.

The University would frequently host events at its facilities, including Campus A, on evenings and weekends. University housekeeping staff were not required to work overtime, but could earn overtime wages by providing housekeeping services for those events. If University housekeeping staff were uninterested or unavailable to provide housekeeping services for such events, the University would hire contractors to perform such services.<sup>3</sup>

University witnesses observed that the University's housekeeping operations at Campus A initially appeared to experience more turnover than what the University had experienced when it had established housekeeping services at another University campus, Campus P.<sup>4</sup>

On August 2, 2023, three housekeepers<sup>5</sup> from Campus A, including Housekeeper 1 and Housekeeper 3, visited the University's human resources office to resign from their positions and to return University-provided clothing and equipment. The three housekeepers expressed concerns with the way Grievant treated them, the way Grievant spoke to them and what they described as favoritism in the way Grievant provided employees with opportunities for overtime work.<sup>6</sup> One of the housekeepers provided HR Director and HR Specialist with two recordings of Grievant speaking with the housekeeping services staff at Campus A.

Because the recordings were in Spanish, HR Director sent the recordings to Employee Relations Consultant who sent the recordings to Employee Relations Assistant to transcribe the information on the recordings into English.<sup>7</sup> Employee Relations Assistant testified that she grew up speaking Spanish as her first language and is fluent in both English and Spanish. Employee Relations Assistant was not provided with any information about the recordings or any suggestion of what she would hear on the recordings. Employee Relations Assistant transcribed what she heard on the two recordings into English and provided her transcriptions to Employee Relations

---

<sup>3</sup> Hearing recording at 6:58:31-7:01:47.

<sup>4</sup> Hearing recording at 2:40:05-2:41:04, 6:51:10-6:51:54.

<sup>5</sup> Two of the three housekeepers who attempted to resign on August 2, 2023, Housekeeper 1 and Housekeeper 3 were still employed by the University at the time of the hearing.

<sup>6</sup> Hearing Recording at 3:00:24-3:02:18, 3:12:50-3:14:32.

<sup>7</sup> Grievant initially expressed concern about the transcription of the recordings based on his belief that Housekeeper 1 had transcribed the recordings. Housekeeper 1 testified that she provided the recordings but did not provide transcripts of the recordings. Hearing recording at 3:55:00-3:56:02. Grievant did not provide any transcription of the recordings. Employee Relations Assistant testified that she transcribed the recordings. Grievant had an opportunity during the hearing to cross-examine Employee Relations Assistant regarding her transcriptions.

Consultant.<sup>8</sup> Employee Relations Consultant received the transcriptions of the recordings from Employee Relations Assistant on or about August 10, 2023 and shared those transcriptions with HR Director.

Associate Director, HR Specialist and Quality Assurance Inspector met the housekeeping services staff at Campus A on August 22, 2023 and August 24, 2023.

Associate Director, Quality Assurance Inspector and HR Specialist asked the housekeeping staff at Campus A general questions about how things were going at Campus A but did not ask questions specifically about Grievant. Associate Director, Quality Assurance Inspector and Human Resources Specialist testified that the housekeeping staff generally expressed concerns with the way Grievant treated them, including allegations that Grievant used inappropriate language, shared staff's personal information with the group, humiliated staff, spoke down to staff, used inappropriate nicknames for staff (e.g. "druggie", "sickie"), threatened staff with job loss, intimidated and made staff members cry.

