



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12243

Hearing Date: May 28, 2025

Decision Issued: June 13, 2025

PROCEDURAL HISTORY

On January 7, 2025, Grievant was issued a Group III Written Notice of disciplinary action with termination for unauthorized use of University parking validations and violations of DHRM Policy 1.60, Standards of Conduct and DHRM Policy 2.35, Civility in the Workplace. The Written Notice described the nature of the offense as follows:

On October 24, 2024¹, an incident occurred in the [Parking Garage] involving conduct that led [University] Police to submit an incident referral to Employee Relations. Your actions during this incident were cited as "Conduct Unbecoming of a University Community Member." It is alleged that your interactions with a parking services employee were inappropriate and confrontational. Specifically, it is reported that you exited your vehicle, followed the employee to their office, attempted to open a locked door, banged on the window, and used your phone to record or take pictures. The actions violate specific provisions of DHRM Policy 2.35 Civility in the Workplace, including:

- Engaging in behavior that creates a reasonable fear of injury to another person;

¹ The Written Notice erroneously identified October 24, 2024, as the date of the incident with the Parking Garage employee (Parking Attendant). Based on the evidence presented, the incident between Grievant and Parking Attendant occurred on October 23, 2024. The police incident report of the event was dated October 24, 2024. This error did not appear to prejudice the Grievant in his presentation of his defense, and the description of the incident in the Written Notice, including the reference to involvement of University police was sufficient to put Grievant on notice as to the misconduct for which he received discipline. See University Ex. at 148-149.

- 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;
- Raising one's voice inappropriately or shouting at another person.

The actions also violate specific provisions of DHRM Policy 1.60 Standards of Conduct, including:

- Demonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers.
- Resolve work-related issues and disputes in a professional manner and through established business processes.
- Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.

Additionally, during the investigation, [University] Police discovered that you had been inappropriately using [University] parking validations to pay for parking. These validations have not been authorized for [University] employee use and not for your personal use. Recent security footage confirms 12 instances of parking validation use, with an additional 8 suspected uses (unconfirmed because clear security footage is not available). Using these parking validations for personal parking costs is a misuse of state funds and in violation of DHRM Policy 1.60 Standards of Conduct which sets the expectation that employees will:

- Use state equipment, time, and resources judiciously and as authorized.

Both the personal conduct during the incident and the unauthorized use of parking validations are considered serious violations of [University] policies.²

On February 4, 2025, Grievant timely filed a grievance to challenge the University's action. The matter advanced to hearing. On February 24, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On May 28, 2025, a hearing was held remotely via the Microsoft TEAMS platform.

During the hearing the University objected, based on relevance, to Grievant's Exhibits Tabs 30, 32-41, 49, 51, and 53. Grievant argued that the exhibits were relevant to the Grievant's defenses to the allegations in the Written Notice. After hearing argument from both parties, the Hearing Officer noted the University's objections, but admitted all of the Grievant's exhibits into the record, including a video exhibit which was marked during the hearing as Grievant's Exhibit (Tab) 54. The University's exhibits were admitted into the record without objection from the Grievant.³

² University Ex. at 148-150.

³ See Hearing Recording at 8:20-20:17.

APPEARANCES

Grievant
Grievant's Counsel
University Counsel
University Party Designee
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group III Written Notice?
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 termination, George Mason University (University or Agency) employed Grievant as an Event Coordinator for one of its Schools. Grievant was employed by the University for approximately eight years.⁴

University students and employees must pay to park on the University's campuses. Students and employees may purchase permits to park on the University's campuses or,

⁴ Hearing Recording at 7:19:58-7:21:02.

they may pay to park consistent with hourly/daily rates at certain University parking facilities on each campus.⁵

The University also makes available for purchase parking validations. A parking validation is a paper ticket or code that can be used in lieu of payment for parking. Parking validations may be purchased by a School or department of the University to provide to visitors to the campus to cover the costs of the visitors' parking at a University parking facility. The parking validations do not expire, so if a University department or School purchased more parking validations than were needed for a particular event, the department or School could use those validations for a future event. University employees are not allowed to use parking validations purchased with University funds to pay for the employees' personal parking needs.⁶

As an Event Coordinator, Grievant may coordinate the purchase of parking validations for use by visitors for certain events. Grievant did not have a budget or organization code, so he would purchase parking validations for events with the approval of the event host and using the budget or organization code of the event host.⁷

On August 24, 2020, Grievant was a recipient of an email from a University resource management assistant following Parking Validation training. The email included a draft parking log that employees were expected to use to track their purchase and use of parking validations. The email also included as an attachment a training handout that noted that:

Parking at a [University] campus cannot be reimbursed for [University] employees

Adjunct faculty (and other [University] employees) should not be given parking validations.⁸

In his capacity as an Event Coordinator, Grievant, on occasion, assisted Center Operations Director with events that Center Operations Director hosted at the University. Center Operations Director testified that he would purchase parking validations for use by visiting speakers for the events or for special visiting guests to the events. Although Center Operations Director often handed out the parking validations to speakers or guests himself, Center Operations Director testified that some parking validations may have been accessible to the employees that worked the registration table for the events that Center Operations Director hosted.⁹

Center Operations Director hosted a symposium at the University at the end of September 2022. Prior to the symposium and due to a change in the parking system, Center Operations Director exchanged parking validations that he had purchased with University funds for parking validations that would work with the new system. Center

⁵ Hearing Recording at 3:00:00-3:32:08.

⁶ See Hearing Recording at 3:00:00-3:32:08 and see 53:00-1:18:02, 3:34:00-4:01:28, 7:07:07-7:18:55, University Ex. at 80-83 and Grievant Ex. at 65-68, and see University Ex. at 63-78.

⁷ Hearing Recording at 7:19:58-7:58:04.

⁸ See University Ex. at 80-83, Grievant Ex. at 65-68.

⁹ Hearing Recording at 3:34:00-4:01:28.

Operations Director exchanged the parking validations prior to the symposium so that parking validations would be available for University visitors who would be participating as speakers during the symposium. The new parking validations that Center Operations Director received in exchange for the old parking validations previously purchased with University funds included parking validations identified as parking validations E-5266 – E5315 and parking validations G-10991 – G-11006.¹⁰ Center Operations Director recalled that he helped set up the registration table for the symposium, but he did not stay at the registration table for the entire symposium because he was attending to the needs of symposium speakers and special guests. Center Operations Director recalled that, although Grievant had a conflict during the start of the symposium, Grievant was able to assist at the registration table toward the end of the symposium.¹¹

Center Operations Director worked with Grievant to plan and host a naming event held at the University at the end of August 2023. Center Operations Director authorized Grievant to submit a request for parking validations for donors and special guests attending the event using University funds from Center Operations Director's budget code. The parking validations that were purchased with Center Operations Director's University funds included parking validations identified as parking validations G-12769 – G-12788.¹² Center Operations Director testified that Grievant worked at the registration table during the naming event. Center Operations Director testified that for the last hour or more of the event, Center Operations Director was attending to the special guests to the event and that he continued to do so for some period of time after the event concluded because the special guests were taking time to speak with students. Center Operations Director testified that by the time the special guests left, the registration table had "long" been closed down.¹³

In addition to being employed by the University, Grievant also was enrolled as a student at the University. During the Fall of 2024, one of Grievant's classes met on Wednesday evenings at the University's Campus-A. At times, Grievant would park his vehicle in the Parking Garage on Wednesday evenings for the period he was attending class, usually entering the Parking Garage to park before 7:00 pm and exiting the Parking Garage after 10:00 pm.¹⁴ Parking Garage is a University parking facility on Campus-A. The University contracts with a third-party contractor to operate Parking Garage. Parking Attendant works for the University's third-party contractor.¹⁵

On Wednesday, October 23, 2024, Grievant parked his car in the Parking Garage to attend a class on Campus-A. The Parking Garage charged an hourly rate for parking. A little after 10:00 pm on Wednesday, October 23, 2024, Grievant attempted to use a parking validation to exit the Parking Garage. The Parking Garage's payment machine indicated that Grievant would have to pay additional money to exit the Parking Garage. Grievant believed that the parking validation should have covered the entire costs of his parking and that he should not have to pay additional money to exit the Parking Garage.

¹⁰ See Hearing Recording at 3:34:00-4:01:28 and University Ex. at 49-55.

¹¹ Hearing Recording at 3:34:00-4:01:28.

¹² Hearing Recording at 3:34:00-4:01:28, University Ex. at 42-47.

¹³ Hearing Recording at 3:34:00-4:01:28.

¹⁴ Hearing Recording at 1:21:00-2:53:00, 7:19:58-7:58:04 and see University Ex. at 7-25.

