



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12208

Hearing Date: July 15, 2025

Decision Issued: July 25, 2025

PROCEDURAL HISTORY

On October 23, 2024, Grievant was issued a Step 4 – Termination, Performance Improvement Counseling Form, for

persistent failure to treat others with respect, courtesy, and dignity, and failure to conduct herself in a professional and cooperative manner which is a violation of Employee Standards of Performance and Conduct Medical Center HR Policy, Behavioral Code of Conduct, and BEH-001-ASPIRE Values.¹

On November 18, 2024, Grievant timely filed a grievance to challenge the University's action. On December 2, 2024, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. A hearing was scheduled for March 18, 2025. By email dated March 17, 2025, Grievant requested to continue the hearing to another date due to her acceptance of a job offer late on Friday, March 14, 2025. Grievant's new employer required her to work on March 18, 2025. The University objected due to the late request for continuance by the Grievant which had allowed the University to expend resources preparing for the scheduled hearing date. The Hearing Officer found that there was just cause to continue the hearing. Following another pre-hearing conference on March 31, 2025, and subsequent email exchange, the hearing was re-scheduled for July 15, 2025.

¹ University Ex. at 1-3.

On July 15, 2025, a hearing was held remotely using the Microsoft TEAMS platform.

APPEARANCES

Grievant
University Advocate
University Party Designee
Witnesses
EDR Observer

ISSUES

1. Whether Grievant engaged in the behavior described in the Step 4 – Termination Performance Improvement Counseling Form?
2. Whether the behavior constituted misconduct?
3. Whether the University's discipline was consistent with law (e.g., free of unlawful discrimination) and policy?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the University 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:

Prior to her dismissal, Grievant was a Patient Care Technician at a University of Virginia Medical Center Facility. Grievant had been employed by the University for almost four years.²

² University Ex. at 4.

On August 11, 2023, Grievant received a Step 2-Formal Counseling³ for “failing to conduct herself in a professional and cooperative manner ... in violation of Medical Center Human Resources Policy No. 701 – Employee Standards of Performance and Conduct, Medical Center Policy No. 283 – Behavioral Code of Conduct and Health System Policy No. 001 – ASPIRE Values.” The Formal Counseling directed Grievant to:

Effective immediately and sustained, [Grievant] is expected to demonstrate adherence to all Medical Center and departmental policies and procedures, specifically MC HR Policy No. 701 Medical Center Policy No. 283 – Behavioral Code of Conduct and Health System Policy No. 001 – ASPIRE Values. [Grievant] is always expected to conduct herself in a professional and cooperative manner. . . . Subsequent misconduct may result in further disciplinary action up to and including termination of employment.⁴

On May 29, 2024, Grievant received a Step-2 Formal Counseling for “mistreatment of a fellow employee in Violation of Medical Center Human Resources Policy No. 701- Employee Standards of Performance and Conduct” and “failure to treat others with fairness, courtesy, respect and consideration in violation of BEH-001-ASPIRE Values.”⁵ The Formal Counseling directed Grievant to:

Effective immediately and sustained, [Grievant] is expected to adhere to Medical Center Human Resources Policy No. 701 – Employee Standards of Performance and Conduct and BEH-001-ASPIRE Values. [Grievant] is expected to always conduct herself in a professional manner in the workplace. Subsequent misconduct and/or performance deficiencies may result in further disciplinary action up to and including termination.⁶

The Facility provides dialysis treatment to patients. The treatment area of the Facility is divided into “bays”, and each bay serves approximately eight patients at a time. The Facility can serve approximately 42 patients at a time. The Facility’s patients may come into the Facility multiple times a week to receive treatment.⁷

As a Patient Care Technician, Grievant interacted with the Facility’s patients by providing patients with medical care, including retrieving patients from the waiting room to take them to their treatment bay, checking patients’ vital signs, initiating patients’ dialysis treatment, and monitoring patients throughout their treatments.⁸

Grievant was required to wear personal protective equipment (PPE) to protect both Grievant and the patients from exposure to blood or other bodily fluids. The PPE that Grievant was required to wear included what was described as a PPE coat (or gown).⁹

³ University Ex. at 31-32.

⁴ University Ex. at 31-32.

⁵ University Ex. at 27-28.

⁶ University Ex. at 27-28.

⁷ Hearing Recording at 40:59-50:38.

⁸ Hearing Recording at 40:59-50:38.

⁹ Hearing Recording at 40:59-50:38.

On September 26, 2024, Nurse Manager spoke with Grievant about complaints she had received about Grievant's conduct toward her co-workers, including that Grievant, at times, had a disrespectful attitude and would walk away from other staff who were trying to provide her with information regarding patient processes.¹⁰

The following week, on October 2, 2024, Grievant wore a PPE coat on which she had hand-written on the back of the coat the phrase: "Everything comes back to you."¹¹ Dialysis Technician read the phrase on Grievant's PPE coat and told Grievant that she knew a song lyric with those words. Grievant responded to Dialysis Technician that the phrase was a song lyric. Dialysis Technician did not have any further interaction with Grievant about Grievant's PPE coat.¹² Dialysis Technician testified that "the whole floor," referring to other staff working that day, talked about the writing on Grievant's PPE coat and who or what the message referenced. Dialysis Technician described the writing on Grievant's PPE coat as "indirect bullying," reflecting "an attitude somewhere," and a "distraction."¹³

On October 3, 2024, Grievant wore a PPE coat on which she had written on the back of the coat the following statement: "Falsely accusing me of having an attitude creates the attitude you THOUGHT I had!!" Grievant wore the gown during her entire shift on October 3, 2024.¹⁴ Nurse-1 testified that she saw the message on Grievant's PPE coat early in her shift and it made her feel "sick to [her] stomach" because she did not know what the message was about or who it was directed toward. Nurse-1 testified that because she was working in the same Bay as Grievant, four or five other staff members approached Nurse-1 to inquire about the message on Grievant's PPE coat. Nurse-1 described the message on Grievant's PPE coat as "disruptive" to the workday. Nurse-1 testified that she also observed a Patient approach Grievant from behind and try to straighten Grievant's coat so that he could read the message. According to Nurse-1, Grievant turned around and told the Patient that he could read the [PPE coat] but he could not touch her. Nurse-1 described the interaction as rude. Nurse-1 felt embarrassed that Grievant was wearing that message on her PPE coat where patients could see it. Nurse-1 described the message as "unkind" and "passive-aggressive."¹⁵ Although Dialysis Technician initially did not see the writing on Grievant's PPE coat on October 3, 2024, she testified that she learned about it because other staff were talking about it and questioning who it may be directed toward.¹⁶ Charge Nurse testified that two staff reported the message on Grievant's PPE coat to her after Grievant had left work for the day on October 3, 2024.¹⁷ Charge Nurse then found the coat and reported it to Nurse Manager.¹⁸

Grievant was placed on administrative leave on October 3, 2024, while the University investigated Grievant's conduct.

¹⁰ Hearing Recording at 35:55-40:24.

¹¹ Hearing Recording at: 1:36:51-1:49:51, 1:58:18-2:08:32 and see University Ex. at 44.

¹² Hearing Recording at: 1:36:51-1:49:51, and 1:58:18-2:04:34.

¹³ Hearing Recording at 1:36:55-1:49:51.

¹⁴ Hearing Recording at 58:50-1:18:10, 1:21:49-1:31:04, and 1:58:18-2:04:34 and University Ex. at 26.

¹⁵ Hearing Recording at 1:21:49-1:31:04.

¹⁶ Hearing Recording at 1:36:55-1:49:51.

¹⁷ Hearing Recording at 58:50-1:18:10.

¹⁸ Hearing Recording at 58:50-1:18:10.