Housekeeper 1 was one of the three housekeepers who visited the University's human resources office with the intention of resigning on August 2, 2023. Housekeeper 1 testified that the Custodial Supervisor would give her limited instruction regarding her job and then Custodial Supervisor and Grievant would criticize her performance and suggest that Grievant would not be able to explain to the other "higher people" why she was so slow and poor performing. Housekeeper 1 testified that when she told Grievant that she did not believe she was meeting expectations because she had not been properly trained and instructed, Grievant called her disrespectful and "a girl that wouldn't let him talk." Housekeeper 1 said that Grievant yelled and screamed at her telling her the training was so easy and basic that she just needed to ask him and he would show her what she needed to know, which she said he never did.<sup>9</sup> Housekeeper 1 testified that she did not want to come to work because she felt bullied by Grievant and Custodial Supervisor and, as a result, she missed so many days from work that she received counseling for her absences.<sup>10</sup> Housekeeper 1 also testified that Grievant would belittle and humiliate her and as an example described a time when Grievant criticized her work in front of several of her co-workers.<sup>11</sup> Housekeeper 1 testified that Grievant did not respect personal space and would get so close to her when he talked to her that he would almost spit on her. Housekeeper 1 testified that Grievant told the housekeepers "I am the devil – don't try me" and that he also told them that he would not tell them whether they were doing a good job or a bad job, but that if he found a piece of trash they were responsible for he was "not going to say anything, [he's] just going to fire [them], that they were very easy to replace" and Grievant bragged about firing people.<sup>12</sup> Housekeeper 1 said that Grievant made it clear that he was in charge of overtime and that the only people that would have the opportunity for overtime work were the people that he believed worked hard and he believed had potential and no one else.<sup>13</sup>

---

<sup>8</sup> See University Ex. at 85-89 (transcription of Recording 1) and 90-91 (transcription of Recording 2).

<sup>9</sup> Hearing recording at 3:41:58-3:44:20.

<sup>10</sup> Hearing recording at 3:44:19-3:44:46.

<sup>11</sup> Hearing recording at 3:46:20- 3:47:56; 4:02:47-4:04:40.

<sup>12</sup> Hearing recording at 3:51:31-3:52:46.

<sup>13</sup> Hearing recording at 3:52:46-3:53:03.

Housekeeper 2 testified that she worked on the day shift at Campus A and that she observed that Grievant showed favoritism to some employees over others with how he treated people and how he provided opportunities for overtime. Housekeeper 2 testified that Grievant intimidated her and treated her like she was an idiot.<sup>14</sup> Housekeeper 2 shared an example when Grievant upset Housekeeper 2 by criticizing her work in front of another housekeeper.<sup>15</sup> Housekeeper 2 also testified that whenever something was dirty, Grievant would tell other housekeepers that “it was [Housekeeper 2’s] fault.”<sup>16</sup> Housekeeper 2 testified that Grievant would “always” tell her she was a nervous person as though he was diagnosing her. Housekeeper 2 testified that Grievant made it clear that he only provided the opportunity to work overtime to the people he believed deserved it.<sup>17</sup> Housekeeper 2 said that since Grievant left the University, it has been made clear that the opportunity to work overtime is available for everyone.<sup>18</sup>

Housekeeper 3 was one of the housekeepers who intended to resign on August 2, 2023. Housekeeper 3 indicated she had been concerned with the amount of favoritism for some employees over others with respect to workload. Housekeeper 3 also observed Grievant being rude and mistreating the housekeepers.<sup>19</sup> As an example, Housekeeper 3 described a situation where Grievant was teaching the housekeepers to use a floor machine. Housekeeper 3 testified that one of the housekeepers, Housekeeper M, asked Grievant for an opportunity to try the floor machine and Grievant responded to Housekeeper M by telling her that he “hired her to clean toilets, to clean ‘shit’” and she will continue to clean “shit.” Housekeeper M resigned after that incident. Housekeeper 3 testified that she felt bad to be a part of that team and did not feel like she could confront Grievant because she felt intimidated by him.<sup>20</sup> Housekeeper 3 described Grievant as having no empathy toward her or the other employees. Housekeeper 3 stated that one of the housekeepers was injured on the job and she later heard Grievant making a comment and laughing that the housekeeper would get no benefits from the accident on the job. Housekeeper 3 observed that when Grievant would meet with the housekeepers he would describe his years of experience and the perfect job he was doing, and he would make them feel like they did not know anything about the job. Housekeeper 3 said that Grievant made the housekeepers feel like they were “less than” him.

