



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 12409

Hearing Date: March 13, 2026
Decision Issued: April 2, 2026

PROCEDURAL HISTORY

On October 14, 2025, Grievant was issued a Group II Written Notice of disciplinary action for unsatisfactory performance and failure to follow instructions.

On October 26, 2025, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On January 12, 2026, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. A prehearing conference was held on January 20, 2026 during which the hearing was scheduled for February 19, 2026. At Grievant's request, without Agency objection, the hearing date was continued until March 13, 2026. On March 13, 2026, a hearing was held by video conference.

APPEARANCES

Grievant
Grievant's Two Representatives
Agency Party Designee
Agency Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?
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.

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 Motor Vehicles employs Grievant as a Program Specialist Senior at one of its locations. Grievant reported to Supervisor who was responsible for assigning duties to Grievant. Grievant had been employed by the Commonwealth for approximately 18 years and returned to the Agency in April 2025.

The Agency has a Juvenile Certificate Procedure regarding juveniles who have completed driver education programs. The Agency had a backlog in July 2025 of approximately 9,600 juvenile certificates ("Juvies") to be processed. To reduce the backlog, the Agency used "Sprints" where staff were to focus on processing Juvies, especially on Fridays. Grievant's work duties included processing Juvies.

Grievant used two monitors attached to his computer in order to access information from one screen and enter that information in the Agency's computer system using the other screen.

Grievant wrote in his due process response, “[a]t that time, my Microsoft Task assignment reflected a target of 100 per day, which was already an increase over the prior guidance of 50 per day from the supervisor’s manager. I had only recently reached proficiency at processing 100 per day while also managing other assigned duties.”¹ Grievant reported processing 105 Juvies on September 17, 2025.²

Grievant and the Agency entered a telework agreement allowing Grievant to work from his home on Fridays. On September 19, 2025, Grievant was teleworking from his home. He had attached his computer to two monitors in order perform his work duties efficiently. Grievant owned the monitors.

Grievant worked 8.5 hours on September 19, 2025. Grievant began working between 7:15 a.m. and 7:30 a.m. At approximately 7:34 a.m., Supervisor sent Grievant an instant message stating, in part:

Also, your juvie numbers have picked up – thank you so much for that. For today please **focus on just processing juvies** and let everything else wait until Monday. If you focus on juvies you should be able to process at least 300 today. I really want to make sure that you are successful in hitting your numbers for the “sprint” that [Manager] laid out.” (Emphasis added.)³

In mid-morning, one of Grievant’s monitors broke, leaving him with one monitor to perform his work. Grievant did not notify Supervisor that he only had one working monitor or that he was unable to devote all of his duties to processing Juvies.

For the remainder of the day, September 19, 2025, Grievant completed Planner updates, Box reviews, documentation drafting, letters, and system research. Grievant testified he took the rest of the day to do letters and drafted some of the letters from “scratch.”

Grievant reported that he had completed 44 juvies. On September 22, 2025, Supervisor sent Grievant an instant message, “Hey – just noticed that you only processed 44 juvies on Friday – what happened?” Grievant replied, “My extra monitor died ... so the struggle was real.”⁴

The Agency conducted an audit of the work Grievant performed on September 19, 2025 and concluded he only processed 1 Juvie at 8:28 a.m. Grievant asserted that the other 43 Juvies may have been previously processed in the system and, thus, would not appear in the Agency’s audit.

¹ Agency Exhibit p. 22.

² Agency Exhibit p. 31.

³ Agency Exhibit p. 26.

⁴ Agency Exhibit p. 26.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “have a minor impact on agency business operations but still require intervention.” Group II offenses include, “acts of misconduct, violations of policy, or unsatisfactory performance of a more serious nature that has a considerable impact on the agency’s ability to provide services and meet business needs.” Group III offenses include, “acts of misconduct, violations of policy, or unsatisfactory performance that is of a most critical nature and significantly impacts agency services and operations.”⁵

DHRM Policy 1.60 defines Group II offenses as:

Offenses in this category include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that significantly impact business operations and/or constitute neglect of duty involving major consequences, insubordinate behaviors and abuse of state resources, violations of policies, procedures, or laws.

Group II offenses include, “[f]ailure to follow supervisor’s instructions.”⁶

Attachment A, DHRM Policy 1.60 discusses failure to follow supervisor’s instructions and directives:

This offense focuses on the ability of agency managers and supervisors to direct work and the workforce. Management must demonstrate the employee was given proper, reasonable and lawful instructions and the employee improperly failed to follow the instructions or perform the assigned work regardless of whether the failure to act was intentional or unintentional. An Agency is entitled to have all instructions followed, unless following the instruction would place the employee or client in imminent danger, cause irreparable harm or violate laws, policy or protocols.

On September 19, 2025, Supervisor instructed Grievant, “please focus on just processing juvies and let everything else wait until Monday.” Supervisor’s instruction was proper, reasonable, and lawful. Grievant did not focus on processing juvies for the entire day. He spent several hours performing duties other than processing Juvies. Grievant

⁵ DHRM Policy 1.60, Attachment A.

⁶ DHRM Policy 1.60, Attachment A.

failed to follow Supervisor's instruction. The Agency has presented sufficient evidence to support the issuance of a Group II Written Notice.

Grievant argued that he should not have been disciplined for failing to process 300 Juvies on September 19, 2025 because this requirement was unreasonable. Grievant established that Supervisor's expectation that he complete 300 Juvies in one day was unreasonable. He had only one monitor and was not able to process 300 Juvies in an eight-hour period. The essence of Supervisor's instruction, however, was to focus on processing Juvies. Grievant did not establish that Supervisor's instruction that he "focus on just processing juvies" was unreasonable. Grievant focused on several duties other than processing Juvies. The Hearing Officer is persuaded by the Agency's evidence that Grievant processed only one Juvie on September 19, 2025. It seems unlikely that 43 of 44 Juvies were previously processed and then finalized by Grievant at the last step in the process. Even if the Hearing Officer assumes to be true Grievant's assertion that he processed 44 Juvies, his evidence shows he did not focus on just processing Juvies as instructed.

Grievant argued that he did not recognize the instruction as an instruction because it was delivered by instant message and contained "LOL" in the chain of messaging. He claimed the instruction lacked clarity and was in an informal tone. Grievant testified he usually receives instructions through email, Planner, or in one-on-one meetings. Although this may explain why Grievant did not comprehend the nature of the directive, the Supervisor's wording in the instant message shows it was an instruction to focus on processing Juvies. It is not necessary for the Agency to show Grievant intentionally refused to perform the instruction.

Grievant argued that the failure of one of his monitors hindered his ability to process more Juvies. The evidence showed Grievant did not devote his duties to completing Juvies.

Grievant argued the Agency failed to take progressive corrective action. Although DHRM Policy 1.60 encourages agencies to follow progressive corrective action, it does not require agencies to do so.

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"⁷ 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

⁷ Va. Code § 2.2-3005.

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 II Written Notice of disciplinary action is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

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]

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

[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].

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer