



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12157

Hearing Date: November 7, 2024

Decision Issued: January 6, 2025

PROCEDURAL HISTORY

On June 21, 2024, Grievant was issued a Group III Written Notice of disciplinary action with termination for violating DHRM Policy 2.35, Civility in the Workplace, DHRM Policy 1.60, Standards of Conduct, and the Virginia Department of Transportation's Code of Ethics. The Written Notice described the nature of Grievant's offense(s) as follows:

This written notice is to address failure to follow the expectations for professional workplace conduct set forth in the Commonwealth's Civility in the Workplace policy (DHRM Policy 2.35), Standards of Conduct (DHRM Policy 1.60), and VDOT's Code of Ethics. The Commonwealth's Civility in the Workplace Policy and Standards of Conduct hold supervisors and leaders uniquely responsible for ensuring a safe, respectful[,] and welcoming workplace for their staff that is free from favoritism, bullying, workplace harassment, retaliation, and other Prohibited Conduct. VDOT's Code of Ethics requires us to act with integrity in all relationships and actions in the work environment, abide by the Standards of Conduct, and not knowingly conduct or condone any improper activity. Under these policies:

- [It is] all employees' responsibility to conduct themselves in a manner that cultivates mutual respect, inclusion, and a healthy work environment.
- The Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties in the workplace.

An Equal Opportunity Employer

- Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable.
- Any employee who engages in conduct prohibited under this policy or who encourages or ignores such conduct by others shall be subject to corrective action, up to and including termination[] under Policy 1.60, Standards of Conduct.
- Aggravating Factors may support a higher-level offense when the facts and circumstances associated with the employee's actions negatively impact the employee's credibility as a supervisor/manager of subordinates, reveals a serious disregard for the safety and wellbeing of self or others, or damages the credibility and reputation of the agency. Repeat infractions of the same or significantly similar offense may also be considered an aggravating factor.

As detailed in the attached letter, a third-party investigation recently undertaken into employee complaints [in the District] revealed that you have engaged in a pattern and practice of bullying, harassment and threatening behavior over the course of multiple years toward several individuals, including but not limited to several of your direct and indirect reports[,] contractors, the Central Office Procurement Manager servicing the [District] and the current [District] Human Resources Manager. Behaviors observed and substantiated include raising your voice and shouting at multiple people, humiliating members of your team by making demeaning comments and giving them menial tasks to perform, making unwelcome or suggestive remarks, misusing your position to deny resources to customers for personal reasons, threatening others with unspecified retribution for not doing what you want. impugning others' reputation through gossip, demonstrating rude, discourteous and unprofessional behavior, and unnecessarily taking a hammer to a state office door lock. Nearly all incidents had multiple witnesses present who reported being seriously disturbed and offended by this conduct.

Although the behaviors reported and substantiated go back to 2017, the most recent event occurred on or about March 1, 2024, when the CO Procurement Manager contacted you regarding a janitorial services contract. The contract was in the last stages of the procurement process and required your approval and designation of a Contract Administrator to award by Friday to avoid a late procurement. When the two of you finally connected via phone, you "screamed" at her something to the effect of "I don't care if you pick Jesus Christ as a CA. But I can tell you one thing, if you think you have a problem waiting for me to respond to you, you will have a bigger problem if you don't award my contract. You just wait and see." This statement was reasonably construed as a threat, and it's not the first time you have engaged in threatening and unprofessional behavior toward this person or withheld relevant information she needed to do her job. It is also contrary to previous written counseling provided to you regarding

civility in the workplace on January 11, 2021. (See Due Process Letter, dated 6/5/24, attached)¹

On July 18, 2024, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On August 5, 2024, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer.

On November 7, 2024, a hearing was held at Agency offices in Richmond, Virginia.

APPEARANCES

Grievant
Grievant's Counsel
Grievant's Counsel
Agency Counsel
Agency Party Designee
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group III Written Notice of disciplinary action?
2. Whether the behavior constituted misconduct?
3. Whether the Agency'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 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.

¹ Agency Ex. 3.

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 her termination, Grievant was an Assistant District Administrator for a Virginia Department of Transportation District office.² Grievant worked for the Agency for more than 28 years.³ Grievant received a performance evaluation for the 2023 Performance Year that rated her overall performance as “Exceeded Expectations.”⁴

As Assistant District Administrator, Grievant’s position was part of the District’s executive team and was supervisory in nature.⁵ Grievant reported to the District Engineer. The District Engineer oversaw the District office and its operations.⁶ Grievant was the lead financial officer for the District and oversaw several sections, including accounting, inventory management, information technology, facilities, business office, and programming.⁷

Procurement Manager started her position in procurement management with the Agency in October 2018. Procurement Manager testified that during her first year in that role, Grievant would call Procurement Manager and “yell and scream” at Procurement Manager when a procurement process did not go the way that Grievant wanted. Procurement Manager recalled being upset and crying at home in response to the behavior. At some point that year, Procurement Manager invited Grievant to meet with Procurement Manager to address some issues. Procurement Manager described Grievant as standing over Procurement Manager and screaming at her. Another employee overheard the interaction, entered the office and asked Grievant to leave. Procurement Manager filed a complaint regarding Grievant’s behavior. Procurement Manager testified that she and Grievant went through an Agency mediation process during which Procurement Manager described that rather than addressing Grievant’s behavior, the Agency focused on Procurement Manager’s customer service to Grievant, including putting Procurement Manager on a performance plan.⁸