Associate Director sent a Due Process Notification dated September 14, 2023, to Grievant. The purpose of the notification was to advise Grievant of Associate Director’s intent to issue a Group III “discharge notice” to Grievant and to provide Grievant with an opportunity to provide information, “including [his] interpretation of the events and any reasons why [he believed] this action should not be taken.” The Due Process Notification described the “rationale/evidence for this decision” as follows:

---

<sup>14</sup> Hearing recording at 4:55:40-4:56:17.

<sup>15</sup> Hearing recording at 4:23:29-4:26:33; 4:46:19-4:50:23.

<sup>16</sup> Hearing recording at 4:54:56-4:55:13 also 4:32:34-4:34:34

<sup>17</sup> Hearing recording at 4:30:35-4:30:47.

<sup>18</sup> Hearing recording at 4:57:47-5:00:00.

<sup>19</sup> Hearing recording at 5:28:34-5:29:56.

<sup>20</sup> Hearing recording at 5:30:28-5:35:44.

On August 2, 2023, we were notified of serious allegations of inappropriate behaviors by you towards the housekeeping staff at the Arlington campus (Mason Square). Due to the seriousness of the allegations, we immediately removed you from the workplace to begin an investigation. The investigation included meeting with every [University] housekeeping employee at [Campus A]. It also included two meetings with you to respond to the allegations.

#### Policy 1.60, Standards of Conduct

This policy promotes the well-being of its employees by maintaining high standards of work performance and professional conduct with an overall emphasis on diversity, equity and inclusion that promotes equitable treatment of all employees.

During the investigatory interviews, there were consistent complaints from several employees that you regularly used threatening, intimidating, aggressive and disparaging language towards the staff. This behavior led to four employees quitting their jobs on the spot without notice and created an overall hostile work environment as indicated in some of the following examples:

- August 2, 2023 recording - Intimidating employees with the threat of losing their jobs. As heard on the recording of a meeting, you stated:
- “From that, [you can] make a conclusion of my personality; is there something that scares me or something I’m afraid of – not even death, guys.”
- “I have been with people who have tried to manipulate me by crying, I’ve dealt with people who have tried to manipulate me by flirting and provoking me. I have been accused of sexual harassment and verbal abuse. None of it was verified.”
- “Here, no one is indispensable, this is USA, we are all replaceable. So, why am I telling you this? I need my check and let me remind you of something, there were more than 68 people waiting to be where you are sitting now.”
- “You are all on probation for one year.” “I don’t need to give you a reason to tell you why I don’t need your service and you don’t need to give me a reason to leave.”
- “So, be very careful when you open your mouth with what you say, where you say it, and who finds out. I will not think about it twice.”
- “There have always been others that want to tear me down in a way or intention. If someone is going to make an accusation, better have proof and better be prepared to fight.”

- “Don’t play with me, you’re tempting the devil.”
- August 2, 2023 recording – Making a derogatory and false statement about a member of leadership. As heard on the recording of the meeting, you stated:
  - “Because, I’m going to fight with my position and my job, I’m not going to stay quiet and I’m not afraid of anyone, not even my bosses.” “My boss, the director of facilities, he likes to drink brandy, likes to drink on the weekend. He would be hungover on Monday’s, and we would have meetings at 7am...”

#### Policy 2.35, Civility in the Workplace

This policy strictly forbids harassment, bullying behaviors, and threatening of employees, customers, and clients, in the workplace. Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable as demonstrated by the following examples below.

- Several employees reported that you brought an employee to tears by name calling and using profanity to describe the work they were expected to perform.
- On another recording, you were heard making a comment that the only thing that will stop you is a 38. This statement was concerning and taken seriously. You described this comment as a joke.

On October 12, 2023, the University issued a Group III Written Notice with termination to Grievant. The Written Notice described the offense as follows:

On August 2, 2023, we were notified of serious allegations of inappropriate behaviors by you towards the housekeeping staff at [Campus A]. Due to the seriousness of the allegations, we immediately removed you from the workplace to begin an investigation. The investigation included meeting with every [University] housekeeping employee at [Campus A]. It also included meeting with you to respond to the allegations.

