

COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 12283

Hearing Officer Appointment: May 12, 2025

Hearing Date: June 25, 2025

Decision Issued: June 26, 2025

PROCEDURAL HISTORY, ISSUES
AND PURPOSE OF HEARING

The Grievant requested an administrative due process hearing to challenge the issuance of a Group III Written Notice with termination, issued by the management of the Department of Medical Assistance Services (“DMAS” or the “Department” or the “Agency”) as described in the Grievance Form A dated April 24, 2025. The Grievant is seeking the relief requested in her Grievance Form A.

In this proceeding, the Agency bears the burden of proof and must show by a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. Of course, the Grievant bears the burden of proof concerning any affirmative defenses.

The parties duly participated in a first pre-hearing conference call scheduled by the hearing officer on May 16, 2025, at 10 am. The Grievant, the Agency’s representative, and the hearing officer participated in the call. The Grievant anticipated hiring an advocate and the specific attorneys from the Office of Attorney General (“OAG”) to act as advocates for the Agency, had not yet been assigned. The hearing officer asked the parties to inform him as soon as they retained counsel. Shortly after the call, DMAS so informed the hearing officer and the attorney for DMAS entered an appearance. *See, Scheduling Order* (as defined below) and Tape.

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

Following the first pre-hearing conference, the hearing officer issued a Scheduling Order entered on May 21, 2025 (the “Scheduling Order”) which is incorporated herein by this reference. The hearing was scheduled to begin at 10 am on June 25, 2025.

Under the Scheduling Order the deadline for exchange of exhibits and witness lists was before 5:00 PM on June 18, 2025. On June 20, 2025, the Grievant requested a continuance, saying that her attorney (who was identified for the first time) had a conflict and that she would be retaining another attorney.

DMAS, by counsel, objected because DMAS had had the case on its calendar for two months and was prepared to proceed, the Grievant did not identify a date by which she would retain counsel, nor did she identify the named attorney at any time prior to June 20, 2025.

On June 21, 2025, the hearing officer decided that the hearing would go forward, as scheduled, on June 25, 2025. The Grievant did not seek a compliance ruling from EDR concerning this decision.

The Grievant did not appear at the hearing. At the hearing, the Agency was represented by its attorney. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely exhibits 1-11 for the Agency.¹

No open issues concerning non-attendance of witnesses or non-production of documents remained by the conclusion of the hearing.

APPEARANCES

Representative for Agency
Attorney for Agency
Witnesses

FINDINGS OF FACT

1. The Agency had previously employed the Grievant under the job title of GL Asset & Reporting Analyst since 2023. AE 5 at 247.
2. The Grievant was in charge of preparing and adjusting journal entries, reviewing and analyzing financial adjustment requests, ensuring the accuracy of fund splits, cost reporting, monitoring financial transactions postings to Cardinal and Oracle, and preparing monthly and quarterly analysis. *Id.*
3. On January 22, 2025, the Grievant was treated at Southside Medical Center's emergency department. Her doctor proceeded to write a doctor's note stating that the Grievant may return to work on January 27, 2025. AE 5 at 252.
4. On January 23 to 24, 2025, the Grievant took sick leave. AE 5 at 253.

¹ References to the agency's exhibits will be designated AE followed by the exhibit number. The Grievant did not submit any exhibits.