Facilities Manager reported to Grievant. Facilities Manager testified that Grievant constantly berated and belittled him. Facilities Manager testified that it caused him severe anxiety and that he would feel physically nauseous when he had to enter the building where Grievant worked. As an example of Grievant’s behavior toward him, Facilities Manager recalled an incident when Grievant became upset about a lawn maintenance contractor’s work. Facilities Manager testified that Grievant called Facilities Manager and yelled and screamed at him and ordered him to go pull weeds himself. Facilities Manager testified that other employees observed him picking weeds in the rain as Grievant had ordered him to do. Facilities Manager could not recall the specific date of the incident, but

² Agency Ex. 10.

³ Grievant Ex. at 11-12.

⁴ Agency Ex. 11.

⁵ Agency Ex. 10.

⁶ Hearing Recording (1) at 9:58:34-9:58:59.

⁷ Agency Ex. 10, and Hearing Recording (1) at 10:59:21-11:01:33.

⁸ Hearing Recording (1) at 6:42:15-6:47:45.

believed it occurred in the spring of either 2019 or 2020.⁹ Facilities Tech testified that he recalled the incident when Grievant ordered Facilities Manager to pick weeds in the rain and recalled that Grievant was angry that a contractor had not shown up to perform the work.¹⁰

Contractor testified regarding his experience with Grievant. Contractor is not a state employee. Contractor and his brother own a company that does contract work for the Agency, including heating and air conditioning work. Contractor recalled a time when Grievant called him while he and his wife were dining in a restaurant. Contractor testified that although he was not using the speaker feature of his phone, Grievant screamed at him through the phone so loudly that she could be heard by his wife and by other patrons of the restaurant. Contractor described feeling humiliated because he could tell that other restaurant patrons had stopped talking and were looking at him as Grievant continued to scream at him through the phone.¹¹ Contractor did not recall the date when the incident happened. Facilities Specialist-1 and Facilities Specialist-2 both testified that they recalled the incident described by Contractor and observed Grievant make the phone call to Contractor. Facilities Specialist-1 described Grievant as very mad with veins bulging in her forehead. He recalled that she was screaming at Contractor so loudly that Facilities Specialist-2 cautioned her that she would give herself a heart attack.¹² Facilities Specialist-1 could not remember the exact date of the incident but recalled it happening “at the beginning of COVID” and within the “last 3 or 4 years.”¹³ Facilities Specialist-2 recalled the incident with Contractor and described Grievant as very upset and very loud. Facilities Specialist-2 recalled that Grievant’s face was red, and she was so worked up that he told her “you’re going to make yourself have a heart attack.”¹⁴

On or about April 8, 2020, an assistant office director of safety filed a complaint that Grievant had violated the civility policy during an interaction with a safety coordinator on April 7, 2020. The complaint alleged that Grievant engaged in bullying, verbal abuse, and threatening behavior. A (now former) District human resources manager investigated the allegation and issued a report of findings and recommendations on May 7, 2020. The report found that the allegations of bullying and threatening behavior and verbal abuse were unsubstantiated, however, the report found evidence substantiating the allegation that Grievant “yelled and screamed” at the safety coordinator. The report concluded that Grievant had engaged in the following prohibited behaviors outlined in the policy guide for DHRM Policy 2.35: demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest and raising one’s voice inappropriately or shouting at another person. Although the investigation report recommended that District management take the appropriate corrective action under the standards of conduct, there was no evidence of disciplinary action or that District Engineer issued verbal or written corrective action to Grievant for the misconduct. During the hearing, both Grievant and District Engineer recalled the complaint regarding Grievant’s behavior at that time and

⁹ Hearing Recording (1) at 5:16:00-5:18:54, 5:24:44-5:25:33.

¹⁰ Hearing Recording (1) at 3:04:14-3:12:00.

¹¹ Hearing Recording (1) at 2:08:09-2:12:08.

¹² Hearing Recording (1) at 2:20:39-2:25:35.

¹³ Hearing Recording (1) at 2:29:25-2:30:34.

¹⁴ Hearing Recording (1) at 2:39:45-2:41:22.

Grievant admitted that she “turned it up a notch,” but asserted that she did so because safety coordinator was being disrespectful and would not leave Grievant’s office as she had asked her to do.¹⁵

Grievant “yelled” at an Agency human resources employee in January of 2021. On January 11, 2021, Grievant’s supervisor, District Engineer, sent an email to Grievant regarding her behavior toward the Agency human resources employee. District Engineer set forth her concern and expectation with respect to Grievant’s behavior as follows:

During our discussion this morning you mentioned you yelled at [a human resources employee] on the phone regarding a recruitment package. You admitted you were wrong in your behavior and that you would apologize to [the human resources employee] for the way you spoke to her. Please make sure you do apologize today or tomorrow.