Earlier this year and prior to the August allegations, you were counseled on similar inappropriate behaviors and the use of inappropriate language from complaints brought to our attention by a vendor and a [University] employee.

On September 19, 2023, a due process meeting was held. The due process meeting provided no additional facts or mitigating circumstances justifying a reduction of this disciplinary action.

The specific behaviors as outlined in the September 14, 2023 due process notification letter were inappropriate, disruptive, and violated the Standards of Conduct policy, 1.60 which states that employees are expected to demonstrate respect for the agency and towards co-workers, supervisors, etc. Additionally, the behaviors also violated the Civility in the Workplace policy 2.35.<sup>21</sup>

## **CONCLUSIONS OF POLICY**

Unacceptable behavior is 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."<sup>22</sup>

The Department of Human Resources Management has issued Policy 1.60 (Standards of Conduct) which sets forth

[t]he Commonwealth's Standards of Conduct and the disciplinary process that agencies must utilize to address unacceptable behavior, conduct, and related employment problems in the workplace or outside the workplace when conduct impacts an employee's ability to do their job and/or influences the agency's overall effectiveness.

Among the expectations of conduct for employees are:

- Demonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers.  
...
- Support efforts that ensure a safe and healthy work environment.  
...

The Department of Human Resources Management has issued Policy 2.35 (Civility in the Workplace) which applies to all state executive branch employees, including employees of George Mason University.

DHRM Policy 2.35 makes clear that

---

<sup>21</sup> Agency Ex. 81-83.

<sup>22</sup> The Department of Human Resources Management ("DHRM") has issued Policy 1.60 setting forth the Standards of Conduct for State employees.



[t]he Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties in the workplace.

Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable.

Pursuant to DHRM Policy 2.35, prohibited conduct/behaviors<sup>23</sup> may include, but are not limited to:

. . .

- Invading personal space;
- Stalking;
- Possessing, brandishing, or using a weapon that is not required by the individual's position while on state premises or engaged in state business;
- Subjecting others to communication or innuendoes of a sexual nature;
- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest;
- Behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others;
- Making disparaging remarks, spreading rumors, or making innuendos about others in the workplace;
- Raising one's voice inappropriately or shouting at another person;
- Swearing or using obscene language or gestures toward another person;
- Making obscene phone calls or delivering obscene messages to another person;
- Humiliating others; making public statements with the intent of embarrassing a targeted person; impugning one's reputation through gossip;
- Making unwelcome or suggestive comments or jokes;
- Displaying symbols associated with hostile/violent groups or inappropriate sexual connotations toward another person;
- Making culturally insensitive remarks; displaying culturally insensitive objects, images, or messages;
- Making demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted persons based on the group, class, or category to which they belong;
- Retaliating against one who, in good faith, reports a violation of this policy or participates in related investigations;
- Posting or discussing sensitive, private information about someone to others;

. . .

---

<sup>23</sup> DHRM Policy 2.35, Civility in the Workplace, Policy Guide.

Whether Grievant engaged in the behavior and whether the behavior constituted misconduct

Housekeeper 1, Housekeeper 2 and Housekeeper 3 credibly described behavior by Grievant that showed a lack of respect for his co-workers.

Grievant's behavior was inappropriate, unprofessional, showed a lack of regard for the housekeepers and humiliated and belittled them.

Housekeeper 1 and Housekeeper 2 both described examples of Grievant criticizing their work in front of their co-workers and both described those incidents as humiliating and upsetting. Grievant generally denied allegations against him and argued that Housekeeper 1 was an insubordinate employee whom he had disciplined suggesting that her allegations were "revenge" for his efforts to improve her work and discipline her. With respect to Housekeeper 2, Grievant stated that he spoke with her about her work when he happened to see her. He did not provide any testimony directly responsive to her assertions that whenever something was dirty, Grievant would tell other housekeepers that "it was [Housekeeper 2's] fault."