¹⁵ See Hearing Recording at 3:00:00-3:32:08.

Grievant sought assistance to exit the Parking Garage from the Parking Attendant. Grievant had a verbal exchange with the Parking Attendant during which the Parking Attendant told Grievant he would need to pay additional money to exit the Parking Garage. Grievant testified that he became frustrated because the Parking Attendant walked away from him without explaining to him why the parking validation was not sufficient payment for his parking. At some point during their interaction, Grievant followed Parking Attendant to her office. Grievant attempted to take a picture of Parking Attendant with his phone.¹⁶

While Grievant was in the Parking Garage and during his interaction with Parking Attendant, Grievant also called the University Police office. Grievant spoke with Police Corporal and told her that he believed that the Parking Garage payment machine was overcharging him for parking and that the Parking Attendant would not let him exit the Parking Garage. Police Corporal advised Grievant that he would have to pay the amount charged to exit the Parking Garage and that he could contest the fee later if he believed he had been overcharged. Police Corporal testified that when Grievant spoke to Police Corporal, Grievant's voice was raised, and he was speaking in a harsh manner.¹⁷

Grievant then used a second parking validation to pay for his parking, which satisfied the charges assessed by the Parking Garage payment machine, and Grievant was able to exit the Parking Garage. After Grievant exited the Parking Garage, he called Police Corporal again to ask for Police Corporal's name and to advise her that he would be filing a formal complaint.

After her phone conversations with Grievant, Police Corporal visited the Parking Garage to perform a welfare check on the Parking Attendant. Police Corporal reported that the Parking Attendant appeared to be upset following the interaction with Grievant. Police Corporal took the Parking Attendant's statement of the event. Police Corporal reported that "due to a language barrier [Police Corporal] was only able to obtain parts of the incident that [Parking Attendant] could articulate in English," but Police Corporal understood Parking Attendant to say that a male (later determined to be Grievant) had yelled at Parking Attendant to "let [him] out" and that his behavior caused Parking Attendant to be afraid. Police Corporal met with Parking Attendant on October 28, 2024, to follow-up on the initial incident report. Police Corporal reported that Parking Attendant again described Grievant as "yelling" at Parking Attendant during their interaction on October 23, 2024.¹⁸ Police Corporal reported the incident to the University's Employee Relations staff and to the Office of Student Conduct.

On November 6, 2024, Police Corporal was in the Parking Garage when Grievant attempted to exit the Parking Garage. On that date, Grievant attempted to use a single parking validation to pay for his parking charges and the parking machine indicated that additional payment would be required to exit the Parking Garage. Grievant advised Police Corporal that he believed that the parking machine was overcharging him for parking. Grievant was able to exit the Parking Garage when he used a second parking validation

¹⁶ Hearing Recording at 7:19:58-7:58:04.

¹⁷ See Hearing Recording at 1:21:00-2:23:00 and University Ex. at 3.

¹⁸ Hearing Recording at 1:21:00-2:53:00 and see University Ex. at 3.

to pay for the charges assessed for his parking. Police Corporal asked Parking Attendant's supervisor if he could review the parking service's records to determine whether anyone else had trouble using parking validations on the same date when Grievant had experienced trouble with the validation. Police Corporal learned that Grievant was the only individual using parking validations to pay for parking on that date and that the parking validations used on November 6, 2024, had been purchased with University funds by Center Operations Director. Police Corporal spoke with Center Operations Director. Center Operations Director told Police Corporal that he had not provided Grievant with parking validations to use to pay for parking. Police Corporal then investigated Grievant's use of parking validations.¹⁹ Police Corporal reported her findings to the University's Employee Relations staff.

The parties stipulated that in September through November 2024, Grievant used between 6-10 parking validations to pay for his personal parking in the Parking Garage to attend classes as a University student at the University campus. These parking validations were validly purchased using state funds for University events that had already taken place.²⁰

The University presented evidence, including photographs from the Parking Garage with date and time stamps and corresponding reports of payment methods for the Parking Garage, for some of the dates when Grievant was alleged to have used parking validations purchased with University funds to pay for his personal parking. The evidence presented showed that Grievant used at least six parking validations to pay for his personal parking and that those parking validations had been purchased using University funds for events that Center Operations Director had hosted (parking validations G-12778, G-12775, G-12777, G-12786, G-10992, and G-10995).²¹

CONCLUSIONS OF POLICY

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

Parking Validations

The preponderance of the evidence showed that Grievant engaged in misconduct when, on multiple occasions, he used University-purchased parking validations for his own personal purposes, that is, to pay for his personal parking needs.

