

COMMONWEALTH OF VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 12262

Hearing Officer Appointment: March 31, 2025
Hearing Date: June 10, 2025
Decision Issued: June 12, 2025

ISSUES:

The Grievant requested an administrative due process hearing to challenge the issuance of a Group II and a Group III Written Notice which were issued on February 7, 2025, by a facility (the “Facility”) of the Virginia Department of Corrections (the “DOC” or the “Department” or the "Agency"). The Group II Written Notice was for violation of Written Notice Offence Codes 11 – Unsatisfactory Performance; and 13 – Failure to follow instructions and/or policy. The Group III Written Notice was for violation of Written Notice Offence Codes 13 – Failure to follow instructions and/or policy; and 71 — Sleeping during working hours. AE 1, 4

The Grievant has raised the issues specified in her Grievance Form A and is seeking the relief requested in her Form A, including reversal of the discipline.

PROCEDURAL HISTORY & BACKGROUND:

The Grievant, the Agency’s advocate and the hearing officer participated in the first prehearing conference call at 1:00 pm on April 8, 2025. The hearing was scheduled for and held

June 10, 2025, as reflected in the Scheduling Order of April 22, 2025, incorporated herein by this reference.

The parties all agreed that email is acceptable as a sole means of written communication.

At the hearing, the hearing officer received various documentary exhibits into evidence.¹

The hearing officer recorded the hearing.

At the hearing, the Grievant represented herself and the Agency was represented by its advocate. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party.

APPEARANCES

Representative for Agency
Grievant
Advocate for Agency
Witnesses

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency at the Facility as a Sergeant. AE 1.
2. On November 6, 2024, at approximately 1745, the Grievant began the formal count of 1 Alpha Pod alone. A male officer then met her in 1 Bravo Pod, and they finished the building count. AE 19.

¹ References to the agency's exhibits will be designated AE followed by the exhibit tab and/or page number. References to the Grievant's exhibits will be designated GE followed by the exhibit tab and/or page number.

3. After the 2130 count, multiple inmates were let out in 1 Delta Pod, including Inmates B and J. AE 19-20.
4. Inmate B exited his cell and headed straight for the shower. AE 20.
5. Inmate J appeared to go to the mop bucket but proceeded instead to the tables and microwave. *Id.*
6. The remaining three inmates proceeded to 1 Delta Pod while Inmate J went back and forth to the cells. *Id.*
7. At approximately 2300, all the inmates who were cleaning had showered and were secured in their cells. Inmate J remained sitting in his cell. *Id.*
8. At approximately 2323, the Grievant began counting 1 Alpha, Bravo, Charlie, and Delta Pods alone. AE 19.
9. At approximately 2345, the Grievant was in the Supervisor Office. *Id.*
10. At approximately 2356, Officer B began counting alone while the Grievant counted downstairs in 1A and 1B alone. *Id.*
11. On November 7, 2024, at 0020, the Grievant entered the 1 Upper Control Booth which was being operated by Officer C. AE 20.
12. At approximately 0023, the Grievant began counting 1 Delta Pod by herself, before Officer B entered and conducted the count on 1 Delta Pod. *Id.*
13. At approximately 0029, Inmate J's cell was opened, and he walked straight to the Control Booth. Inmate J remained there, speaking with the Grievant, until approximately 0121. At that time, she exited the booth to escort a nurse into 1 Delta Pod, and Inmate J returned to his assigned cell. *Id.*

