



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12255

Hearing Date: July 22, 2025

Decision Issued: August 12, 2025

PROCEDURAL HISTORY

On February 5, 2025, Grievant (also referred to as Sergeant-4) was issued a Group III Written Notice of disciplinary action with termination for falsification of records by omission, including violating the Agency's Standards of Conduct and policies on Use of Force and Standards of Ethics and Conflict of Interest.¹

On February 25, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On March 24, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. At the request of Grievant, Captain-1, and Captain-2, the Office of Employment Dispute Resolution consolidated for hearing this case with Case No. 12256 (Captain-2) and Case No. 12257 (Captain-1).² On July 22, 2025, a consolidated hearing was held at the Facility.

By the deadline for the exchange of exhibits, the Agency's advocate submitted on behalf of both parties, Joint Exhibits 1 through 30 (pages 1 through 437). At the request of both parties, the Joint Exhibits included a late submitted exhibit marked as Joint Exhibit 31 which was a document entitled "2024 – VADOC Cell Extraction." During the hearing, the parties' advocates noticed that documents were inadvertently included in the Joint Exhibit book and both parties asked that the following pages not be admitted into the record: Joint Exhibits at 126, 127, 244, 245, and Joint Exhibit 17 (pages 227-231). Also included in the Joint Exhibits were video exhibits marked as Joint Exhibit 26, Videos 1

¹ Joint Ex. at 1-3.

² See Office of Employment Dispute Resolution, Consolidation Ruling, Ruling Nos. 2025-5874, 2025-5875, 2025-5876, 2025-5877 (May 9, 2025).

through 11. Grievant objected to Video 3 (Lieutenant BWC footage) on hearsay grounds in the absence of testimony from Lieutenant. The Hearing Officer noted Grievant's objection but admitted the exhibit as relevant to the events at issue in this case.

APPEARANCES

Grievant (also referred to as Sergeant-4)
Grievants' Counsel
Agency Legal Advocate
Agency Party Designee
Captain-1 (Case No. 12257 grievant)
Captain-2 (Case No. 12256 grievant)
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:

Prior to his dismissal, Grievant was a Sergeant at a Department of Corrections Facility. As a Sergeant, Grievant was a security supervisor to correctional officers and officer trainees at the Facility. Grievant had been employed by the Agency for more than 23 years. Grievant had served in the role of Sergeant for approximately 14 years. Performance evaluations issued in November of 2024, November of 2023, and December

of 2022, showed that Grievant's performance was satisfactory to the Agency.³ No evidence of prior active discipline was introduced during the hearing.

As a member of the Agency's security personnel, Grievant received training on uses of force and how to write reports of incidents, including reporting uses of force.⁴

On August 26, 2024, Grievant was on duty as part of the day shift at the Facility. As Grievant was finishing up his shift, Sergeant-3 notified the on-coming night shift commander, Captain-2, that Inmate-A had been wearing some type of plastic or cable-like material around his neck while he was in the outside recreation area for the Facility's Restorative Housing Unit.⁵ The Facility's Restorative Housing Unit is the highest security area of the Facility and houses inmates that may pose a threat to themselves or others.

Captain-1, Captain-2, Lieutenant, Sergeant-1, Sergeant-2, Sergeant-3, and Sergeant-4 responded to Inmate-A's Cell to retrieve the cable and conduct a search of Inmate-A's Cell.

Captain-1,⁶ Captain-2,⁷ and Lieutenant⁸ wore body worn cameras that were activated during the moments after the officers gathered outside of Inmate-A's Cell. Sergeant-1 was not wearing a body worn camera. Sergeant-4 wore a body worn camera but it was not activated until approximately 19:03:40.⁹ Sergeant-2 wore a body worn camera which was activated, but Sergeant-2's body worn camera was knocked to the floor shortly after the cell extraction began and did not provide clear video footage of the events at issue in this case.¹⁰ Sergeant-3's body worn camera was deactivated (at approximately 18:54:37) while the officers were standing outside of Inmate-A's Cell.¹¹

After the officers gathered outside of Inmate-A's Cell, Captain-2 and Captain-1 repeatedly instructed Inmate-A to come to the Cell door to be restrained so that the officers could search Inmate-A's Cell. Inmate-A refused to comply with those instructions.¹²

As the senior officer, Captain-1 was in charge of the group. Captain-1 instructed Sergeant-1 to retrieve the shield.¹³

³ Hearing Recording at 6:43:23-7:32:01, Joint Ex. at 15-19, 30-33,42-45.

