



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12299

Hearing Date: July 29, 2025

Decision Issued: July 31, 2025

PROCEDURAL HISTORY

On January 10, 2025, Grievant was issued a Group I Formal Written Notice with removal for civility in the workplace and standards of conduct violations.

On February 4, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On June 9, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing officer. On July 29, 2025, a hearing was held in-person.

APPEARANCES

Grievant
Department of Corrections Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice Form 129-01-004?
2. Whether the behavior constituted misconduct?

An Equal Opportunity Employer

3. Whether the Agency'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 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 Dillwyn Correctional Center ("Dillwyn") employed Grievant as a Corrections Officer. Evidence of prior disciplinary action was introduced during the hearing. On August 6, 2024, a Written Notice of Group I violations was provided which Grievant refused to sign.

Grievant received training and notices regarding civility in the workplace and safety rules violations. Dillwyn provided a manual instructing Grievant on the proper policies and procedures regarding obscene or offensive language and civility.

Grievant knew he needed to keep lights on in certain areas of the facility. Grievant knew civility and professional language were required throughout the facility. Grievant admitted to not having lights on correctly in the facility. Grievant admitted to making statements which may be offensive. Grievant disputed if those statements were offensive and who was present when those statements were made.

CONCLUSIONS OF POLICY

Operating Procedure 135.1 sets forth the Agency's Standards of Conduct. OP 135.1 A 7(m) states employees, "Conduct themselves at all times in a manner that supports the mission of the DOC and the performance of their duties." Operating Procedure 135.1 A 7(k) establishes DOC employees, "Support efforts that ensure a safe and healthy work environment.

On August 5, 2024, Grievant spoke with language deemed offensive. Further, Grievant turned off lights in the office of the Food Operations Director violating a known safety protocol.

Dillwyn provided Grievant a Group I Written Notice of Offense Codes 14 & 36. Grievant refused to sign the notice.

Grievant argued he may be the victim of retaliation; he had not previously filed paperwork to support this allegation. Grievant argued the only person who could have heard him speak was not offended. Grievant admitted to the language used may be found offensive. Grievant admitted to turning off a light in the office of the Food Operations Director. Grievant acknowledged protocol dictated the light in the office was to remain on.

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...” Va. Code §3005. 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 the Grievant of a Group I, Written Notice Form 129-01-004 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 Street, 12th Floor
Richmond, Virginia 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

/s/ James Bradley Winder, Jr.

James Bradley Winder, Jr., Esq.
Hearing Officer

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.