When Grievant told Housekeeper M that "he hired her to clean toilets, to clean shit and she will continue to clean shit"<sup>24</sup> his language was rude, inappropriate and profane. More significantly, however, the nature of his response was designed to humiliate and belittle Housekeeper M. Grievant asserted that he did not let Housekeeper M use the floor machine because she was inexperienced and because he already had an employee who had been injured. Grievant suggested during the hearing that Housekeeper M had mental health issues based on his observations of her behavior when she abruptly resigned following the incident.<sup>25</sup> Grievant did not directly deny that he spoke to Housekeeper M in the manner described by Housekeeper 3. But even assuming that Grievant's general denials included a denial of the description of his interaction with Housekeeper M, the Hearing Officer found Housekeeper 3's testimony regarding Grievant's interaction with Housekeeper M to be credible and generally Grievant's description of those events and the abrupt nature of Housekeeper M's resignation.

Housekeeper 1 and Housekeeper 2 both described Grievant as showing favoritism with respect to providing opportunities for the housekeepers to earn overtime wages. Both Housekeeper 1 and Housekeeper 2 testified that Grievant described the opportunity for overtime as available only for those employees that Grievant determined deserved it.<sup>26</sup> Grievant argued that there was no favoritism with respect to overtime because only the same few people ever wanted to work overtime. Custodial Supervisor also testified that only the same housekeepers volunteered for overtime opportunities and that overtime was available for anyone. Whether or not the same individual housekeepers actually worked overtime, Housekeeper 1 and Housekeeper 2 credibly and consistently described a work environment where Grievant led them to believe that the opportunity for

---

<sup>24</sup> Hearing recording at 5:30:28-5:35:44.

<sup>25</sup> Hearing recording at 7:33:48-7:35:28.

<sup>26</sup> Hearing recording at 3:52:46-3:53:03, 4:30:35-4:30:47; see also University Ex. at 85-89.

overtime was available only to those among them whom Grievant found worthy and that their opportunity to earn overtime wages was in his discretion to grant or deny.<sup>27</sup>

Housekeeper 1, Housekeeper 2 and Housekeeper 3 testified that they felt intimidated by Grievant and that he made them feel like they were idiots, did not know what they were doing and that they were “less than” or unworthy. Housekeeper 1 also testified that Grievant would boast about firing people and would threaten to fire the housekeepers.

Grievant argued that his accusers were insubordinate employees seeking “revenge” against him for trying to hold them accountable for their work.<sup>28</sup> Grievant pointed to issues with Housekeeper 1’s attendance and the effort to discipline Housekeeper 1 as the motive for her accusations and testimony.<sup>29</sup> With respect to Housekeeper 3, Grievant pointed to a time when Housekeeper 3 called the Custodial Supervisor during a power outage at Campus A during a weekend and Grievant’s determination to go to Campus A to prove “that she was lying” about being in the dark<sup>30</sup> and also asserted that Housekeeper 3 was “covering up” for contract employees from her country of origin.<sup>31</sup> With respect to Housekeeper 2, Grievant described her as “fragile” and someone who would “break into tears” if you did not speak to her “in the right way” as the basis for her testimony.<sup>32</sup> Custodial Supervisor testified that she did not consider Housekeeper 1 or Housekeeper 3 to be good employees and she was aware of Housekeeper 1 and Housekeeper 3 trying to get Custodial Supervisor in trouble.<sup>33</sup> This Hearing Officer found the testimony of Housekeeper 1, Housekeeper 2 and Housekeeper 3 credible with respect to their description of their experience working with Grievant because their testimony was credibly consistent.

Grievant argued that “the element” he worked with on the night shift were people who did not want to work, who wanted to sleep or get high. Grievant argued that he advised Associate Director and HR Director of what was happening at Campus A and Associate Director and HR Director never identified any problems or concerns with Grievant’s work.<sup>34</sup> Grievant asserted that Associate Director advised Grievant that he could “handle it.” There was no evidence in the record, however, to suggest that Grievant described his specific behavior toward the housekeepers to Associate Director or HR Director.