There was no dispute that in September through November 2024, Grievant used at least six parking validations to pay for his personal parking in the Parking Garage to attend classes as a University student at the University Campus-A. These parking validations were validly purchased using state funds for University events that had already

¹⁹ Hearing Recording at 1:21:00-2:53:00 and see University Ex. at 5-25.

²⁰ See Hearing Recording at 5:11-7:20 and see Email from University Counsel to the Hearing Officer and Grievant's Counsel dated May 30, 2025, providing the stipulation as agreed to by the parties.

²¹ See University Ex. at 5-25 and 42-55, Grievant Ex. Tab 54, Hearing Recording 1:21:00-2:53:00, 3:34:00-4:01:28, 7:19:58-7:58:04.

taken place.²² The evidence presented showed that Grievant used at least six parking validations to pay for his personal parking and that those parking validations had been purchased using University funds for events that Center Operations Director had hosted (parking validations G-12778, G-12775, G-12777, G-12786, G-10992, and G-10995).²³

Grievant admitted that on multiple occasions he used University-purchased parking validations to pay for his personal parking to attend class. Grievant admitted to his understanding that University-purchased parking validations were not to be used by employees for their personal use, however, according to Grievant, Center Operations Director gave the parking validations to Grievant and Grievant believed that Center Operations Director had authorized him to use the parking validations for his personal purposes. According to Grievant, Center Operations Director provided the parking validations to Grievant for his good work performance. Grievant recalled that at the end of the naming event held on August 31, 2023, Grievant attempted to return leftover parking validations to Center Operations Director. According to Grievant, Center Operations Director said, "No, no, no, that's your bounty. Thank you for doing such a great job." According to Grievant, Center Operations Director then handed the parking validations back to Grievant. Grievant testified that he attempted to again hand the validations to Center Operations Director, but Center Operations Director again refused them. Grievant testified that he interpreted Center Operations Director's conduct as Center Operations Director gifting the validations to Grievant to use in any manner Grievant saw fit, including for Grievant's personal use.

Grievant's testimony and recollection of events, however, was inconsistent with the credible testimony of Center Operations Director. Center Operations Director credibly testified that he did not give Grievant parking validations at the end of the August 31, 2023, event. Center Operations Director also testified that he did not tell Grievant that parking validations were "his bounty" or reward for a job well done. Center Operations Director credibly testified that he never gave Grievant any parking validations for Grievant's personal use. Center Operations Director's testimony was clear and credible. His testimony during the hearing also was consistent with the statements that he made to University officials during the University's investigation of Grievant's use of parking validations.²⁴

Grievant argued that he was confused as to the University's practices with respect to the use of parking validations by University employees and that the University inconsistently applied its policies. One of Grievant's witnesses testified to her recollection that another employee had been granted authorization to use University-purchased parking validations on the days that employee was working on another University campus and for the period on those dates when that employee also was attending classes on that campus. Based on the evidence, if such conduct occurred, it occurred approximately six

²² See Hearing Recording at 5:11-7:20 and see Email from University Counsel to the Hearing Officer and Grievant's Counsel dated May 30, 2025, providing the stipulation as agreed to by the parties.

²³ See University Ex. at 5-25 and 42-55, Grievant Ex. Tab 54, Hearing Recording 1:21:00-2:53:00, 3:34:00-4:01:28, 7:19:58-7:58:04.

²⁴ Hearing Recording at 3:34:00-4:01:28 and see Hearing Recording at 1:21:00-1:50:26, 5:14:36-5:42:01 and Grievant Ex. at 15.

or seven years ago.²⁵ This Hearing Officer does not find use of parking validations that may have been specifically authorized for such purpose six or seven years ago to be relevant or similar to the issues in this case. Based on the evidence presented, around 2020, there may have been changes or clarification to University practices regarding whether University employees could use parking validations purchased by the University when an employee was engaged in business on behalf of the University related to a particular activity or event, for example, a validation used by an employee on the day of an event when the employee was helping to set up or work the event. There was no evidence, however, that the parking validations Grievant used were provided to him as an employee for his use to work a specific event or that Grievant used any of the parking validations at issue in this case for University business purposes. The evidence showed that Grievant used University-purchased parking validations to pay for his personal parking needs to attend classes. Based on the witness testimony, including Grievant's testimony, the University's practices were clear that University employees could not use University-purchased parking validations for the employees' personal purposes, such as attending classes on campus. The evidence also showed that Grievant received information as to the appropriate use of parking validations in August 2020 that made clear that "parking at a [University] campus cannot be reimbursed for [University] employees" and "[a]djunct faculty (and other [University] employees) should not be given parking validations."²⁶

Grievant also appeared to argue that he may have been confused as to the appropriate use of parking validations because he was aware of University students being offered parking validations to attend University sponsored events. With respect to the use of parking validations by University students, the evidence showed that, at times, certain University departments may have authorized parking validations to be used by University students to facilitate student attendance at, or participation in, a particular event.²⁷ There was no evidence, however, that the University or a University department ever provided parking validations to students to attend classes. There also was no evidence that the parking validations at issue in this case were provided to Grievant or used by Grievant to attend a specific event to which he had been invited in his capacity as a student and for which he had been provided the parking validation as a student guest to attend such event.

The University has met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct when, on multiple occasions, he used University-purchased parking validations for his own personal purposes, that is, to pay for his personal parking needs.

Interaction with Parking Attendant on October 23, 2024

²⁵ See Hearing Recording at 6:29:33-7:05:19.

²⁶ See University Ex. at 80-83, Grievant Ex. at 65-68 and see Hearing Recording at 54:42-1:18:02, 3:00:00-3:32:08, 3:34:00-4:01:28, 7:07:07-7:18:55, 7:19:58-7:58:04.

²⁷ See Hearing Recording at 7:07:07-7:18:55 and Grievant Ex. at 329-334.

With respect to Grievant's behavior during his interaction with Parking Attendant on October 23, 2024, even in the absence of testimony from Parking Attendant,²⁸ the preponderance of the evidence showed that Grievant engaged in misconduct.

Grievant argued that because Parking Attendant refused to participate in the proceeding, the Hearing Officer should make an adverse inference. Grievant also argued that due to the reported language barrier that Police Corporal experienced when communicating with Parking Attendant, the Hearing Officer should give little weight to the statements provided to Police Corporal, by and on behalf of, the Parking Attendant. Grievant also appeared to argue that his interaction with Parking Attendant was misunderstood or blown out of proportion.

Although Parking Attendant's participation in the hearing may have provided additional relevant information, Parking Attendant's refusal to participate in the hearing in this case does not warrant an adverse inference. Parking Attendant is not a University employee and there was no evidence that Parking Attendant's failure to participate in the hearing was due to misconduct by the University. Police Corporal testified regarding the information provided by Parking Attendant that was included in Police Corporal's incident report. Grievant had the opportunity to question Police Corporal about her observations and the information she received from Parking Attendant. Grievant also had the opportunity to provide testimony and evidence regarding his interaction with Parking Attendant.

Police Corporal reported her observation that Parking Attendant was "upset" after the interaction with Grievant. Police Corporal credibly testified that when she took Parking Attendant's statement on October 23, 2024, Parking Attendant described Grievant as "yelling" at Parking Attendant. According to Police Corporal, during her follow-up interview with Parking Attendant on October 28, 2024, Parking Attendant again described Grievant as "yelling" at Parking Attendant during their interaction on October 23, 2024. Police Corporal testified to her own observations of Grievant when she spoke with him on the phone when he called the Police office during his interaction with the Parking Attendant on October 23, 2024. Police Corporal credibly testified that Grievant's voice was raised, and his tone was harsh when he spoke with Police Corporal. Grievant admitted that he was frustrated during his interaction with Parking Attendant. According to Grievant he became frustrated with Parking Attendant and Police Corporal because they did not explain to him why the parking validation did not cover his total parking charges, and he was concerned that University visitors may experience the same issue with the validations and receive the same lack of explanation. Grievant also testified that he was upset and stressed that night about an emergency health issue his dog was experiencing.²⁹

The preponderance of the evidence showed that during his interaction with Parking Attendant on October 23, 2024, Grievant raised his voice or yelled at Parking Attendant. At the time of these events, Grievant was an employee of the University using a Parking Garage on a University campus. When Grievant yelled or raised his voice at Parking Attendant his behavior was rude, unprofessional, and disrespectful. Such conduct is

²⁸ Parking Attendant refused to participate in this proceeding.