⁴ Hearing Recording at 2:19:46-3:39:52, 4:12:30-4:52:24 and see Joint Ex. at 51-102.

⁵ See Hearing Recording at 6:05:10-6:43:10 and see Joint Ex. 308-309.

⁶ See Joint Ex. 26, Video 1 (Captain-1 BWC footage). The video footage from Captain-1's body worn camera provided a view of the incident that was directly in front of Captain-1 but tilted slightly upward (as though the camera was tilted slightly upward), such that Captain-1's camera did not capture video of things directly in front of Captain-1, but below waist level.

⁷ See Joint Ex. 26, Video 2 (Captain-2 BWC footage).

⁸ See Joint Ex. 26, Video 3 (Lieutenant BWC footage).

⁹ See Joint Ex. 26, Video 5 (Sergeant-4 BWC footage).

¹⁰ See Joint Ex. 26, Video 6 (Sergeant-2 BWC footage).

¹¹ See Joint Ex. 26, Video 4 (Sergeant-3 BWC footage).

¹² See Joint Ex. 26, Video 1 and 2 (Captain-1 and Captain-2 BWC footage).

¹³ Hearing Recording at 5:05:26-6:04:21 and see Joint Ex. 26, Video 1, 2, and 3 (Captain-1, Captain-2 and Lieutenant BWC footage).

While Sergeant-1 was retrieving the shield, Captain-1's camera footage showed that Sergeant-4 and Sergeant-3 tried to convince Inmate-A to cooperate and "cuff-up" to allow the officers to search Inmate-A's Cell. Inmate-A continued to refuse to cooperate and responded to Sergeant-4 that, "if y'all come in here and try to put y'all's hands on me, I'm going to f*ck y'all up!" While speaking to Sergeant-4 and Sergeant-3, Inmate-A denied that he had any wires or cords.¹⁴

After Sergeant-1 returned with the shield, Captain-1 instructed the officers that the plan would be to pin Inmate-A down on the bed and then handcuff him. The officers then lined up to prepare to enter the Cell. Aside from the shield carried by Sergeant-1, none of the officers carried or wore protective gear.¹⁵

Captain-1 again and repeatedly instructed Inmate-A to "step to the door" so he could be cuffed, but Inmate-A refused.¹⁶

At approximately 18:57:50, the officers entered Inmate-A's Cell. Sergeant-1 was the first to enter the Cell, followed by Lieutenant, Sergeant-2, Sergeant-3, and then Sergeant-4.¹⁷ Captain-2 was at the end of the line-up of officers. Captain-1 and Captain-2 initially stayed near the doorway of the Cell.

Based on testimony from the witnesses and video footage from Lieutenant's body worn camera, it appeared that immediately after the officers entered the Cell, the handle on the shield broke.¹⁸ Sergeant-1 then handed the shield to Lieutenant.¹⁹

It then appeared that Inmate-A had moved so that he was lying on his bed. Inmate-A attempted to cover himself with his sheet and mattress. At approximately 18:58:01, camera footage from the body worn cameras of Lieutenant and Captain-2 showed Sergeant-1 repeatedly punch at the covered Inmate-A. Captain-2's camera footage showed that Sergeant-1 move his closed right fist in a forceful punching motion down toward the covered Inmate-A at least three times.²⁰ Sergeant-2 and Sergeant-3 appeared to have grabbed onto either Inmate-A's legs or Inmate-A's sheet or mattress and were attempting to pull Inmate-A off the bed. Sergeant-4 could be seen looking down toward the floor as he attempted to maneuver around Sergeant-3 to move closer to the bed.²¹

The officers were then able to pull Inmate-A with his mattress onto the floor of the Cell.²²

After Inmate-A was on the floor, at approximately 18:58:13, Lieutenant's body worn camera footage showed Sergeant-1 bend over toward Inmate-A and again move his

¹⁴ See Joint Ex. 26, Video 1 (Captain-1 BWC footage).

¹⁵ See Joint Ex. 26, Video 1, 2, and 3 (Captain-1, Captain-2, and Lieutenant BWC footage).

¹⁶ See Joint Ex. 26, Video 1 and 2 (Captain-1 and Captain-2 BWC footage).