Grievant appeared to acknowledge that he can be loud but suggested that was due to his past work in the construction industry and argued that he did not intend to intimidate anyone and that he treated people with respect.<sup>35</sup> Grievant being loud in the way that he speaks might arguably explain perceptions of him “yelling” at someone, but

---

<sup>27</sup> See Hearing recording at 3:52:46-3:53:03, 4:30:35-4:30:47; see also University Ex. at 85-89.

<sup>28</sup> Hearing recording at 7:18:23-7:19:15, 7:21:15-7:21:30.

<sup>29</sup> Hearing recording at 7:36:35-7:37:45.

<sup>30</sup> Hearing recording at 5:54:33-6:13:51; 7:50:57-7:54:40.

<sup>31</sup> Hearing recording at 7:55:20-7:57:42.

<sup>32</sup> Hearing recording at 7:21:15-7:21:30.

<sup>33</sup> Hearing recording at 1:31:52-1:33:14.

<sup>34</sup> Hearing recording at 7:19:15-7:19:39.

<sup>35</sup> Hearing recording at 8:50:28-8:51:22.

it does not excuse behavior that was otherwise in appropriate or likely to intimidate, humiliate or belittle.

Grievant argued that the University took his statements on the recording that the University received on August 2, 2023, out of context and that he was explaining his personal experiences to the housekeepers in order to train and motivate them, not to intimidate or threaten them. Grievant asserted that he was not threatening to fire people, but was confirming how lucky they all were to work at the University.<sup>36</sup> While Grievant's intent may be a factor for consideration in determining the appropriate penalty, specific intent is not required for a violation of the policies at issue in this case.<sup>37</sup> In this case, the referenced statements on the recording were consistent with the hearing testimony of Housekeeper 1, Housekeeper 2 and Housekeeper 3 who credibly testified that they felt intimidated by Grievant, observed favoritism by Grievant and at times were humiliated or felt belittled by Grievant.

The preponderance of the evidence proves that Grievant violated DHRM Policy 2.35 (Civility in the Workplace) and the Standards of Conduct when he engaged in behavior that intimidated, humiliated and belittled the housekeeping staff at Campus A.

#### Whether the University's discipline was consistent with law and policy

Group III offenses generally include acts of misconduct, violations of policy, or performance that are of a most serious nature and significantly impact agency operations. Examples may include: Absence of three or more consecutive work days without approval; safety/health infractions that endanger the employee and/or others; unethical or illegal conduct; significant neglect of duty, disruption of workplace, or other serious violations of policy, procedures or laws. Absent mitigating circumstances, job termination is the normal result of a Group III offense.

Violation of DHRM Policy 2.35 may be a Group I, Group II, or Group III offense depending upon the nature of the violation.

The preponderance of the evidence shows that Grievant's misconduct undermined team cohesion, staff morale, individual self-worth of housekeepers and impacted the University's ability to retain employees among the housekeeping staff at Campus A.

Grievant argued that his job duties never officially changed and did not include supervising the housekeepers. Grievant's behavior toward the housekeepers was inappropriate and violated DHRM Policy 2.35 whether his role was as a co-worker or a supervisor.

Grievant argued that the University failed to engage in progressive discipline. Grievant argued that the issuance of a Group III Written Notice for a "first offense" was

---

<sup>36</sup> Hearing recording at 8:47:44-8:50:28.

<sup>37</sup> See *also* Office of Employment Dispute Resolution, Administrative Review Ruling No. 2021-5194 (Feb. 2, 2021).

unwarranted because he was a good employee with a record of good work performance and no active disciplinary actions. Although agencies are encouraged to engage in progressive disciplinary action, the Standards of Conduct do not require agencies to do so. The University elected to issue Grievant a Group III Written Notice and has presented sufficient evidence to support its decision.

