

DECISION OF HEARING OFFICER

IN RE: CASE NO: 12278

HEARING DATE: July 10, 2025

DECISION ISSUED: July 25, 2025

PROCEDURAL HISTORY

Client was charged with an offense that occurred on March 6, 2025.¹ Grievant received a due process letter on April 11, 2025,² and Grievant made response on April 14, 2025.³ The Written Notice was issued on April 17, 2025.⁴ A Hearing Officer was appointed on May 5, 2025. A prehearing conference was scheduled for May 20, 2025, however, neither the Agency's Advocate nor the Grievant were available at the time of the call. The Agency appointed another Agency Advocate, and another prehearing conference was scheduled for May 27, 2025. The hearing commenced at the Agency's facility on July 10, 2025.

It should be noted that Grievant showed little understanding of the grievance process. She referred to the Hearing Officer as her case worker. The examination and cross examination format were explained to her in the presence of the Agency Advocate before the hearing started. The Grievant then asked to make phone contact with possible witnesses before the hearing started and by agreement with the Agency Advocate Grievant was permitted to do so.

APPEARANCES

Agency Advocate

No Agency representative was present

Three (3) Agency Witnesses

No Grievant Advocate was present

Grievant as Witness

NOTE: Agency Advocate did not refer to tabs. She referred only to pages in the Exhibit presented. Therefore, the entire evidence of Agency will be referred to as collective Exhibit I and the specific pages used.

¹ Agency Exhibit I, Written Notice pg. 5-6

² Agency Exhibit I, Due Process Letter, pg. 7

³ Agency Exhibit I, Response Letter, pg.8-9

⁴ Agency Exhibit I, Written Notice pg. 5-6

ISSUES

1. Whether Grievant violated Operational Policy 1.60, Standards of Conduct⁵
2. Whether Grievant violated Operational Policy 2.35, Civility in the Workplace⁶
3. Whether Grievant violated Agency policies⁷
4. Whether the Grievant was aware of the Agency policies⁸
5. Whether there were mitigating circumstances considered, to reduce or increase the disciplinary action.⁹

BURDEN OF PROOF

In disciplinary actions, the burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against the Grievant were warranted and appropriate under the circumstances. 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. Grievant has the burden of proving any affirmative defenses raised by Grievant. GPM §5.8.

APPLICABLE POLICY

This hearing is held in compliance with Virginia Code § 2.2-3000 et seq the Rules for Conducting Grievances effective July 1, 2012, and the Grievance Procedure Manual (GPM) effective January 1, 2025.

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “includes 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 requires formal disciplinary action.” Group III offenses “include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.” More than one (1) active Group II offense may be combined to warrant termination.

FINDING OF FACTS

After reviewing the evidence presented and observing the demeanor of each

Witness the Hearing Officer makes the following findings of facts:

⁵ Agency Exhibit I, Operational Policy 1.60, pgs. 58-87

⁶ Agency Exhibit I, Operational Policy 2.35, pgs. 88-98

⁷ Agency Exhibit I, Various policies: Agency Exhibit I, 524 (HRM) pg. 96 et seq; Agency Exhibit I, employment work profile. Pg.107 et seq; Agency Exhibit I, reporting policy VI 201 (RTS) pg. 46

⁸ Agency Exhibit I, Training pgs. 99-105 and 106

⁹ Agency Exhibit I, Needs for Improvement pg. 119 et sec

In the early morning of March 6, 2025, between midnight and 1:30 am, an employee of the Agency, was assigned to stay with a patient in Room G6 for the employee's entire overnight shift. The employee stated she felt "fear" of being with the patient all night. She enlisted the "help" of other staff working the night shift. This employee then started a video, the first shot being a photo of what may have been the patient occupying Room G6.¹⁰

The employee then posted crude comments and videos of the subsequent events.¹¹ The employee stated she wanted other employees to come protect her from the sleeping patient. She later described an exceptionally large roach that had "flown onto her head" located in the room.