On October 23, 2024, the University issued to Grievant, a Step 4 – Termination, Performance Improvement Counseling Form, “for persistent failure to treat others with respect, courtesy, and dignity, and failure to conduct herself in a professional and cooperative manner which is a violation of Employee Standards of Performance and Conduct Medical Center HR Policy, Behavioral Code of Conduct, and BEH-001-ASPIRE Values.”¹⁹

The University introduced evidence to show that Grievant had received a total of four prior Step 2-Formal Counseling, Performance Improvement Counseling forms.²⁰

CONCLUSIONS OF POLICY

The University Medical Center has adopted a Behavioral Code of Conduct.²¹ University Medical Center employees are expected to, at all times:

- Treat each other, patients and their families, with fairness, courtesy, respect and consideration.
- Respect and value the diversity of others.
- Cooperate and communicate with others, displaying regard for each person’s dignity and worth.
- Use conflict management skills and direct verbal communication to manage disagreements. ...
- Respond to requests for service and assistance promptly, courteously, and professionally.
- Support and follow hospital policies and procedures. ...²²

The University Medical Center also has adopted ASPIRE Values that apply to University Medical Center employees.²³ The ASPIRE Values policy statement sets forth the expectation that each employee:

[i]s responsible for cultivating and sustaining an environment which encourages civility and a collaborative spirit. These responsibilities require that each Team Member be held to the highest personal and professional standards, with adherence to the principles and goals of the Health System’s core ASPIRE Values:

1. Accountability: Acknowledging and assuming responsibility for where we have succeeded and failed in terms of our actions, decisions, policies, and results.

¹⁹ University Ex. 1-3.

²⁰ See University Ex. at 27-34.

²¹ See Behavioral Code of Conduct, Policy No. MCP-0283 (University Ex. at 12-13).

²² See Behavioral Code of Conduct, Policy No. MCP-0283 (University Ex. at 12-13).

²³ BEH-001: ASPIRE Values, Office of the Executive Vice President of Health Affairs (University Ex. at 14-16).

2. Stewardship: Managing our resources and commitment to continual improvement and learning and responsibly and carefully while acknowledging shortcomings or problems in our quest.

3. Professionalism: Approaching all that we do in a collaborative way and delivering excellent care through the lens of helpfulness, positivity, and kindness and competency.

4. Integrity: Being honest, open and fair through our behaviors, attitude and treatment of others.

5. Respect: Valuing everyone through our compassionate and caring ways.

6. Equity: Fostering an environment of belonging that promotes justice, equity, diversity, and inclusion and unity throughout the organization and within the communities we serve.

. . . Adherence to ASPIRE values requires that each Team Member demonstrate fairness, respect, and courtesy toward other Team Members, as well as patients, students, and all others with whom he/she personally interacts, recognizing each individual's dignity and worth. Such adherence requires the demonstration of behaviors which include, without limitation:

1. Respecting and valuing the diversity of others;
2. Cooperating and communicating with others, displaying regard for each person's dignity and worth;
3. Using conflict management skills, together with respectful and courteous verbal communication, to effectively manage disagreements;
4. Acknowledging one's mistakes when they occur;
5. Working honestly, effectively and collegially with other members of the multidisciplinary healthcare team; . . .
6. Responding promptly, courteously, and appropriately to requests from patients, students, research colleagues, members of the public and fellow Team Members;
7. Praising Team Members publicly, and providing constructive feedback where necessary in private;
8. Providing medical care only to those with whom a formal patient-provider relationship has been established, and avoiding the provision of care to co-workers outside of such formal relationships. Team Members who need procedures performed or medications administered should see their own provider, where they can receive appropriate follow-up care and have a record of the care that was provided.

The ASPIRE Values policy also provides that "corrective action for violations of this Policy will be taken consistent with HR policies, as relevant, and consistent with such

other policies, procedures and processes of the Health System and its Entities as may be applicable.”²⁴

The University Medical Center has adopted Employee Standards of Performance and Conduct.²⁵ The Medical Center expects each employee to perform their duties and conduct themselves in a manner which enables all employees to work together in achieving Medical Center goals. The Employee Standards of Performance and Conduct set for the expectation that all employees shall:

- Treat others with respect, courtesy, and dignity, and shall conduct themselves in a professional and cooperative manner.
- Adhere to all Medical Center policies; Medical Center and departmental clinical practice guidelines, protocol orders and standard operating procedures; and to such Health System and University policies as applicable. . .
- Adhere to the [University] Code of Ethics.
- Perform job duties as assigned by the supervisor, spending the workday efficiently and effectively performing such duties while demonstrating an awareness of priorities.
- Perform their tasks safely and responsibly in accordance with department and supervisory expectations.
- Maintain professional boundaries with patients, their families, and Medical Center employees and other colleagues.

