

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

DIVISION OF HEARINGS

In the matter of: Case No. 12420

Hearing Officer Appointment: March 9, 2026
Hearing Date: April 28, 2026
Decision Issued: May 3, 2026

PROCEDURAL HISTORY AND ISSUES

The Grievant requested an administrative due process hearing to challenge the issuance of a Group III Written Notice, for Written Notice Offense Codes 11 (Unsatisfactory Performance) 13 (Failure to follow instructions or policy) and 39 (Violation of DHRM Policy 2.35, Civility in the Workplace), issued December 17, 2025, by the Department of Corrections ("DOC" or the "Department" or the "Agency").

Pursuant to the Written Notice, the Grievant's employment was terminated December 17, 2025.

The Grievant has raised the issues specified in his Grievance Form A and is seeking the relief requested in his Grievance Form A, including removal of the Written Notices from his record, reinstatement, back pay, and restoration of benefits.

The Grievant, the Agency's advocate and the hearing officer participated in a first prehearing conference call at 10:00 am on April 2, 2026. The parties agreed that communication by email alone is acceptable.

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.

Pursuant to the Amended Scheduling Order entered April 7, 2026, incorporated herein by this reference, at the request of the Grievant over the Agency's objection, the hearing was held virtually on April 28, 2026.

The Grievant did not appear and the attempt to reach him was unsuccessful. The Agency was represented by its advocate. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing.¹

APPEARANCES

Representative for Agency
Advocate for Agency
Witnesses
Grievant did not participate

¹ References to the agency's exhibits will be designated AE followed by the exhibit number or page number. The Grievant offered no exhibits. References to the recorded tape of the April 28, 2026, hearing will be designated Tape 1A.

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as (as Grievant describes it in his Form A) a Kitchen Supervisor at a facility (the "Facility") of DOC.
2. The Facility is a maximum security facility level 4-5.
3. The Grievant was required to strictly adhere to all applicable Agency policies and procedures.
4. The Grievant, as a supervisor, is held to a higher standard when it comes to compliance with Agency policies and procedures and is expected to model behavior and set an example to his subordinates and inmates alike.
5. The Grievant performed an important vital function for the Facility as a self-described Kitchen Supervisor (see Grievant's Form A) with substantial training invested in the Grievant by the Agency in all aspects of his employment.
6. The Facility reasonably and of necessity relied on the Grievant to fulfill all his duties and responsibilities.
7. The Facility is a high security level institution and the Grievant's role in acting professionally and maintaining the safety and security of inmates, staff and the public is paramount.
8. Two colleagues of Grievant, B who is black and A who is Caucasian, were in the kitchen preparing cart on October 28, 2025.
9. Grievant overheard B expressing his concern to A concerning his first summons to serve as a juror on jury duty.

10. Grievant inappropriately interjected his racially charged, inflammatory comments into the conversation, to the effect that “Black people get what they deserve in a traffic stop.”
11. A credibly testified that B became visibly upset by the comments.
12. The Grievant undermined team cohesion, staff morale, individual self-worth and productivity.
13. The Department’s actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
14. The Department’s actions concerning this grievance were reasonable and consistent with law and policy.
15. To the extent the Findings of Fact contain conclusions of law, or the Conclusions of Law contain findings of fact, they should be considered without regard to their given labels.
16. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.
17. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

APPLICABLE LAW, ANALYSIS AND DECISION

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

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

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

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

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (the "SOC"). The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and

objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action. DOC has also adopted its own version of the SOC – OP 135.1. AE 7.

EDR Case Number 9240 states, “The Agency may consider any unique impact that a particular offense has on the department, and the fact that the potential consequences of the performance or misconduct substantially exceeds agency norms.” Respect for fellow employees and inmates are important policy considerations for an agency like the DOC.

The Grievant's disciplinary infraction identified above was reasonably classified by management as a Group III offense. This is especially the case because Grievant was a supervisor and could have upset inmates, many of whom are black, causing friction and disturbances, if they overheard or heard about the racially charged comments.

EDR has consistently held supervisors, such as Grievant in this case, to a higher standard.