This afternoon I received an email from [(former) human resources manager] and subsequently a phone call about your behavior toward [human resources employee]. I completely understand your frustration when others’ performance affects your ability to get the job done. However, you need to find another outlet for your frustrations. This is not the first time this has happened, but it must be the last.

Please make sure you apologize and look for ways you can manage your frustration. As a leader, we need to set an example for our employees, and the example you are currently setting is not acceptable.

Please let me know if you would like to discuss or if I can help identify frustration management techniques.¹⁶

During the hearing, District Engineer testified that her reference in the email to Grievant that “[t]his is not the first time this has happened” was to the April 2020 incident with the safety coordinator.¹⁷

Finance & Accounting Manager reported to Grievant. Finance & Accounting Manager recalled an incident that occurred in August of 2021. At the time the District was preparing to require employees to return to work in the office. On August 25, 2021, two of Finance & Accounting Manager’s employees had visited the office for business reasons and observed mold growing on walls, carpet, and chairs in the office. The employees took a photograph of the mold. Finance & Accounting Manager sent an email to District Engineer, Grievant, and Facilities Manager regarding what had been reported to her and including the photograph.¹⁸ Finance & Accounting Manager also called Grievant. Finance & Accounting Manager testified that this was the first time Grievant “went off” on her. Finance & Accounting Manager testified that Grievant was screaming and yelling at her and told her that she and her staff would report to the office

¹⁵ Hearing Recording (1) at 10:33:23-10:35:55, 12:03:56-12:09:08.

¹⁶ Agency Ex. 18 and see Hearing Recording (2) at 3:06-7:10.

¹⁷ Hearing Recording (1) at 10:33:23-10:35:44.

¹⁸ Agency Ex. 13 at 60.

on Monday as scheduled and Grievant did not care if they had to find a space for them to work in the parking lot. Finance & Accounting Manager testified that she was “taken aback” and “shaken” by that interaction with Grievant. Finance & Accounting Manager testified that she was concerned because she did not understand why Grievant was so angry and aggressive. Although Grievant made sure that the office was cleaned over that weekend and that new chairs were acquired before the employees reported to work in the office as scheduled, Finance & Accounting Manager testified that Grievant did not speak to her for two months following the incident even though Finance & Accounting Manager was one of Grievant’s direct reports.¹⁹ Finance & Accounting Manager did not report the incident immediately, but testified that she later reported it to District Engineer in the context of other concerns that Finance & Accounting Manager had with Grievant’s behavior.²⁰

IT Manager also reported directly to Grievant. IT Manager testified regarding an incident that he experienced with Grievant in April 2023. IT Manager testified that District Engineer asked him about the status of an upcoming migration project. After describing the status of the project and his expectations for its rollout, IT Manager mentioned to District Engineer that he would be out of the District office attending a business meeting that Grievant had scheduled to occur off-site during one day of the project. IT Manager testified that within approximately ten minutes of that conversation, Grievant called him on the phone and yelled at him for mentioning the scheduling of the off-site meeting to District Engineer. IT Manager recalled Grievant saying “you stabbed me in the back” and “I’m not going to forget this.”²¹ IT Manager testified that it was difficult working with Grievant because he never knew what to expect.²²

District HR Manager began working for the Agency in the District in December of 2022. Although District HR Manager worked in the District, he reported to the Agency’s Central Office through the human resources division. On May 10, 2023, the District hosted an employee appreciation event for District employees. District HR Manager and Grievant had discussed the event and that both would have staff supporting the event. On the day of the event, District human resources staff also were on-boarding new employees. Grievant and her staff performed most of the set up for the event with little assistance from District HR Manager or his staff. After the event concluded, Grievant, Maintenance Program Manager and Facilities Manager began cleaning up from the event. Maintenance Program Manager testified that she was wiping down a table when District HR Manager approached her and asked what he could do to help. Maintenance Program Manager suggested that he ask Grievant. When District HR Manager asked Grievant what he could do to help, she told him that he needed to tell his staff to wipe down tables. District HR Manager responded that he was short-staffed, and his staff were busy wrapping up their on-boarding work with the new employees, but that he, himself, could help. District HR Manager testified that it was at this point that Grievant started yelling at him. District HR Manager testified that he tried to de-escalate the situation, but Grievant told him to “get out of her face.”²³ District HR Manager described Grievant as very angry

¹⁹ Hearing Recording (1) at 4:56:07-5:00:18, 5:04:40-5:08:02.

²⁰ Hearing Recording (1) at 5:04:40-5:08:02.

²¹ Hearing Recording (1) at 3:16:32-3:20:52.

²² Hearing Recording at 3:24:00-3:26:10.