5. On February 18, 2025, the Grievant emailed the Department's General Ledger Supervisor ("GLS") requesting time off for March 13, 18, 21, 24, 25, 26, and 27, 2025. AE 5 at 237.
6. On that same day, the GLS responded to the Grievant, asking what category of leave she was using for her requested days off. AE 5 at 236.
7. The Grievant did not respond to the GLS's query.
8. Instead, on March 12, 2025, the Grievant replied to the GLS, stating that she wanted to take time off on March 17, 2025, instead of the previously requested March 18, 2025. AE 5 at 235.
9. On that same day, the Agency's Director of Human Capital and Development ("Human Resource Director" or "HRD") sent the Grievant an email asking where she was as he understood she was under the weather. AE 5 at 228.
10. On March 13, 2028, the Grievant responded that she had left the building for a 1 pm appointment that was previously scheduled. *Id.*
11. On March 14, 2025, DMAS received a formal email complaint alleging abuse of work time by the Grievant. The file complaint alleged that the Grievant sent personal messages and engaged in personal disputes (vendettas) while on agency worktime as well as misused sick leave, specifically on January 24, 2025. In particular, the complaint alleged that the Grievant had said that "all she had to do was tell her doctor to write a note." The complaint additionally alleged the acts began around January 2025 and continued through March 2025. AE 5 at 247, 259-260.
12. On March 17, 2025, the GLS emailed the Grievant, asking whether she was working that day, as she did not receive Grievant's log-in email that morning. AE 5 at 230.
13. Later that day, the HRD sent the Grievant an email, asking where she was again, as her leadership team noticed that she was not in the office that day and tried to reach her. AE 5 at 229.
14. Additionally, on that same day, an internal investigation was launched by the Internal Audit division to determine the merits of the March 14, 2025 complaint. AE 5 at 247, 261.
15. Later that same day, the Chief Information Security Officer ("ISO") sent Internal Audit a raw data report on the Grievant's email activity for the last 90 days (DC 90 days.xlsx file). The file had a total of 578 messages from December 17, 2024

to March 14, 2025, 113 of them having attachments, which had been blind carbon copied (“BCCed”) to an external Yahoo email address owned by a user with the Grievant’s last name, though with a different first name (“Email A”). The DataSource was the Grievant’s DMAS official email (“Email B”). *Id.* The ISO used Microsoft Purview for his investigation and validated the accuracy of the results using the Splunk system. Tape.

16. During a recent VEC appeals hearing, the Grievant admitted in her testimony that the Email A account was her own.
17. On March 20, 2025, the Grievant emailed the GLS, stating that she was going to sign on in between her 9.45 am and 3 pm appointments. AE 5 at 235.
18. Later that day, the GLS replied to the Grievant, explaining to her that her time off was not approved due to her not identifying the leave category. She further explained that, as “[p]er DMAS policy 5.0, employees are to enter all time worked or leave used properly and in a timely fashion.” AE 5 at 234.
19. On that same day, the Grievant emailed the Agency Director, alleging harassment and retaliation. She explained that she sent a time off request on February 18, 2025, but the GLS did not approve of her request, despite the Fiscal Manager approving it and listing the time on the GL Monthly Calendar. AE 5 at 233.
20. She further alleged that she was being harassed on March 17, 2025, when she took her day off. She alleged that she had sent an email to her management team on March 12, 2025, clarifying that her requested day off was March 17, 2025, not March 18, 2025. *Id.*
21. Additionally, she alleged that the HRD had been sending emails to her as if she was a “no call no show.” *Id.*
22. On March 21, 2025, the Grievant sent an email to the Virginia Secretary of Health and Human Resources alleging retaliation at DMAS. She claimed that, whenever she included the necessary personnel on an email to follow the chain of command, she received pushbacks and was reprimanded. She further claimed that her supervisor and manager began copying the Division Director daily on all her work assignments and have since also started including the HRD. The Grievant claimed that she was being constantly harassed about what she did outside of DMAS, which she asserted was “confidential.” AE 5 at 231.
23. On March 27, 2025, Internal Audit produced a memorandum determining that the allegation for misuse of sick leave by the Grievant on January 24, 2025 was substantiated based on evidence submitted and a review of the Grievant’s time recorded in Cardinal. AE 5 at 247, 261.