14. On November 8, 2024, the Intel Department received a “kite” (anonymous report) regarding possible fraternization between the Grievant and the above-mentioned Inmate J. It was alleged that this fraternization had been going on for a while now, and that whenever the Grievant worked, she would allow Inmate J to follow her around to different pods. It was also alleged that she was supposed to meet Inmate J’s brother to receive meth and suboxone strips. Officer C was allegedly working with her to pass the drugs through the booth window using gloves. Lastly, it was alleged that on November 7, 2024, the Grievant had let out Inmate J from his cell at 0026. AE 19.
15. On November 25, 2024, at approximately 2235, Inmates B and J were let out of their cells. They proceeded to hang out at the Control Booth where the Grievant was at. AE 21.
16. At approximately 2320, the Grievant entered 1 Delta Pod and escorted both inmates into the back slider of the pod and then into the back closet. They then exited 1 Delta Pod and proceeded to the lobby storage closet. *Id.*
17. At approximately 2336, the Grievant escorted both inmates out of the building with trash, where they remained until another officer arrived. The inmates then returned upstairs. *Id.*
18. At approximately 2343, both inmates went into the hall closet while the count was being conducted in 1 Delta Pod. *Id.*
19. On November 26, 2024, at approximately 0025, the Grievant proceeded to the 3rd floor lobby with both inmates, having disposed of the trash outside the building. *Id.*

20. At approximately 0052, the Grievant returned to the 2nd floor Supervisor Office while both inmates remained in the stairwell. *Id.*
21. The inmates remained there, speaking with the Grievant and Officer G, while the Supervisor Office door was open and the Grievant's body worn camera ("BWC") was not activated. AE 5, 21.
22. At 0245, the inmates returned to 1 Delta Pod and remained in the pod watching TV. AE 21.
23. At approximately 0307, a count of 1 Delta Pod was being conducted while both inmates were still hanging out in the pod. *Id.*
24. At 0318, both inmates were finally secured in their cells when the nurse entered the pod. *Id.*
25. On November 29, 2024, at approximately 2136, the Grievant went into the 1 Lower Control Booth. *Id.*
26. At approximately 2239, both Inmates B and J were let out of their cells, exited the pod, and entered the 1 Lower Lobby Area. Both Inmates then entered 1 Bravo Pod unescorted with a blue cart and remain in the pod until 2330. *Id.*
27. At approximately 2336, the Grievant was in the Supervisor Office pre-writing count sheets. She then exited the office to conduct the actual count. *Id.*
28. On November 30, 2024, at 0023, Inmates B and J were secured in their cells. AE *Id.*
29. At approximately 0348, the Grievant fell asleep in the 1 Lower Supervisor Office. *Id.*
30. At approximately 0446, the Grievant woke up from her sleep. *Id.*

31. There were several times during her interactions with Inmates B and J where Grievant did not activate her BWC. AE 5, 8.
32. Grievant admitted during the hearing that she did not activate her BWC, calling it “simple negligence.” Tape.
33. On December 4, 2024, the Grievant provided a statement alleging that on November 6, 2024, Inmate J was let out after the 2130 count to collect request forms and toilet paper that was asked for earlier in the night. Inmate J then proceeded to ask the Grievant a question which she answered. She stated that Inmates B and J were utilized at night to clean up and organize the closets that were out of code. If they had gone to the office door, the Grievant explained that it was only because they were explaining what the pod needed and what supplies needed to be ordered. She also clarified that there was always another person conducting a count, but there was just a gap between the counters. AE 20.
34. However, as per the above facts, Inmate B and J did not clean, pass out toilet paper, nor pick up request forms. There was no need for either of the inmates to be out. *Id.* Tape.
35. During the December 18, 2024 “Correctional Operational Procedure Meeting,” the Grievant again tried to justify her hour-long conversation with the inmate by stating that she had lost his request slip. She stated that she had no knowledge of the inmate’s presence in the pod after hours. AE 12.
36. The Grievant implicitly admitted that she fell asleep. She tried justifying it by stating she only gets “two hours of sleep a day” and that she was “not the only one that sleeps on the shift.” *Id.*

37. During the December 30, 2024 “Second Step Meeting,” when asked about the inmates being out after/during the count, the Grievant argued that she had never seen those inmates disrespecting anyone. She never took into consideration that they could have jumped her, explaining that they respected her. No one told her that the inmates were still out, and if someone had, she would have made them go back into their cells. She stated that she did not get the supplies she needed for the building, nor did the Facility have the necessary staff they need, and thus the inmates helped the Grievant with these needs. Additionally, she stated that her BWC was turned on whenever she went into the closet with the inmates. AE 14.
38. The Grievant explained that on November 7, she told Booth Officer C to release Inmate J from his cell because they were going over a requisition and wanted Inmate J to discuss it with her and Officer C. She stated that the inmate also talked about his JP player. She acknowledged that her original statement about them discussing toilet paper was not that night. *Id.*
39. When the Assistant Warden asked why those inmates were not on the outcount forms if they were not in their cells, the Grievant responded that they were still in the building and thus were not counted for outcount. The Assistant Warden then asked the Grievant if she knew that the count process was for the inmates to be in their cells, and the Grievant replied in the affirmative, stating that outcount was only for inmates out of the building and that she had never heard anyone process outcount in the evening unless they were physically outside of the building. *Id.*
40. The Assistant Warden explained to the Grievant that, because she was a supervisor, she was held to a higher standard. Failing to activate her BWC, having

the inmates out in the middle of the night and sitting in the stairwell talking to them for close to two hours, and giving them access to unauthorized areas could be seen as giving special treatment to those inmates, ultimately leading to the kite being sent. AE 14-15.

41. The Grievant tried to justify herself by stating that the inmates had just finished cleaning the closet and that she was explaining to them the need to come up with a plan to organize and order supplies. She personally believed the conversation only lasted 30 minutes. AE 15.
42. Lastly, the Grievant again asserted that there were “some officers who go to sleep as soon as they take the post and sleep the whole night,” and “if she do[z]e[d] off, it [was] not like she [was] sitting there purposely [wanting to go] to sleep.” She stated that “she had just worked 8, 9, or 10 days straight, and that she did not recall going to sleep.” AE 14.
43. The investigation conducted was thorough and impartial. The conclusions reached were reasonable.
44. The Grievant performed a vital function for the Facility as a Sergeant with significant and substantial training invested in the Grievant by the Agency in all aspects of her employment. The Facility reasonably and of necessity relied on the Grievant to fulfill all her duties.
45. The orderly and efficacious performance of the Grievant’s work is critical for the orderly and efficient functioning of the Agency.
46. Despite this critical need, Grievant committed serious violations of the Agency’s security policies and protocols by failing to activate her BWC during necessary

situations, by not securing inmates in their cells during count, by allowing inmates to access unauthorized areas at unauthorized times, and by falling asleep while on post.

47. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.
48. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
49. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
50. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

APPLICABLE POLICY, LAW, ANALYSIS AND DECISION

The General Assembly enacted the *Virginia Personnel Act*, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the Agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60. The operative Agency Standards of Conduct (the "SOC") are contained in Agency Operating Procedure 135.1 ("Policy No. 135.1"). The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

The Grievant did not follow the applicable state and agency policies.

Specifically, the Grievant committed the following disciplinary infractions which were reasonably classified by management, as a Group II and Group III offense respectively.

For the Group II offense, Operating procedure 430.6, *Body Worn Camera Equipment*, Section II(E)(3) states in part as follows: “Security Supervisors up through Chief of Security positions must activate their BWC when: (a) Making rounds in inmate Housing Units, Recreation Area, Visitation Areas, etc.” AE 66.

Additionally, Operating procedure 410.2, *Count Procedures*, Section II(C) provides:

“C. During formal and informal counts, all inmates and CCAP probationer/parolee movement must cease from the time the count starts until it is reconciled in VACORIS and the Shift Commander clears count.

1. As many inmates and CCAP probationers/parolees **as possible will be counted in their quarters**. Out-counts should be limited to inmates and CCAP probationers/paroles in essential employment.

2. Corrections Officers must **see** an inmate’s or CCAP probationer’s/parolee’s flesh **and observe movement or hear** the inmate or CCAP probationer/parolee speak.” AE 58 (emphasis added).

Moreover, Operating Procedure 135.1, *Standards of Conduct*, Section XIII provides:

“A. These include acts and behaviors that are of a more serious or repetitive nature. This level is appropriate for offenses that seriously impact business operations and/or constitute a neglect of duty involving major consequences, insubordinate behaviors, and abuse of State resources, etc. An accumulation of two Group II offenses normally should warrant termination.

B. Group II offenses include, but are not limited to:

1. Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy or procedure.” AE 85.

Here, the Grievant held the rank of Sergeant. All sergeants and higher-ranking officers are by definition supervisors. As such, that person is issued a BWC whenever they enter the institution. The data from the BWC is downloaded at the end of a shift in order to have a record of the time it was on and of any incidents for which this data would be valuable.

The Grievant failed to follow policy and activate her BWC on multiple occasions (November 26, 29, and 30, 2024) while she was making the rounds to interact with Inmates B and J. Activating the BWC is an important safety measure when interacting with inmates. Without the BWC recording, inmates might be more likely to act aggressively or inappropriately, knowing that there would be no video evidence of their actions.

Additionally, the Grievant allowed Inmates B and J to be out of their quarters during the count on November 25 and 26, 2024. She did not see them nor did she observe their movement or hear them speak while doing the count as required by policy. Both inmates were in the hall closet while the count was being conducted in 1 Delta Pod on November 25, 2024, while both inmates were still hanging out in the pod watching TV while count of 1 Delta Pod was being conducted on November 26, 2024.

Ultimately, as alluded to by the Assistant Warden, the Grievant's failure to follow policy in regards to Inmates B and J (such as failing to activate her BWC around them, having the inmates out in the middle of the night and sitting in the stairwell talking to them for close to two hours, giving them access to unauthorized areas, and letting them not be physically present in

their quarters during the counts) could have been seen by other inmates as giving special treatment to Inmates B and J, which ultimately led to a separate inmate sending the kite.

For the Group III offense, Operating Procedure 135.1, *Standards of Conduct*, Section XIV provides:

“A. These offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, include but are not limited to, endangering others in the workplace, constituting illegal or unethical conduct, indicating significant neglect of duty; resulting in disruption of the workplace; or other serious violations of policies, procedures, or laws.

B. Group III offenses include, but are not limited to:

...

8. Sleeping during working hours.” AE 87.

Here, the Grievant implicitly admitted to sleeping while on post during her statements and meetings. This is corroborated by testimony of the Intelligence Officer and still images of camera footage, which clearly show Grievant asleep. AE 24, 37.

The Grievant argues that the Agency has not carried its burden of proof, has misapplied policy and acted unjustly in issuing the discipline. However, the hearing officer agrees with the Agency's advocate that the various offenses are appropriately classified at the Group II and Group III level, as designated, with the Agency appropriately exercising the discipline and ending the Grievant's employment due to the Group II and Group III Written Notices.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated numerous policies, including Policy No. 1.60 and that the violations each rose to the level of a Group II and Group III respectively.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past good service to the Agency. *See*, AE 1, 4.

DHRM's *Rules for Conducting Grievance Hearings* provide in part:

DHRM's *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." *Rules* § VI(B).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant. *See*, AE 1, 4.

The Grievant alleged that there was inconsistent discipline by the Agency and thus there should be mitigation.

Section VI(B)(2) of the *Rules for Conducting Grievance Hearings* provides that mitigating circumstances may include "whether the discipline is consistent with the agency's treatment of other similarly situated employees." As with all affirmative defenses, the Grievant

has the burden to raise and establish any mitigating factors. *Grievance Procedure Manual*, § 5.8; *Rules for Conducting Grievance Hearings*, § VI(B).

In EDR Case No. 2020-5052, the Grievant was issued a Group I Written Notice for failure to follow instructions, having reviewed video footage without approval in violation of the Manager's instruction. The Grievant brought up three comparators. The first comparator was a probationary employee, who received a probationary evaluation about the incident from the Manager, and later resigned. The matter would have resulted in termination if it had progressed and he had not resigned. The second comparator received a Group I Written Notice that was mitigated to a formal counseling. He had reported to the Grievant, was present during the incident for which the Grievant was disciplined, engaged in the behavior at the direction of his supervisor (i.e., the Grievant), and later acknowledged that his conduct was improper. The third comparator also reviewed camera footage but did not receive corrective action. Though he was present when the first comparator accessed the video recordings, he denied participating in the behavior himself. Indeed, he was not disciplined because he did not have notice of the policy that approval was required before reviewing video recordings. Overall, EDR found that the three comparator employees were not similarly situated to the Grievant, and thus mitigation on that basis was not warranted there.

Here, the Grievant asserted that she "not the only one that sleeps on the shift." AE 12. However, the Grievant did not provide further details of these other officers who have allegedly engaged in similar misconduct and whether they have been disciplined. Without further evidence, it cannot be conclusively said that the other officers were "similarly situated" to the Grievant such that she had received inconsistent discipline.

The Grievant has asserted that the discipline was unwarranted. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below, the hearing officer considered a number of factors including those specifically referenced in AE 1 and 4, the Written Notices, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the demands of the Grievant's work environment;
2. the Grievant's tenure at the Agency;
3. the Grievant's past favorable performance evaluation history;
4. no active prior discipline;
5. her very hard work for the Facility;
6. the long hours worked by the Grievant, with few breaks;
7. the shortage of staff at the Facility; and
8. the infrequency of leave taken by Grievant.

EDR 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. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the policies are important to the proper functioning, appearance and reputation of the Agency, and the Grievant held an important position where management of necessity relied on her to attend work and to perform her duties in strict conformity with Agency policies, as she had undertaken to do. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

Additionally, the Grievant supervised Facility inmates and employees. EDR has consistently held supervisors, such as Grievant in this case, to a higher standard. As EDR stated in Case No. 9872, in evaluating misconduct by a supervisor that to a non-supervisory employee would have been a Group I, the discipline was increased to a Group II, stating, "This is especially so because of the supervisor's role and the agency's expectations of the supervisor to serve as a role model to clients and to employees under his supervision." *See, also*, DHRM Ruling 2015-3953:

The issue of whether an agency can hold a supervisor to a higher standard is a policy issue as well as a procedural issue. As discussed above, the Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy. DHRM has previously determined that "agencies may hold supervisors and managers to a higher degree of responsibility and leadership than non-management employees."

The *Rules for Conducting Grievance Hearings*, § VI require that a hearing officer must show deference to how the agency weighs the supervisory status of an employee in determining the appropriate level of discipline. Here, the agency determined that the Grievant's misconduct was more severe based, in part, on her position as a supervisor. Policy permits the agency to hold supervisory employees to a higher standard than non-supervisory employees, and accordingly the hearing officer defers to the agency's weighing of that factor.

Similarly, Agency Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, Section II(D) stresses: "Employees in DOC supervisory and managerial positions must be especially mindful of how their words and deeds might be perceived or might affect or

influence others. Therefore, they may be held to a higher standard for misconduct and violations of this operating procedure based on their scope of authority and influence, status as a role model, and ability to significantly impact the employment status and direct the work of others.”

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth’s employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a “super-personnel officer” and must be careful not to succumb to the temptation to substitute his judgment for that of an agency’s management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

In EDR Case No. 8975 involving the University of Virginia ("UVA"), a grievant received a Group III Written Notice with removal for falsifying records on five (5) separate dates. Although the evidence supported only one of those instances, the hearing officer upheld the disciplinary action. The grievant appealed to EDR asserting that the disciplinary action was inappropriate in that the grievant did not engage in as much misconduct as alleged by UVA. The Director upheld the hearing officer's decision:

The grievant's arguments essentially contest the hearing officer's determinations of fact as they relate to the proper sanction for the misconduct. Such determinations are within the hearing officer's authority as the hearing officer considers the facts de novo to determine whether the disciplinary action was appropriate. In this case, while it appears that the hearing officer did find that the grievant did not engage in as much misconduct as alleged by the University, it was still determined that the grievant had falsified a state record with the requisite intent, generally a Group III offense under the Standards of Conduct. [footnote omitted] Upon review of the record, there is no indication that the hearing officer abused his discretion in making these findings or that the facts were not supported by the hearing record. Consequently, this Department has no basis to disturb the hearing decision.

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In this proceeding, the Agency's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer.

The hearing officer decides for the offenses specified in the written notices (i) the Grievant engaged in the behavior described in the written notices; (ii) the behavior constituted misconduct; (iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the written notices and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

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 and Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 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]

ENTER 6/12/2025

John Robinson

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

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