²³ Hearing Recording (1) at 5:36:21-5:39:55.

and aggressive with her fists clenched as she yelled at him. District HR Manager described feeling embarrassed. Maintenance Program Manager observed that shortly after District HR Manager approached Grievant to ask what he could do to help, Grievant was “over-the-top” yelling at District HR Manager and District HR Manager was trying to calm her down. Maintenance Program Manager described Grievant as “screaming” at District HR Manager and “angry” with “fists clenched.” Maintenance Program Manager described the situation as “terrible” and “very uncomfortable.”²⁴ Facilities Manager also observed the incident. Facilities Manager testified that District HR Manager also elevated his voice in response to Grievant so that he too was “screaming” during the incident. Facilities Manager, however, also described District HR Manager as attempting to de-escalate the situation.²⁵

District HR Manager told his supervisor about the incident with Grievant and she recommended that he speak with District Engineer about what happened. District HR Manager told District Engineer that he did not want to file a formal complaint about the incident with Grievant and that he wanted to talk to Grievant about it. On May 15, 2023, District HR Manager met with Grievant to discuss the incident and told her that her behavior during the incident, including raising her voice, was inappropriate and he recommended that she take a refresher course on civility in the workplace.²⁶ Grievant testified that when District HR Manager discussed the incident with her she told him how frustrated she had been by what had happened during the event and that if he “felt like I should take the civility class then I will take the civility class, but if I take the civility class then you need to take a class on how to be a team player.”²⁷

Although Finance & Accounting Manager did not observe the May 10, 2023 incident between District HR Manager and Grievant, she testified that Grievant told her about the incident. Finance & Accounting Manager described Grievant as acting “proud” of her behavior toward District HR Manager and testified that Grievant described her own behavior as “[she] told him” and that she “gave him hell.”²⁸

On November 7, 2023, Grievant contacted the Commonwealth’s Fraud, Waste, and Abuse hotline via email to report “falsification of official documents such as time sheets and leave reports in the [District] HR section.”²⁹ On November 8, 2023, Grievant provided additional information regarding her allegations, including District HR Manager’s name. Grievant sent another email to the hotline on December 18, 2023, because she had not “seen any action” so she provided examples of “[District HR Manager] not working 8 hours a day and taking 2 hours for lunch.”³⁰

On or about January 3, 2024, the Agency’s office of Audits and Compliance interviewed District HR Manager regarding the allegations from the hotline complaint. Other district human resources staff also were interviewed. District HR Manager

²⁴ Hearing Recording (1) at 3:58:34-4:07:51.

²⁵ Hearing Recording (1) at 5:15:00-5:16:00, 5:23:06-5:24:04.

²⁶ Hearing Recording (1) at 5:39:55-5:46:45

²⁷ Hearing Recording (1) at 11:14:22-11:22:27.

²⁸ Hearing Recording (1) at 5:01:11-5:02:15.

²⁹ Grievant Ex. at 29-30.

³⁰ Grievant Ex. at 31-32.

suspected it was Grievant who submitted the hotline complaint. District HR Manager believed that Grievant was behind the hotline complaint, which he considered “persecution” of him and his staff following his interaction and discussion with Grievant in May 2023. So, on January 12, 2024, District HR Manager submitted a formal complaint regarding Grievant’s behavior. In his complaint, District HR Manager noted the incident that occurred on May 10, 2023, and that he had addressed the issue directly with Grievant and that he “did not put in a formal complaint because [he] believed this was a matter that [he] could work out directly with her and her supervisor and move forward in good faith.”³¹

On the morning of February 27, 2024, Maintenance Program Manager forwarded an email to Grievant that she had received from the Agency’s procurement staff regarding the status of a request for proposals and inquiring as to moving forward with procurement of the services contract. That same morning, the procurement staff also emailed Grievant to request that Grievant identify a person to serve as contract administrator for the contract because Maintenance Program Manager had taken another position and would be unable to serve as contract administrator.³²

Grievant did not respond to the email from the procurement staff.

On the afternoon of February 29, 2024, Procurement Manager followed up with an email to Grievant. Procurement Manager advised Grievant that procurement staff would need Grievant’s approval before they could post a notice of intent to award for the services contract. If they were unable to post the notice of intent to award by the following day, March 1, the procurement would be a late procurement. Procurement Manager noted that Grievant also needed to assign someone to serve as the contract administrator before they could award the contract.³³

On or about March 1, 2024, Procurement Manager again reached out to Grievant, this time by both email and text. Procurement Manager again requested that Grievant respond to procurement staff as to whether Grievant approved posting the notice of intent to award that day.³⁴

Grievant then responded by calling Procurement Manager. Procurement Manager testified that during the call Grievant was “screaming” and “yelling” at Procurement Manager and told her “this” was “ridiculous.” Grievant questioned why Procurement Manager needed Grievant to identify a contract administrator and told Procurement Manager that it was “ridiculous” that Procurement Manager was asking her for one because Grievant did not have anyone to serve as contract administrator. According to Procurement Manager Grievant said she did not care if Procurement Manager picked “Jesus Christ” to be contract administrator. Procurement Manager tried to explain why she needed a contract administrator identified consistent with procurement rules and suggested staff that worked for Grievant who had the appropriate training to serve as a contract administrator. Grievant repeated that she “didn’t care” who served as contract administrator. Grievant also suggested that if Procurement Manager had a problem

³¹ Agency Ex. 19 at 1.

³² Agency Ex. 21.

³³ Agency Ex. 21.