24. Additionally, Internal Audit had reviewed the DC-Sent-Items-bcc-yahoo.pdf file that the ISO provided which contained emails the Grievant had sent from Email B. AE 5 at 261.
25. Internal Audit noted that, of 55 emails sent from Email B to other individuals at DMAS with BCCs to Email A, 53 contained attachments. All 55 of the emails pertained to DMAS financial operations, which could potentially include sensitive financial information or transaction details. *Id.*
26. Internal Audit also noted that 18 emails sent from Email B, which had BCCs to Email A, appeared to be related to a grievance filing or performance evaluation. *Id.*
27. Furthermore, Internal Audit noted that 1 email sent from Email B, which had a BCC to Email A, stated that it was scanned to email. *Id.*
28. Lastly, the ISO had provided Internal Audit with a folder of 6 attachments that were sent by the Grievant's Email B with BCCs to Email A. This information verified that 5 emails from the DC-Sent-Items-bcc-yahoo.pdf file contained attachments with the Agency's financial information. *Id.*
29. Accordingly, Internal Audit determined that the Grievant had violated Agency policy by BCCing a personal Yahoo email address on work related email messages. Specifically, 55 of those emails indicated the possible inclusion of sensitive DMAS financial information or transaction details. AE 5 at 262.
30. The Grievant did not have permission to send the information, which was proprietary to DMAS and confidential, to her personal email account. Tape.
31. The Grievant's unauthorized transmission of the sensitive information threatened the Agency's operations and posed a security risk, exposing the Agency to Medicaid fraud. Tape.
32. The Grievance received significant information security awareness training, which had been approved by VITA. Tape.
33. The Grievant's actions and inactions represented willful misconduct. Tape.
34. The internal investigation conducted was thorough and impartial. The conclusions reached were reasonable.
35. The Agency's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.

36. The Agency's actions concerning this grievance were reasonable and consistent with law and policy.
37. The testimony of the Agency witnesses was credible and consistent. The demeanor of such witnesses was open, frank and forthright.

APPLICABLE 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. AE 3 at 193. The Standards of Conduct (the "SOC") provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serves 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, DMAS- *Information Resource Acceptable Use Policy and Standards* ("DMAS IRAUPS") provides that:

“UNACCEPTABLE USE

In addition to unacceptable uses as defined in DHRM’s Policy 1.75, Use of Electronic Communications and social media, the following statements, although not inclusive, define specific unacceptable uses. Users cannot use the DMAS’ network or systems to:

...

23. Use personal browser-based e-mail accounts, such as Hotmail and AOL, unless approved for business reasons, in writing, by the Division Director as an exception and submitted to Human Resources,

...

EMAIL USAGE

1. Using any outbound email sent from a DMAS agency email account is to be considered as equivalent to a message sent on agency letterhead,

...

2. It is prohibited to:

...

- d. Use Non-[Commonwealth of Virginia] email accounts to conduct agency business[.]”

AE 2 at 183-185 (emphasis added).

Additionally, DHRM Policy 1.75, *Use of Electronic Communications and Social Media* provides that:

“Agency provided electronic communications tools and Agency social media accounts and related applications are the property of the Commonwealth provided to conduct State business in an effective and efficient manner.

...

- Users must secure sensitive or confidential information when communicating electronically or posting information on internal or external websites including social media.

...

- Protect sensitive and confidential data and refrain from posting information regarding the development of or use of the Commonwealth's technology systems and related processes.

...

- Ensure that the agency-provided email address is used for agency business and is not used to register on social media accounts or for other personal use.

...

Employees engaging in prohibited activities may be subject to disciplinary action according to DHRM Policy 1.60, Standards of Conduct. Other users may be denied continued access.

Prohibited activities include but are not limited to:

...

- Accessing, uploading, downloading, transmitting, printing, communicating, or posting access-restricted agency information, proprietary agency information, sensitive state data or records, or copyrighted materials.

...

- Permitting a non-approved user to access agency equipment.”

AE 4 at 219-222 (emphasis added).

As such, pursuant to DHRM Policy 1.60, the Grievant's actions could clearly constitute a Group III offense, as asserted by the Department:

“Group III Offense:

- Offenses in the category include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, for example, endanger others in the workplace, constitute illegal or unethical conduct; neglect of duty; disruption of the workplace; or **other serious violations of policies, procedures, or laws**.

...

