



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12248

Hearing Date: April 21, 2025

Decision Issued: April 30, 2025

PROCEDURAL HISTORY

On January 21, 2025, Grievant was issued a Group III Formal Written Notice with removal for attendance issues, leaves of absence, and standards of conduct violations.

On February 14, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On March 10, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing officer. On April 21, 2025, a hearing was held in-person.

APPEARANCES

Grievant
Department of Corrections Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice Form 129-01-004?
2. Whether the behavior constituted misconduct?

An Equal Opportunity Employer

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?

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 Agency 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:

The Fluvanna Correctional Center for Women ("FCCW") employed Grievant as a Corrections Officer. Evidence of prior disciplinary evidence was introduced during the hearing. On November 8, 2024, a Written Notice of Group II violations was provided which Grievant refused to sign. On May 31, 2024, a Notice of Improvement Needed/Substandard Performance was provided, Grievant did not sign this Notice.

FCCW received training and notices regarding attendance and tardiness. FCCW provided a manual instructing Grievant on the proper policies and procedures regarding absenteeism or calling in late. FCCW provided numerous numbers to call into FCCW as it related to Grievant's tardiness or absenteeism.

Grievant failed to report to work on time on September 12, 2024; September 19, 2024, September 22, 2024; September 23, 2024, September 25, 2024, September 27, 2024; September 28, 2024; September 29, 2024, September 30, 2024; October 1, 2024; October 11, 2024; October 12, 2024; October 14, 2024; October 16, 2024; October 17, 2024; October 21, 2024; October 22, 2024; October 25, 2024; October 27, 2024; October 31, 2024; November 2, 2024; November 5, 2025; November 7, 2024; and November 10, 2024. Grievant failed to report to work on October 3, 2024; October 8, 2024; October 13, 2024; November 8, 2024; November 13, 2024; November 24, 2024; November 27, 2024; November 28, 2024; December 2, 2024; December 3, 2024; December 6, 2024; December 7, 2024; and December 8, 2024.

Grievant knew she needed to call the proper channels to provide for her tardiness two hours prior to being tardy. Grievant acknowledged she did not call in and texted or emailed minutes

before she arrived late at her position. Grievant acknowledged she did not have doctor's notes related to her absences and had not provided this evidence prior to the hearing.

CONCLUSIONS OF POLICY

Operating Procedure 135.1 sets forth the Agency's Standards of Conduct. OP 135.1 G 1 states employees, "Report to work as scheduled, seek approval from supervisors in advance for any changes to the established work schedule; including the use of leave and late or early arrivals and departures, and report hours of work and leave accurately." Operating Procedure 110.1 C sets forth the Agency's Proper Approval, Notice and Reporting of Absences for its employees.

On the dates established above, Grievant engaged in excessive tardiness and absenteeism. Grievant failed to provide the proper advanced notice required by the Operating Procedures, failed to follow the proper protocols regarding notice related to absenteeism or tardiness, and failed to provide supporting documentation related to her tardiness or absenteeism.

FCCW terminated the Grievant following DOC Operating Procedure 110.1, DOC Operating Procedure 135.1, and Department of DHRM Policy 1.60. These policies allow for termination related to Group III violations 3 Failure to report without notice, 4 3 days absent without notice, 13 Failure to follow instructions and/or policy, and 99 Other.

Grievant argued she had issues related to her vehicle, the shift she was assigned, caring for her grandmother, and doctor's appointments. Grievant was adequately trained, retrained, and provided a plan to improve her attendance issues. Grievant failed to follow the proper procedures and did not provide timely notice or supporting documentation to support her basis for absences and tardiness.

Va. 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..." Va. Code §3005. 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. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group III, Written Notice Form 129-01-004 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 14th Street, 12th Floor
Richmond, Virginia 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

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

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.¹

/s/ James Bradley Winder, Jr.

James Bradley Winder, Jr., Esq.
Hearing Officer

¹ 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.