³⁴ Agency Ex. 21.

waiting for Grievant to respond to her emails, she would have a bigger problem if she did not award the contract, that she would “see” what would happen. Procurement Manager explained to Grievant that Procurement Manager did not have authority to assign work for Grievant’s staff, so it was Grievant, not Procurement Manager, who needed to choose who would serve as contract administrator for the contract.³⁵

Procurement Manager testified that she was so upset following the phone call with Grievant that she was shaking. Procurement Manager was working from home at the time of the call and Procurement Manager testified that she was sufficiently upset that her husband noticed and asked her what was wrong.³⁶

Procurement Manager sent an email to a Central Office human resources staff member at 1:23 p.m. on that same day to report a “Civility Complaint on [Grievant].” In her email, Procurement Manager recounted the events leading up to her phone call with Grievant and then described the call as follows:

I then sent [Grievant] a text asking again if she could approve the posting of the [Notice of Intent of Award]. She called me immediately; she was irate [and] began raising her voice and told me that I could post the NOIA and she could care less if I picked Jesus Christ to be the [Contract Administrator]. She made statements about why I needed a CA to award and told me that she wouldn’t have anyone for a while in that position. I suggested that maybe [Facilities Manager] or [facilities staff person] to be the CA and she repeated that she didn’t care, but that if I thought I had a problem waiting on her to respond that I would have a big problem if I didn’t award her contract. I also told her that I didn’t have authority to just assign [facilities staff person] as the CA and while raising her voice, she said, I do, they work for me.

I hung up in disbelief that she had taken that attitude and was talking to me that way about me just doing my job. I needed end user approval to post the NOIA and 10.2 of the APSPM states that upon award the agency shall designate a contract administrator. Employees working for VDOT, or any other agency should not have to deal with being belittled and treated the way I was this morning while trying to do my job.

Also, this is not the first time that this has happened, I filed a complaint years ago on [Grievant] for the very same thing.³⁷

The Agency requested that the Office of the Attorney General engage a third-party investigator to independently investigate the allegations made by Procurement Manager and District HR Manager.³⁸

³⁵ Hearing Recording (1) at 6:50:50-6:53:31, see also Agency Ex. 13 at 3.

³⁶ Hearing Recording (1) at 6:51:57-6:53:31.

³⁷ Agency Ex. 13 at 3.

³⁸ Agency Ex. 13 at 2, Hearing Recording (1) at 7:33:54-7:35:53.

The Third-Party Investigator issued a report of her findings on May 21, 2024. The Third-Party Investigator reported information she received from Agency employees and Agency contractors who worked with Grievant.³⁹

On June 21, 2024, the Agency issued a Group III Written Notice of disciplinary action to Grievant and terminated her employment for violating DHRM Policy 2.35, Civility in the Workplace, DHRM Policy 1.60, Standards of Conduct, and the Virginia Department of Transportation's Code of Ethics.

CONCLUSIONS OF POLICY

The Commonwealth's Standards of Conduct apply to state employees, including Agency employees. The Standards of Conduct include standards of work performance and professional conduct and set forth the disciplinary process agencies must utilize to address unacceptable behavior.⁴⁰

The Standards of Conduct set forth the expectation that employees "[d]emonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, . . . and customers."⁴¹

The Standards of Conduct set forth the expectation for supervisors and managers to "serve as role models through their compliance with policies, agency protocols and best practices in leading and communicating with their subordinate employees." Supervisors and managers are expected to demonstrate "personal conduct that fosters a respectful workplace culture and models the expectations established for employees."⁴²

The Department of Human Resource Management also has issued Policy 2.35, Civility in the Workplace, which applies to all state executive branch employees, including employees of the Agency.

DHRM Policy 2.35 makes clear that

[t]he Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties in the workplace.

Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable.⁴³

³⁹ Agency Ex. 13.

⁴⁰ See DHRM Policy 1.60, Standards of Conduct.

⁴¹ See DHRM Policy 1.60, Standards of Conduct.

⁴² See DHRM Policy 1.60, Standards of Conduct.

⁴³ See DHRM Policy 2.35, Civility in the Workplace.

Pursuant to DHRM Policy 2.35, prohibited conduct/behaviors⁴⁴ may include, but are not limited to:

- 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;
- Making disparaging remarks, spreading rumors, or making innuendos about others in the workplace;
- Raising one's voice inappropriately or shouting at another person;
- Humiliating others; making public statements with the intent of embarrassing a targeted person; impugning one's reputation through gossip.

Disciplinary actions to address prohibited behaviors may be taken on a progressive basis or actions may be taken upon the first occurrence, depending upon the nature and seriousness of the conduct. The context of the behaviors, nature of the relationship between the parties, frequency of associated behaviors, and the specific circumstances must be considered in determining if the behavior is prohibited. A "reasonable person" standard is applied when assessing if behaviors should be considered offensive or inappropriate.

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

Grievant engaged in misconduct on or about March 1, 2024 when she yelled at Procurement Manager, including when she belittled Procurement Manager's effort to perform her job by telling Procurement Manager "this" is "ridiculous" and it was "ridiculous" that Procurement Manager was asking her to identify a contract administrator, and when she warned Procurement Manager that if she had a problem waiting for Grievant to respond to her emails that she would see what would happen if she failed to award the contract. Grievant did not recall raising her voice at Procurement Manager during the call "any more than [Grievant's] loud voice."⁴⁵ Grievant also described that she may have been a little excited because she was trying to get through a lot of emails and may have turned it up a notch because she was excited.⁴⁶ This Hearing Officer found Procurement Manager's recollection of the incident to be clear, credible and consistent with Procurement Manager's reporting of the incident on the day it occurred. Procurement Manager described being so upset that she was shaking. Grievant's behavior was rude, unprofessional, and intimidating, Grievant inappropriately yelled and showed a lack of regard for Procurement Manager and her work and significantly distressed Procurement Manager.

⁴⁴ See DHRM Policy 2.35, Civility in the Workplace, Policy Guide.

⁴⁵ Hearing Recording (1) at 11:27:34-11:38:32.

⁴⁶ Hearing Recording (1) at 11:27:34-11:38:32, 12:01:40-12:02:44.

Grievant engaged in misconduct in April 2023 when she yelled at IT Manager and accused him of stabbing her in the back and warned him that "I'm not going to forget this." Grievant appeared to argue that this allegation as well as other allegations of behavior that occurred more than a year before she was disciplined, was untimely, and that she should not have to respond to such allegations. Grievant also generally asserted that she has a loud voice. This Hearing Officer found IT Manager's recollection to be clear and his testimony to be credible. IT Manager did not describe Grievant as just loud, he described her as "yelling" at him and accusing him of stabbing her in the back. In addition to inappropriately yelling, Grievant's behavior toward IT Manager was rude, unprofessional, and intimidating.

Grievant engaged in misconduct in August 2021 when she yelled at Finance & Accounting Manager. Grievant appeared to argue that this allegation as well as other allegations of behavior that occurred more than a year before she was disciplined, was untimely, and that she should not have to respond to such allegations. Grievant also generally asserted that she has a loud voice. This Hearing Officer found Finance & Accounting Manager's recollection to be clear and her testimony to be credible. Finance & Accounting Manager did not describe Grievant as being loud, but described this as the first time that Grievant "went off" on her. She described Grievant as angry and aggressive and that she felt "taken aback" and "shaken" by Grievant's behavior. In addition to inappropriately yelling, Grievant's behavior toward Finance & Accounting Manager was rude and unprofessional.

Grievant engaged in misconduct when she "yelled" and "screamed" at Facilities Manager and ordered him to pull weeds in the rain. Grievant appeared to argue that this allegation as well as other allegations of behavior that occurred more than a year before she was disciplined, was untimely, and that she should not have to respond to such allegations. Grievant also generally asserted that she has a loud voice. This Hearing Officer found Facilities Manager's recollection of the incident to be clear and credible. Facilities Manager's recollection of the incident was corroborated by Facilities Tech who also recalled the incident. In addition to inappropriately yelling at Facilities Manager, Grievant's behavior was rude and unprofessional. Her behavior showed a lack of regard for Facilities Manager and was designed to humiliate and embarrass him.

Grievant engaged in misconduct when she yelled at Contractor during a phone call. Grievant appeared to argue that this allegation as well as other allegations of behavior that occurred more than a year before she was disciplined, was untimely, and that she should not have to respond to such allegations. Grievant also generally asserted that she has a loud voice. This Hearing Officer found Contractor's testimony to be clear and credible. Contractor did not describe Grievant as loud; he described her as screaming at him so loudly that she could be heard by his wife and by other patrons of a restaurant where he was dining. Facilities Specialist-1 and Facilities Specialist-2 both observed Grievant's behavior and described her as "screaming" and so worked up that Facilities Specialist-2 warned Grievant that she would give herself a heart attack. In addition to inappropriately yelling at Contractor, Grievant's behavior was rude and unprofessional. Her behavior showed a lack of regard for Contractor and was designed to humiliate and embarrass him.

Grievant appeared to argue that the allegations made by IT Manager, Finance & Accounting Manager, Facilities Manager and Contractor were untimely under DHRM Policy 2.35 and under Agency policy that stated that employees “shall [r]eport instances of prohibited conduct they experience or become aware of as soon as possible after the incident occurs.” This Hearing Officer is not persuaded by Grievant’s argument that the Agency is barred from investigating and addressing the allegations made by IT Manager, Finance & Accounting Manager, Facilities Manager, and Contractor. In this case, other than Procurement Manager and District HR Manager, Grievant’s accusers were employees that Grievant directly supervised and a contractor whose business performed work for the District. Facilities Manager, IT Manager and Contractor testified that they believed that if they had reported Grievant’s behavior it would go unaddressed and that they would suffer retaliation from Grievant.⁴⁷ Their fears were not unreasonable. Grievant was on the District’s executive team and its lead financial officer. She was in a position of power with respect to the employees who reported to her and at least a perceived position of power to Contractor. The nature of Grievant’s behavior was to intimidate. Indeed, IT Manager recalled Grievant describing herself as the “Teflon Queen” because nothing ever stuck to her.⁴⁸

Grievant argued that the witnesses had no reason to fear Grievant or retaliation by Grievant because the Agency had not presented evidence that Grievant actually retaliated against her accusers. The absence of evidence of retaliation does not mean that a fear of retaliation is unwarranted, especially when, as in this case, the nature of the behavior was to intimidate and cause fear to help ensure that the behavior would not be reported.