According to DHRM 1.60, “Supervisors and managers are expected to serve as role models through their compliance with policies, agency protocols and best practices in leading and communicating with their subordinate employees.” AE 8 at 6. Supervisors and managers are expected to, “Demonstrate interpersonal communications, leadership strategies and personal conduct that fosters a respectful workplace culture and models the expectations established for employees,” and “Provide consistent and objective feedback, coaching and instructional guidance to employees regarding their performance, conduct or compliance with policies and procedures prior to initiating corrective or disciplinary actions.”

EDR has affirmed that supervisors may be held to a higher standard of conduct and thus elevated level of discipline, as noted by the hearing officer in Case No. 11734, which cited prior EDR decisions supporting this principle.

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

The issue of whether an agency can hold a supervisor to a higher standard is a policy issue as well as a procedural issue. As discussed above, the Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy. DHRM has previously determined that "agencies may hold supervisors and managers to a higher degree of responsibility and leadership than non-management employees." The Rules for Conducting Grievance Hearings require that a hearing officer must show deference to how the agency weighs the supervisory status of an employee in determining the appropriate level of discipline. Here, the agency appears to have determined that the grievant's misconduct was more severe based, in part, on his position as a supervisor. Because policy permits an agency to hold supervisory employees to a higher standard than non-supervisory employees, the hearing officer did not err in deferring to the agency's weighing of that factor. We decline to disturb the decision on this basis. [Footnotes omitted].

Grievant violated DHRM 1.60 when he failed to:

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Demonstrate respect for the agency and behave in a civil and professional manner toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers.
- Support efforts that ensure a safe and healthy work environment.
- Resolve work-related issues and disputes in a professional manner and through established agency processes.
- Meet or exceed established job performance expectations.
- Make work-related decisions and/or take actions that are in the best interest of the agency.
- Comply with the letter and spirit of all state and agency policies and procedures, and Commonwealth laws and regulations.

Grievant violated DHRM 2.35 when his conduct undermined team cohesion, staff morale, individual self-worth and productivity.

The Standards of Conduct DHRM 1.60 require that employees,

- Demonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers.
- Resolve work-related issues and disputes in a professional manner and through established business processes.
- Meet or exceed established job performance expectations.
- Make work-related decisions and/or take actions that are in the best interest of the agency.
- Comply with the letter and spirit of all state and agency policies and procedures, the Conflict of Interest Act, and Commonwealth laws and regulations.
- Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.

DHRM Policy 2.35, Civility in the Workplace (AE 9), ensures that agencies provide a welcoming, safe, and civil workplace for their employees, customers, clients, contract workers, volunteers, and other third parties and increase awareness of all employees' responsibility to conduct themselves in a manner that cultivates mutual respect, inclusion, and a healthy work environment.

Specifically, the policy prohibits employees from,

- 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.
- AE 9.

EDR has ruled that a violation of DHRM 2.35 can be a Group I, Group II or Group III, and it is for the agency to determine the level of discipline. EDR stated, “Policy 2.35 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; thus, disciplinary actions are not necessarily comparable across agencies.” AE 9.

The hearing officer agrees with the Agency's advocate that the upheld Written Notice is appropriately classified at the Group III level with the Agency appropriately exercising the discipline and ending the Grievant's employment.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated numerous policies, including Policy No. 1.60 and that the violation rose to the level of a Group III offense, which warranted termination.

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

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past service to the Agency.

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

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

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

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

1. the demands of the Grievant's job and work environment;
2. the shortage of staff at the Facility;
3. the Grievant's past satisfactory job performance; and
4. 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 supervisory position of trust where management of necessity relied on him to perform his duties in strict conformity with Agency policies, as he 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, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

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

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

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 upheld offense 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.

The Grievant did not offer any material probative evidence concerning any affirmative defenses.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the upheld Written Notice is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's termination action concerning the Grievant is hereby

upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

APPEAL RIGHTS

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

Please address your request to:

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

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer.

The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction

in which the grievance arose within **30 days** of the date when the decision becomes final.^[1]

ENTER 5/3 / 2026

John Robinson

John V. Robinson, Hearing Officer

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

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