- One Group III Offense normally should result in **termination** unless there are mitigating circumstances.”

AE 3 at 204 (emphasis added).

As previously stated, the Agency’s burden is to show upon a preponderance of evidence that the discipline was warranted and appropriate under the circumstances.

The ISO’s raw data report confirmed that, from December 17, 2024 to March 14, 2025, a total of 578 messages were sent from the Grievant’s official DMAS email and BCCed to an external Yahoo email address. Of these, 113 messages included attachments. The external email address was a Non-Commonwealth of Virginia email address, and it was likely a personal, browser-based email address. As found above in ¶16, the Grievant has now admitted it was her personal email address. Tape. Notably, 55 of the BCCed emails appeared to contain sensitive DMAS financial information or transaction details.

In essence, the Grievant failed to protect and secure sensitive or confidential information when transmitting and communicating electronically via email. This misconduct represents a serious violation of Agency policy, repeated multiple times over several months, and exposed DMAS’s sensitive financial information to the risk of theft through a personal email account. The severity of the violation is further compounded by the fact that, as a GL Asset & Reporting Analyst, the Grievant was specifically entrusted with the responsibility of handling and safeguarding such financial information.

The Grievant’s current infraction is further aggravated by prior misconduct that demonstrates the Grievant’s ongoing inability to adhere to Agency policy. Specifically, the Internal Audit investigation revealed that the Grievant had misused sick leave on January 24, 2025.

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 attorney and HRD that the Written Notice is appropriately classified at the Group III level with the Agency appropriately exercising the discipline and ending the Grievant’s employment.

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).

The Grievant asserts that the discipline is too harsh. 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.

Accordingly, because the Department assessed mitigating factors, the Rules only allow this hearing officer to mitigate the discipline further if this hearing officer upon consideration of the evidence finds that the Department's discipline exceeded the limits of reasonableness.

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 the Written Notice, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the demands of the Grievant's job and work environment;
2. the Grievant's illnesses; and
3. the length of the Grievant's service to the Agency.

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 policy is important to the proper functioning, appearance and reputation of the Agency, and the Grievant held a position of trust where management of necessity relied on her to perform her duties in strict conformity with Agency policies, as she had been trained and 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.

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, 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.

EDR Ruling Number 2009-2192; February 6, 2009.

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 Notice (i) the Grievant engaged in the behavior described in the Written Notice; (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

Additionally, the Grievant alleged retaliation by the Department but did not begin to bear her burden of proving this claim.

In order to succeed with her retaliation affirmative defense, the Grievant must show that (1) she engaged in a protected activity; (2) she experienced an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action. See *Netter v. Barnes*, 908 F.3d 932, 938 (4th Cir. 2018) (citing *Univ. of Tex. S.W. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013)); *Villa v. CavaMezze Grill, LLC*, 858 F.3d 896, 900-901 (4th Cir. 2017).

If the Agency presents a nonretaliatory business reason for the adverse employment action, then the Grievant must present sufficient evidence that the Agency's stated reason was a mere pretext or excuse for retaliation. See, e.g., *Felt v. MEI Techs., Inc.*, 584 Fed. App'x 139, 140 (4th Cir. 2014).

The Grievant engaged in a protected activity when she communicated with the Agency Director, and later the Virginia Secretary of Health and Human Resources, alleging harassment and retaliation at DMAS. The Grievant further experienced an adverse employment action when she received the Written Notice and was terminated from her employment..

However, the Grievant failed to establish the necessary causal link. It is clear that the Agency had nonretaliatory business reasons for the disciplinary action taken against the Grievant. The Agency has demonstrated that the Grievant violated state and Agency policies. Because the Agency had non-retaliatory reasons for its disciplinary actions and the Grievant has offered no evidence to suggest that those reasons are mere pretext, the Grievant has not met her burden to prove the Agency's disciplinary action was retaliation.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the Written Notice 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.²

ENTER: 6/26/25

John Robinson

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission).

² Agencies must request and receive prior approval from EDR before filing a notice of appeal.