Further, with respect to timely reporting and the timeliness of an agency’s disciplinary action, the Office of Employment Dispute Resolution has made clear that:

we find nothing in state policy or other applicable authority that creates a limitations period on agency management’s ability to address misconduct of which it becomes aware. Although DHRM Policy 1.60, Standards of Conduct, requires agencies to administer corrective and disciplinary actions “through an objective process initiated as promptly as feasible,” this requirement is not intended to foreclose agencies’ ability to address allegations of misconduct that may eventually be uncovered or learned of after a period of time. Similarly, with respect to violations of Policy 2.35, the policy’s instruction that misconduct “should” be reported “as soon as possible after the incident occurs” should not be read as a barrier to reporting, nor would this provision be grounds for an agency to ignore a complaint solely on grounds that it was not made timely. Although delays in reporting and enforcement can impair agencies’ ability to manage its workforce efficiently, management must nevertheless investigate reports of misconduct under Policy 2.35 and address sustained allegations appropriately under Policy 1.60.⁴⁹

⁴⁷Hearing Recording (1) at 3:39:00-3:41:15, 5:26:40-5:28:32, 2:12:17-2:14:22.

⁴⁸ Hearing Recording (1) at 3:24:00-3:26:10.

⁴⁹ EDR Ruling 2024-5710 (Aug. 22, 2024) at 11-13.

Grievant also asserted that she had not violated DHRM Policy 2.35, or did not recall engaging in behavior that violated DHRM Policy 2.35 and appeared to suggest that the witnesses had coordinated their stories to facilitate the disciplinary action against her. This Hearing Officer is not persuaded. The Agency witnesses were clear in their recollection of events and this Hearing Officer found their testimony to be credible and consistent with the behavior Grievant exhibited toward a safety coordinator in 2020 and the behavior Grievant exhibited toward a human resources employee for which Grievant had been counseled in January 2021.

The preponderance of the evidence showed that Grievant engaged in misconduct on several separate occasions in her interactions with Agency employees and a Contractor in violation of DHRM Policy 2.35, Civility in the Workplace and the Standards of Conduct.

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

The Agency's issuance of a Group III Written Notice with termination was reasonable and 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."⁵⁰

Violation of DHRM Policy 2.35 may be a Group I, Group II, or Group III offense depending upon the nature of the violation. DHRM Policy 2.35, Civility in the Workplace, and its associated guidance permit agencies to assess the severity of an offense and its effect on the workplace in selecting the appropriate level of discipline. These determinations are fact-specific and subject to substantial discretion by agency management.

The preponderance of the evidence shows that the Agency could have issued a Group III Written Notice with termination to Grievant solely based on her behavior toward Procurement Manager on March 1, 2024. Grievant's behavior on that date was rude, unprofessional, and intimidating. Grievant yelled and showed a lack of regard for Procurement Manager and her work and significantly distressed Procurement Manager. The nature of such conduct is serious as it serves to undermine team cohesion, staff morale and individual self-worth. Additionally, Grievant's behavior toward Procurement Manager on that date was similar in nature to the behavior for which Grievant was counseled in January 2021, when Grievant "yelled" at a human resources employee. At that time, Grievant was instructed that it must be the last time she should engage in such behavior and advised that the example Grievant was setting was "unacceptable."⁵¹

⁵⁰ See DHRM Policy 1.60, Standards of Conduct.

⁵¹ Agency Ex. 18.

Because of Grievant's supervisory role, it was reasonable for the Agency to hold Grievant to a higher standard with the expectation that she would set an example for appropriate behavior. Based on the seriousness of the offense, the repeated nature of Grievant's misconduct on March 1, 2024, following the email she had received from District Engineer on January 11, 2021, and Grievant's position as a supervisor, the Agency's issuance of a Group III Written Notice with termination for that offense alone was reasonable and consistent with law and policy.

In addition to Grievant's misconduct on March 1, 2024, during her interaction with Procurement Manager, the preponderance of the evidence showed that Grievant engaged in behavior that violated DHRM Policy 2.35 on multiple other separate occasions towards employees who reported to her and an external stakeholder. Grievant's misconduct in her interactions with IT Manager, Finance & Accounting Manager, Facilities Manager, and Contractor was severe because Grievant was in a position of power with respect to these individuals and the nature of her behavior as to the employees who reported to her was to undermine team cohesion, staff morale, and individual self-worth.

The Agency could have issued separate written notices for Grievant's offenses, but in this case, the Agency decided to combine multiple offenses into a single Group III Written Notice.

Given the serious and repeated nature of Grievant's misconduct, as well as Grievant's supervisory role, the Agency's classification of Grievant's misconduct as a Group III offense was reasonable.

Absent mitigating circumstances, job termination is the normal result of a Group III written notice.

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

Retaliation

Grievant argued that the disciplinary action was the result of retaliation. In order to succeed with a retaliation defense, 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.⁵² If the Agency presents a non-retaliatory business reason for the adverse employment action, then Grievant must present sufficient evidence that the Agency's stated reason was a mere pretext or excuse for retaliation.⁵³ Grievant arguably engaged in protected activity when she reported her concerns about falsification of records and timekeeping and leave abuses by District human resources staff to the Office of the State Inspector General through the Fraud, Waste, and Abuse hotline in November and December of 2023.⁵⁴ Grievant experienced an adverse employment action when she received the Group III Written Notice of

⁵² 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).

⁵³ See, e.g., *Felt v. MEI Techs., Inc.*, 584 Fed. App'x 139, 140 (4th Cir. 2014).

⁵⁴ Grievant Ex. at 29-33.

disciplinary action with termination. Even if District HR Manager's motives for reporting Grievant's behavior was due to his belief that Grievant had reported his behavior to the Fraud, Waste, and Abuse hotline, the preponderance of the evidence showed that the Agency had non-retaliatory business reasons for its discipline of Grievant because Grievant had engaged in behavior that violated policy in her treatment of Procurement Manager, other Agency staff, and Contractor. Grievant has not shown that, but for her engagement in protected activity, the Agency would not have issued the discipline for her misconduct. Because the Agency had non-retaliatory reasons for its discipline of Grievant and Grievant has offered no evidence to suggest that those reasons are mere pretext, Grievant has not met her burden to prove the Agency's issuance of discipline to Grievant was retaliation.

To the extent that Grievant appeared to argue that the Agency would not have investigated Grievant but for retaliatory motives by District HR Manager, this Hearing Officer is not persuaded. Even if District HR Manager was motivated by a desire to retaliate against Grievant when he reported Grievant's behavior towards him, District HR Manager's motives did not relieve the Agency of its responsibility to investigate Procurement Manager's allegations of Grievant's misconduct towards her. In this case, the Chief Deputy Commissioner credibly testified that Grievant's alleged misconduct was first brought to her attention, not because of District HR Manager's allegations, but rather, as a result of Procurement Manager filing her complaint about Grievant's behavior, which included an assertion that Grievant had mistreated Procurement Manager on a prior occasion. It was because Chief Deputy Commissioner became aware at that time that an allegation also had been made by a human resources staff member that Chief Deputy Commissioner requested that a third-party investigator be hired rather than relying on the Agency's human resources staff to conduct the investigation and to avoid concerns that human resources staff investigating the allegations may not be fair or impartial.⁵⁵

The Agency has demonstrated that it had non-retaliatory business reasons for its discipline of Grievant and Grievant has not shown that, but for her engagement in protected activity, the Agency would not have issued the discipline for her misconduct.

Other Defenses

Grievant appeared, at times, to suggest that the Agency failed to engage in progressive discipline. Grievant argued that she was a good employee with a record of good work performance and no active prior disciplinary actions. Although agencies are encouraged to engage in progressive disciplinary action, the Standards of Conduct do not require agencies to do so. The Agency elected to issue Grievant a Group III Written Notice and has presented sufficient evidence to support its decision.

Grievant argued that the Agency treated her poorly in the investigation of the allegations against Grievant and argued that the third-party investigator made up her mind and did not properly consider the information Grievant provided during the investigation. Grievant essentially argued that the Agency did not provide her adequate due process.

⁵⁵ Hearing Recording (1) at 7:33:54-7:35:53, 7:56:00-8:01:19, 8:23:30-8:26:49.

The hearing process cures any such deficiency. Grievant had the opportunity to present any evidence and arguments she wished during the hearing.

Mitigation

Grievant argued that the discipline should be reduced because, according to Grievant, the Agency did not apply discipline consistently when it disciplined Grievant more harshly than Grievant's supervisor, District Engineer. Based on testimony during the hearing, the Agency issued a Group III written notice to District Engineer but did not terminate District Engineer's employment.⁵⁶ Although DHRM Policy 2.35 makes clear that supervisors who allow reported prohibited conduct to continue "may be considered parties to the offense and subject to disciplinary action," it does not require, as Grievant suggests, that a supervisor be issued discipline identical to that issued to their subordinate. Additionally, based on the evidence presented, it was not clear that District Engineer should reasonably have known of all of Grievant's misconduct and there was no evidence to suggest that District Engineer had engaged in any such behavior herself.⁵⁷ The Agency's decision to issue Group III written notices to both Grievant and District Engineer but to only terminate Grievant, does not exceed the limits of reasonableness in this case.

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...."⁵⁸ 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 Grievant of a Group III Written Notice 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.

⁵⁶ Hearing Recording (1) at 8:10:44-8:12:02, 10:03:27-10:06:21, 10:47:41-10:47:56.

⁵⁷ Hearing Recording (1) at 8:24:59-8:28:49, 10:35:55-10:38:19.

⁵⁸ Va. Code § 2.2-3005.

Please address your request to:

Office of Employment 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.⁵⁹

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

⁵⁹ 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.