¹⁷ See Joint Ex. 26, Video 1 (Captain-1 BWC footage).

¹⁸ See Joint Ex. 26, Video 2 and 3 (Captain-2 and Lieutenant BWC footage).

¹⁹ See Joint Ex. 26, Video 2 and 3 (Captain-2 and Lieutenant BWC footage).

²⁰ See Joint Ex. 26, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

²¹ See Joint Ex. 26, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

²² See Joint Ex. 26, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

closed right fist in a punching motion toward Inmate-A.²³ Lieutenant's camera footage showed Sergeant-4 standing just behind Sergeant-1. Sergeant-4 appeared to be looking down toward Inmate-A on the Cell floor.²⁴

Captain-2's camera footage showed that Captain-2 had taken the shield from Lieutenant and was holding it in his hands so that the shield, which was made of a partially clear material could be seen in front of Captain-2's body worn camera. At 18:58:13, Captain-2 appeared to be moving backward as though out of the Cell. Footage from Captain-2's camera showed Sergeant-1 move his right arm back. The shield that Captain-2 carried and the positions of other officers in the Cell, however, obstructed the camera's view of Sergeant-1's actions at that time. Captain-2's camera footage showed that, at that time, Sergeant-4 was standing behind Sergeant-1. Sergeant-4 appeared to be looking down toward where Inmate-A was seated on the floor.²⁵

After the other officers entered the Cell, Captain-1's body worn camera did not have a view into the Cell until approximately 18:58:20. At that time Captain-1 stepped into the Cell, in front of Captain-2 while Captain-2 was placing the broken shield against an outside wall of the Cell.²⁶

The officers continued their efforts to try to grab Inmate-A's arms and legs to restrain him. At approximately 18:58:41, the footage from Captain-1 and Captain-2's cameras captured Inmate-A saying, "y'all just beat me up, y'all just beat me up."²⁷ To which Captain-1 responded that, "nobody beat you up." Captain-1 and Captain-2 repeatedly instructed Inmate-A to put his hands behind his back and stop resisting.²⁸

Based on the camera footage, Inmate-A continued to fail to follow the instructions to place his hands behind his back. Inmate-A could be heard saying, "I'm not resisting" and "I'm standing my ground."²⁹ Inmate-A did not comply with the officers' instructions to allow them to handcuff him, and he appeared to resist their efforts to do so. There was no evidence, however, that Inmate-A attempted to assault or otherwise cause harm to the officers.³⁰

Sergeant-2, Sergeant-4, Sergeant-3 and Lieutenant continued their efforts to try to get Inmate-A into a position so that he could be handcuffed. At approximately 19:00:03, footage from Lieutenant's camera showed that Inmate-A was in a seated position on the Cell floor. Sergeant-2 and Sergeant-4 were struggling to get Inmate-A's arms behind his back. Sergeant-1 knelt down and wrapped his arm around Inmate-A's neck and throat in a chokehold, that is, he held Inmate-A in a manner that would allow him to apply choking pressure to Inmate-A's throat and neck. After Sergeant-1 placed Inmate-A into

²³ See Joint Ex. 26, Video 3 (Lieutenant BWC footage).

²⁴ See Joint Ex. 26, Video 3 (Lieutenant BWC footage).

²⁵ See Joint Ex. 26, Video 2 (Captain-2 BWC footage).

²⁶ See Joint Ex. 26, Video 1 (Captain-1 BWC footage).

²⁷ See Joint Ex. 26, Video 1, 2, (Captain-1 and Captain-2 BWC footage) and see Video 3 (Lieutenant BWC footage).

²⁸ See Joint Ex. 26, Video 1, 2, (Captain-1 and Captain-2 BWC footage) and see Video 3 (Lieutenant BWC footage).

²⁹ See Joint Ex. 26, Video 1, 2, 3 (Captain-1, Captain-2 and Lieutenant BWC footage).