Ultimately, five (5) staff members were in the patient's room, fulfilling no assigned job duty. At one point, a staff member brought in a cup with "Holy Water" written on it, a paper cross and a Bible. This was presumably to rid the room of evil spirits and alleged to be intended as a joke. Grievant was one of the four staff to be called into the room. Her presence was verified by Grievant being in the video sitting in a chair, and also by the hall surveillance camera showing Grievant going into Room G6 and later leaving it. The video this employee created was done in private Room G6 with two sleeping patients. The group of employees had obviously not been invited by the sleeping patients to have this gathering in their private room.

The employee assigned to the patient in Room G6 later posted this entire event on Snapchat.¹²

DISCUSSION

Grievant was charged with not reporting the invasion of the patient's privacy. Grievant was charged with failure to report that she and four (4) other employees were not doing their assigned jobs. Grievant was also specifically charged with not performing her assigned job during the time she was in the patients' room. Grievant appeared to not be truthful and was non-compliant with the investigation by "not remembering" answers to questions that were asked of her.

Grievant stated she only came into the room to find the alleged roach and kill it. Grievant stated she had no idea anything was being recorded and then later uploaded it to Snapchat. Grievant did not deny she was in Room G6.

It cannot be proven that Grievant knew the video was intended to be put on Snapchat. But it is difficult to believe Grievant did not know she and others were being videoed while in room G6. It is even more difficult to believe Grievant did not hear any

¹⁰ Agency Exhibit I, Video Evidence pg. 17

¹¹ Agency Exhibit I, Video Evidence pgs. 17-19

¹² Agency Exhibit I, Investigating Report pg. 22-23

comments being made. The employee assigned to the patient made such comments produced in texts as: ¹³

“Her [patient’s] eyes rolled back into her head and she’s snoring”

“I’m scared she’s evil”

“I ain’t never seen a roach that big, let alone in a patient’s room”

These comments are discriminatory and show disrespect for the patient. They put in question the facility’s cleanliness. Grievant should have reported such behavior to her Superior.

While Grievant was only briefly in the patient’s room,¹⁴ she was not there to do any service for the patient. Rather she had specific duties elsewhere at the time.¹⁵ Mental health patients are not in the facility to be made fun of. Given the historic attitude that people exhibiting mental issues were “possessed,” the enactment of an exorcism even if done in the employee break room would have been very unprofessional regardless for whom it was intended. Grievant was in the patient’s room at the time this “joke” was introduced.

OPINION

A Hearing Officer is a neutral person who is expected to listen in an unbiased manner to both parties’ opinions. While the Hearing Officer may agree that a matter feels unfair to the Grievant, the Hearing Officer is bound by the rules created for the Hearing Officer’s decision. The Agency is given deference to be able to manage its operations and employees.

Hearing Officers may order appropriate remedies but may not grant relief that is inconsistent with law, policy, or the grievance procedure.

In hearings contesting formal discipline, if the Hearing Officer finds that (i) the employee engaged in the behavior described in the Written Notice, (ii) the behavior constituted misconduct, and (iii) the Agency’s discipline was consistent with law and policy, the Agency’s discipline must be upheld and may not be mitigated, unless under the record evidence, the agency’s discipline exceeds the limits of reasonableness.¹⁶

Further, a Hearing Officer is not a super-personnel officer, therefore in providing any remedy, the Hearing Officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.¹⁷

¹³ Agency Exhibit I, Video Evidence pgs. 17-19

¹⁴ Agency Exhibit I, Investigating Report pg. 34

¹⁵ Agency Exhibit I, Investigating Report pg. 35

¹⁶ Grievance Procedure Manual, effective July 1, 2025. §5.9 pg. 20

¹⁷ Rules for Conducting Grievance Hearings effective July 2025, VI Scope of Relief pg. 14. DeJarnette v. Corning, 133 F.3d 293, 299 (4th Cir. 1998)(“Title VII is not a vehicle for substituting the judgement of a for that of the employer”).

Grievant's behavior did fall into the category of OP 1.60 Group III.¹⁸ Discipline is appropriate for unethical conduct evidenced by invading a patient's privacy when there was no good reason for Grievant to be in patient's room with a group of other staff, all of whom had other duties. Grievant's behavior did also fall into the category of OP 1.60 Group II. Discipline may be elevated by Grievant's violation of the policy to report the abusive behavior of the employee assigned to the Patient in G6. The patient was degraded by comments and the use of the Patient's room for a gathering.

Grievant did violate OP 2.35¹⁹ in that she ignored the degrading conduct of employee as the employee committed "bullying" by disrespectful behavior and targeting the patient's characteristics.

Grievant violated VI 201 policy²⁰ by Grievant's failure to report language that demeans, ..., or humiliates an individual.

The Chief Officer of the facility stated there is a policy against having a cell phone in a patient's room per the Electronic Devices policy 524 (HRM).²¹ Grievant testimony stated there was a cell phone in the G6 room (not Grievant phone). This was not reported until after the investigation started.

Grievant stated at the investigation that she "didn't remember" if she had been trained in DI 201²² and HIPPA²³. However, her signature is on her training record as exhibited on Agency exhibit 1 at page 106.

Grievant and others were found to not be truthful and/or forthcoming with the investigator in violation of DI 201-6 ²⁴found on page 51 of the Agency Exhibit I as "workforce members are expected to cooperate fully in an investigation".

Finally, Grievant was simply not doing her assigned tasks while sitting in a patient's room with a group of other employees as evidenced by the hall surveillance camera which recorded her going into and back out of the G6 room and the list of tasks she was otherwise to be doing at the time. This gathering and failure to complete tasks and failure to report the gathering was a violation of Grievant's duty to "devote full effort to job responsibilities during work hours" to "make work-related decisions and/or take actions that are in the best interest of the "Agency" and to "report ...any inappropriate activities..." ²⁵ These violations of policy which clearly were a disruption to the workplace which falls into OP 1.60 category Group III.

¹⁸ Agency Exhibit I, Operational Policy 1.60

¹⁹ Agency Exhibit I, Operational Policy 2.35

²⁰ Agency Exhibit I, Policy VI 201

²¹ Agency Exhibit I, Policy 524 (HRM)

²² Agency Exhibit I, Policy DI 201

²³ Agency Exhibit I, Policy HIPPA

²⁴ Agency Exhibit I, Policy DI 201-6

²⁵ Agency Exhibit I, Operational Policy 1.60

MITIGATION

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 the rules established by the Department of Human Resource Management...” 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:

- (1) whether an employee had notice of the rule, how the Agency interprets the rule, and/or the possible consequences of not complying with the rule.
- (2) whether the discipline is consistent with the Agency’s treatment of other similarly situated employees or
- (3) whether the penalty otherwise exceeds the limits of reasonableness under all the relevant circumstances.²⁶

Evidence was entered as to Grievant’s previous disciplines as they impacted the decision to terminate her. Grievant gave no evidence of mitigation.

Agency Exhibit 1 page 119: lack of alertness and wakefulness

Agency Exhibit 1 page 121: eating at the nurse’s station, late or missing scheduled tasks

Agency Exhibit 1 page 123: use of cell phone

Agency Exhibit 1 page 125: not report to duty on time

Agency Exhibit 1 page 127: not report to shift on time

For these reasons there is no reason to reduce Grievant’s discipline.

DECISION

For the reasons given above the Group III discipline with termination given to Grievant is consistent with law and policy and is therefore **UPHELD**.

Sondra K. Alan

Sondra K. Alan
Hearing Officer

²⁶ Rules for Conducting Grievance Hearings, §VI, p. 17

APPEAL RIGHTS

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

[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].

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