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

The preponderance of evidence showed that when Grievant wrote and wore negative and accusatory messages on her PPE coat in the workplace, her behavior was unprofessional, disrespectful, and disruptive in violation of the University’s Employee Standards of Performance and Conduct, Behavioral Code of Conduct, and ASPIRE Values policy.

The evidence showed that on October 2, 2024, Grievant wore a PPE coat on which she had written the phrase “Everything comes back to you.” On October 3, 2024, Grievant wore a PPE coat on which she had written the statement “Falsely accusing me of having an attitude, creates the attitude you THOUGHT I had!!”

Dialysis Technician credibly testified that although she understood the phrase “Everything comes back to you” to be a song lyric, she also believed that message on Grievant’s PPE coat was a message intended for someone at work because staff did not normally write messages on their gowns. Dialysis Technician described the message as

²⁴ BEH-001: ASPIRE Values, Office of the Executive Vice President of Health Affairs (University Ex. at 14-16).

²⁵ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. at 5-11).

a “distraction” and “indirectly bullying” or “an attitude toward someone.”²⁶ Nurse-1 testified that she felt “sick to [her] stomach” when she saw the message on Grievant’s gown that read “Falsely accusing me of having an attitude, creates the attitude you THOUGHT I had!!” Nurse-1 described the message as “unkind” and “passive-aggressive.” Nurse-1 testified to being embarrassed that patients could see the message. Nurse-1 also testified that the message was disruptive to her workday because four or five other staff asked her about the basis and intended recipient of Grievant’s message. After two staff members asked Charge Nurse about the message on Grievant’s PPE coat on October 3, 2024, Charge Nurse read the PPE coat. Charge Nurse described the message as causing her to be confused and feel fear that the message was intended for her or someone else at the Facility that day.²⁷ Charge Nurse, Dialysis Technician, and Nurse-1 all consistently and credibly testified that multiple staff were discussing and concerned about the messages on Grievant’s PPE coats.²⁸

Grievant admitted that on October 2, 2024, she wore a PPE coat on which she had written the phrase “Everything comes back to you,” which Grievant described as a song title. Grievant also admitted that on October 3, 2024, she wore a PPE coat on which she had written the statement “Falsely accusing me of having an attitude, creates the attitude you THOUGHT I had!!” Grievant described that phrase as a quote she read from social media that she thought was “funny.” Grievant testified that she did not have an attitude while she was at work on the days she wore the PPE coats and she did not verbally communicate the messages on her PPE coats to anyone. Grievant also asserted that she did not intend the writing on her PPE coats to mean anything or to be directed toward any of her co-workers or patients. Grievant testified that she had written messages on her PPE coats in the past without incident and that if anyone had asked her about the writing she would have clarified that it was not intended as a message to any specific individual.²⁹

This Hearing Officer is not persuaded by Grievant’s arguments. Grievant chose to write messages on her PPE coats approximately one week after Nurse Manager had a discussion with Grievant about complaints Nurse Manager had received about Grievant’s disrespectful conduct toward other staff. The credible and consistent testimony of the University’s witnesses was that staff might draw pictures of flowers, smiley faces, or team logos on their PPE coats, but it was unusual for someone to write a phrase or sentence on their coat. Grievant’s writings were not drawings or team logos. Grievant used the word “you” in each phrase she wrote on her PPE coat. On October 3rd, Grievant’s message referenced “falsely accusing” and included underlining and capitalization of a word and two exclamation points which provided emphasis to her message. Additionally, Grievant’s work required her to interact with other Facility staff and Facility patients throughout the workday. By writing messages on the PPE coats she wore, Grievant communicated a message to every person who viewed her PPE coat on October 2 or October 3, 2024. It was reasonable for any staff member or patient reading the writing on Grievant’s PPE coats to understand Grievant’s message to be negative and accusatory and directed toward them or someone else in the Facility. And that is what happened. As University

²⁶ Hearing Recording at 1:36:55-1:49:51.

²⁷ Hearing Recording at 58:50-1:18:10.

²⁸ Hearing Recording at 58:50-1:18:10, 1:21:49-1:31:04, 1:36:55-1:49:51 and see also Hearing Recording at 34:05-50:38.

²⁹ Hearing Recording at 1:58:18-2:04:34.

witnesses testified, Grievant's messages were interpreted by Facility staff as messages intended for "someone" at the Facility and those messages created "confusion," "distraction," and "disruption" as staff discussed and questioned the meaning and subject of Grievant's messages. Grievant was not required to write anything on her PPE coats. Grievant chose to write and wear negative and accusatory messages on her PPE coats in the workplace for everyone, including patients, to see. Such behavior was unprofessional and disrespectful and created confusion, distraction, and disruption in the workplace.

The University has met its burden of proving by a preponderance of evidence that Grievant's behavior was unprofessional, disrespectful, and disruptive and in violation of the University's Employee Standards of Performance and Conduct, Behavioral Code of Conduct, and ASPIRE Values policy.

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

The University has met its burden of proving that its discipline was consistent with law and policy in this case.

The University's progressive performance improvement counseling steps include informal counseling (Step One), formal written counseling (Step Two), performance warning and/or suspension (Step Three), and termination (Step Four).³⁰ University Medical Center management may take into consideration any prior Performance Warning or Formal Counseling in evaluating the appropriate Step in addressing subsequent performance issues or acts of misconduct arising more than one year from the date of the Performance Warning or Formal Counseling.

An employee may be terminated if the employee does not successfully meet expectations following progressive performance improvement counseling, or if the employee's Serious or Gross Misconduct has a significant or severe impact on patient care or Medical Center operations.³¹

In this case, Grievant had received prior formal counseling for unprofessional behavior in the workplace. Through its prior counseling of Grievant, the University made clear its expectation that Grievant conduct herself in a professional and cooperative manner and adhere to University policies, including the Employee Standards of Performance and Conduct, the Behavioral Code of Conduct, and the ASPIRE Values policy. The preponderance of the evidence showed that although Grievant had received prior counseling, she continued to engage in behavior that was unprofessional, disrespectful, and disruptive.

In the Grievance Form A that Grievant submitted to initiate her grievance, Grievant appeared to allege that the complaints against her were made after she had reported or complained about other staff members. During the hearing, Grievant did not present any

³⁰ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. at 5-11).

³¹ See Employee Standards of Performance and Conduct Medical Center HR Policy (University Ex. at 5-11).

evidence related to this issue. To the extent that Grievant may have asserted that the University's disciplinary action was retaliation, she has not presented any evidence to support such a defense. The University has shown that it had non-retaliatory reasons for its disciplinary action based on Grievant's misconduct, and Grievant has offered no evidence to show that those reasons were mere pretext for retaliation.

Grievant argued that she should not be prohibited from being rehired by the University at another University facility. Grievant argued that her work performance was good and "speaks for itself" based on the performance evaluation information provided in the University's exhibits.³² Grievant also argued that she was pursuing additional education and wanted to continue to work in the medical field but that the University's designation of her as ineligible for rehire would significantly limit her employment opportunities. Medical Center Policy HR-405 governs Separation from Employment.³³ This policy allows the University to designate a former employee as ineligible for rehire if the employee is separated from employment due to serious misconduct, gross misconduct, or violation of policy. Grievant was terminated for violating University policies.

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

Mitigation

Grievant argued that she was being disciplined more harshly than other staff. Grievant did not provide any specific examples of similarly situated employees who had engaged in similar misconduct and received less discipline. Grievant generally referred to other employees wearing sweatshirts with school or corporate names or logos in violation of the University dress code, which according to Grievant required staff to only wear scrubs or other clothing with University logos. Grievant referred to a witness wearing a non-University sweatshirt during her testimony which Grievant argued was a violation of a University dress code. Grievant, however, was not disciplined for violating the University's dress code or for wearing clothing with non-University logos. Grievant was disciplined for writing and wearing messages on her PPE coats that were unprofessional and disruptive to the workplace.

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...."³⁴ 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

³² See University Ex. at 36-43.

³³ University Ex. at 17-19.

³⁴ Va. Code § 2.2-3005.

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 University's issuance to Grievant of a Step 4 – Termination Performance Improvement Counseling Form 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.³⁵

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

³⁵ 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.