²⁹ Hearing Recording at 7:19:58-7:58:04.

prohibited under DHRM Policy 2.35, Civility in the Workplace.³⁰ That Grievant was frustrated by Parking Attendant's response to him and upset due to his concern for his dog may explain Grievant's behavior, but it does not excuse it.

The University has met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct when, on multiple occasions, he used University-purchased parking validations to pay for his personal parking. The University also has met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct when he raised his voice or yelled at Parking Attendant on October 23, 2024, in violation of DHRM Policy 2.35, Civility in the Workplace.

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

The University's discipline was consistent with law and 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."³¹ Examples of Group III offenses may include: Absence of three or more consecutive workdays 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.

In this case, the University combined multiple offenses into a single Group III Written Notice.

Violation of DHRM Policy 2.35, Civility in the Workplace, may be a Group I, Group II, or Group III offense depending upon the nature of the violation. In this case, based on the evidence presented, if Grievant's violation of DHRM Policy 2.35 were considered alone, it would rise to the level of a Group I offense.

The unauthorized use of University-purchased parking validations for personal use or gain, however, is a Group III offense.³² By its nature this type of misconduct constitutes a serious breach of trust.

Grievant appeared to argue that his misconduct was a misuse of state property that did not rise to the level of a Group III offense. The parking validations were University property purchased with University funds. Each time a parking validation was used to pay for parking, its value was reduced in whole or in part to cover the charges for parking. Grievant's unauthorized appropriation of the University's parking validations was not incidental to his misuse of State property, like obtaining sheets of paper from misuse of a

³⁰ See DHRM Policy 2.35, Civility in the Workplace, Policy Guide.

³¹ The Department of Human Resources Management ("DHRM") has issued Policy 1.60 setting forth the Standards of Conduct for State employees.

³² See, Attachment A, DHRM Policy 1.60.

printer. Grievant's misuse of the parking validations was to fulfill his intent to convert the value of the University's parking validations to his use, that is to pay for his personal parking needs. Even if this Hearing Officer were to accept Grievant's argument that his misconduct was a misuse of University property, and not also a misappropriation of that property, it would not change the outcome of this case. The preponderance of the evidence showed that Grievant engaged in such misuse of University property on multiple occasions. Although the University could have treated each unauthorized use of a parking validation as a separate offense, the University decided to combine multiple offenses into a single Group III Written Notice. In this case, the serious and repeated nature of Grievant's misconduct also rises to the level of a Group III offense.

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 unwarranted because he was a good employee with no prior active disciplinary actions. Although agencies are encouraged to engage in progressive disciplinary action, agencies are not required 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's actions were based in discriminatory motives due to Grievant's sexual orientation and race. The University showed that it had business reasons for its discipline of Grievant based on Grievant's misconduct. Grievant has not presented evidence to show that those reasons were mere pretext for discrimination.

The University has presented sufficient evidence to support the issuance of a Group III Written Notice. Upon the issuance of a Group III Written Notice, an agency may remove an employee.

The University's discipline was consistent with law and policy.

Mitigation

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

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, it was not appropriate to reduce the discipline.

Grievant argued that the total parking validations used were of minimal value (less than \$200) and Grievant offered to pay the University for the validations he used. The University could have considered the value of the validations and Grievant's offer to pay for the validations to mitigate the disciplinary action. The University also could have considered that Grievant apologized to Parking Attendant and Police Corporal to mitigate the disciplinary action. That the University chose not to mitigate the disciplinary action

based on such factors, however, is not a reason for the Hearing Officer to conclude that the University action exceeds the limits of reasonableness.

Grievant argued that the University issued inconsistent discipline. Grievant pointed to an employee who was alleged to have engaged in sexual harassment but was not terminated. This Hearing Officer did not find Grievant and that employee to be similarly situated because there was no evidence that the comparator employee misused or misappropriated University property for his own personal use. Grievant also argued that other staff were not terminated when they did not understand University or state procurement policies for booking travel, however, Grievant did not present evidence of other University employees who misappropriated or misused University property to their own personal use and were disciplined less harshly than Grievant.

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....”³³ 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 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 14th St., 12th Floor
Richmond, VA 23219

³³ Va. Code § 2.2-3005.

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.³⁴

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

³⁴ 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.