Grievant argued that the University treated him poorly in the investigation of the allegations against Grievant and argued that the University made up its mind and did not properly consider his response to the allegations. Grievant also argued he was not provided sufficient opportunity to defend himself. Grievant argued repeatedly that the HR Director delayed and mishandled the investigation, for this Grievant presented the testimony of himself and Former Custodial Supervisor. Both Grievant and Former Custodial Supervisor testified that they believed that they were not treated fairly through the investigation of allegations against them. Grievant and Former Custodial Supervisor both testified that they believed the investigation took too long and their responses to the allegations were not considered. Grievant and Custodial Supervisor testified that they were not given information about the bases for the investigation or the charges against them. Former Custodial Supervisor's employment with the University is not a matter before this Hearing Officer. With respect to Grievant, the evidence provided during the hearing was that the University placed Grievant on paid administrative leave to allow the University an opportunity to investigate the allegations regarding Grievant's alleged misconduct. Grievant was placed on paid administrative leave on or about August 2 or 3, 2023. The University began the process of investigating the allegations including meeting with and interviewing housekeeping employees at Campus A. Associate Director, HR Specialist and Quality Assurance Inspector met with housekeeping employees at Campus A on August 22, 2023, and August 24, 2023. At some point, the University extended Grievant's paid administrative leave. The University issued a due process notice to Grievant dated September 14, 2023. The Agency met with Grievant following the issuance of the due process notice. The University issued the Written Notice to Grievant on October 12, 2023. Although the University could have issued the Written Notice sooner, the length of time that the University took to investigate the allegations against Grievant and then issue discipline does not render the University's disciplinary action invalid under DHRM Policy 1.60.

As to the Grievant's other argument about the University's investigation and treatment of Grievant, Grievant essentially argued that the University did not afford him with sufficient due process. The hearing process cures any such deficiency. Grievant had the opportunity to present any evidence and arguments he wished during the hearing.

There was a dispute during the hearing among the parties as to whether Grievant received one or two prior verbal counselings. Grievant argued that he had received only a single verbal counseling, in June 2023, related to language he used during a discussion with new employees. A University witness testified that Grievant received a verbal counseling in January 2023 related to an interaction with a contract employee and a second verbal counseling in June 2023. The Hearing Officer does not need to resolve the dispute as to the prior verbal counselings Grievant may have received because the Hearing Officer has determined that the University's discipline is consistent with the Standards of Conduct even in the absence of any prior verbal counselings.

Grievant's misconduct not only impacted the morale and work environment at Campus A but also the University's ability to retain staff at Campus A. The University's issuance of a Group III Written Notice with termination was consistent with the Standards of Conduct. The University has met its burden of proof.

### Mitigation

Grievant argued that the Agency failed to appropriately consider mitigating factors, including the Grievant's years of service and history of good performance evaluations.

The Standards of Conduct provide that an Agency may reduce the level of a disciplinary action if there are mitigating circumstances, such as conditions that compel a reduction to promote the interests of consistency, equity and objectivity, or based on an employee's otherwise satisfactory work performance. In this case, the University determined that because of the severity of Grievant's misconduct and its impact on Agency operations, it was not appropriate to reduce the discipline.

Virginia Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resource Management...."<sup>38</sup> Under the Rules for Conducting Grievance Hearings, "[a] hearing officer must give deference to the agency's consideration and 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 Office of Employment Dispute Resolution 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.<sup>39</sup> The Grievant did not have a long tenure with the agency. Regardless, under the Rules, an employee's length of service and otherwise satisfactory work performance, standing alone, are not sufficient to mitigate disciplinary action in this matter.

In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

---

<sup>38</sup> Va. Code § 2.2-3005.

<sup>39</sup> EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368.

## DECISION

For the reasons stated herein, the University's issuance to Grievant of a Group III Written Notice of disciplinary action with termination is **upheld**.

## 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 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>40</sup>

*Angela L. Jenkins*

Angela L. Jenkins, Esq.  
Hearing Officer

---

<sup>40</sup> See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant.