



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12273

Hearing Date: June 11, 2025

Decision Issued: June 18, 2025

PROCEDURAL HISTORY

On March 21, 2025, Grievant was issued a Group III Formal Written Notice with removal for violations of civility in the workplace and standards of conduct violations.

On March 31, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On April 17, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing officer. On June 11, 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 Department of Behavioral Health and Developmental Services ("DBHDS") employed Grievant as a RNCA. Evidence of prior disciplinary evidence was introduced during the hearing. On October 6, 2023, a Probationary Progress Review was provided which Grievant refused to sign. Grievant's probationary period was extended until June 25, 2024, due to unacceptable behavioral issues on October 3, 2023. Chief Nurse Executive [REDACTED] testified she routinely coached and counseled the grievant regarding her behavior and treatment of other staff.

DBHDS provided training and notices regarding attendance and tardiness. BDHDS provided a manual instructing Grievant on the proper policies and procedures regarding civility and proper treatment of staff and co-workers.

Grievant had an altercation with another employee of DBHDS on December 25, 2024. Grievant's behavior was described as loud, aggressive, bullying, and disrespectful. Through testimony and the written notice, this altercation caused another employee to be visibly shaken and upset.

Grievant admitted to the altercation but denied its severity. Grievant further introduced evidence she claimed showed injustice to her regarding scheduling.

CONCLUSIONS OF POLICY

Department of Human Resource Management ("DHRM") policies are authorized by Title 2.2 of the Code of Virginia. DHRM Policy 2.35 sets forth Civility in the Workplace. The purpose

of this policy is "...to foster a culture that demonstrates the principles of civility, diversity, equity, and inclusion. In keeping with this commitment, workplace harassment (including sexual harassment), bullying (including cyber-bullying), and workplace violence of any kind are prohibited in state government agencies."

DHRM Policy 1.60 provides the Standards of Conduct for state employees. Group III indicates discharge is enforceable if any employee engages in conduct which is a "disruption of workplace."

On the dates established above, Grievant engaged in severe disruption of the workplace. Grievant failed to follow civility in the workplace and disrupted a workplace area which could undermine patient care.

DBHDS terminated the Grievant following DHRM Policy 1.60 and DHRM Policy 2.35. These policies allow for termination related to Group III violations 39 Violation of Policy 2.35, Civility in the Workplace.

Grievant argued she had issues with multiple members of the staff. She also indicated she found members to be "stupid," and not worth working with. Grievant was adequately trained, retrained, and provided a plan to improve her issues with staff. Grievant failed to follow the proper procedures and did not maintain the appropriate level of civility to her co-workers.

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.