³⁰ See Joint Ex. 26, Video 1, 2, 3 (Captain-1, Captain-2, and Lieutenant BWC footage).

the chokehold, Inmate-A made labored, raspy breathing sounds and gurgling noises suggesting that his breathing may have been restricted. At one point, while maintaining his chokehold on Inmate-A, Sergeant-1 appeared to lift Inmate-A slightly up off the floor by his throat and neck. Sergeant-1 kept Inmate-A in the chokehold for at least 27 seconds.³¹ While Sergeant-1 held Inmate-A in a chokehold, Sergeant-2 and Sergeant-4 were on the floor directly beside Inmate-A and continued to try to get Inmate-A's hands behind his back to allow for him to be cuffed. Lieutenant's camera footage also showed Captain-1 standing in the Cell near Inmate-A and Sergeant-1. Captain-1 was positioned with his body facing toward Inmate-A, Sergeant-1, and the officers on the Cell floor. In the moments before Sergeant-1 released Inmate-A from the chokehold, Captain 1's head and face could be seen tilted slightly down and facing toward Sergeant-1 and Inmate-A. After Inmate-A was released from the chokehold, Inmate-A gasped for breath and said in a raspy voice, "you might as well have just killed me."³²

Captain-1's camera footage showed a slightly tilted upward view of Sergeant-1's movements. At approximately 19:00:03 the footage from Captain-1's camera showed Sergeant-1 in front of the camera start to kneel or bend down out of view of the tilted-upward view of Captain-1's camera. The audio from Captain-1's camera picked up the sounds in the Cell, including sounds of labored and raspy breathing and gurgling, as though someone may have been experiencing restricted breathing or choking. After almost 30 seconds, Sergeant-1 re-appeared in front of Captain-1's camera and audio from the camera picked up sounds of gasping for breath and then Inmate-A speaking with a raspy voice saying, "you might as well have just killed me."³³

Captain-2's camera provided limited footage of Sergeant-1 and Inmate-A during the period that Sergeant-1 held Inmate-A in a chokehold. At approximately 19:00:03, Captain-2's camera footage showed Sergeant-1 bending or kneeling down toward where Inmate-A had been on the floor, however, Inmate-A and Sergeant-1's actions after he bent down toward Inmate-A were blocked from the view of Captain-2's camera by another officer. Captain-2's camera did show Captain-1 standing near and facing down toward where Inmate-A was on the floor. By 19:00:05, other officers moved in front of Captain-2's camera. At 19:00:10, Captain-2 stepped around Sergeant-3 who had been blocking his view. Captain-1's camera footage then briefly showed Sergeant-1 who appeared to be kneeling on the floor behind Inmate-A. Sergeant-1 appeared to be holding onto Inmate-A. The view of Inmate-A, however, was blocked by other officers making it difficult to observe how Sergeant-1 was holding Inmate-A. Captain-2's camera also showed Captain-1 still in a position standing and appearing to look down toward where Sergeant-1 and Inmate-A were on the floor of the Cell. The audio from Captain-2's body worn camera picked up gurgling noises. By 19:00:15, Sergeant-3 had again stepped in front of Captain-2's body camera and blocked the view of Inmate-A, but Captain-1 could still be seen standing over and looking down toward the area of the Cell floor where Sergeant-1 and Inmate-A would have been.

³¹ See Joint Ex. 26, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

³² See Joint Ex. 26, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

³³ See Joint Ex. 26, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

While Sergeant-1 held Inmate-A in the chokehold or immediately after, Sergeant-2 and Sergeant-4 were able to get handcuffs onto Inmate-A. By approximately 19:00:53, the cuffed Inmate-A was stood up and moved to stand in a corner of the Cell.³⁴

Captain-1 and Captain-2 both deactivated their body worn cameras after Inmate-A was handcuffed.

Lieutenant's camera footage showed that Sergeant-4, Sergeant-2, and, initially Captain-1 held the handcuffed Inmate-A in a corner of the Cell as the other officers began their search of the Cell for contraband. As the search continued, Captain-1 stepped away from Inmate-A. Sergeant-4 and Sergeant-2 continued to hold Inmate-A in a corner of the Cell. At approximately 19:05:13, while Sergeant-4 and Sergeant-2 were holding Inmate-A, Inmate-A loudly told the officers in the Cell "this [n-word] just choked me, bro. He choked me when I had cuffs behind my back...." Sergeant-3 and Captain-2 could be seen inside the Cell searching for contraband when Inmate-A made this statement. Captain-1 and Sergeant-1 appeared to be standing just outside of the doorway of the Cell.³⁵

While the officers still had Inmate-A handcuffed in his Cell, at approximately 19:11:46, Inmate-A collapsed. Sergeant-4 reported in his Internal Incident Report that Inmate-A suffered a seizure. Sergeant-4 attempted to assist Inmate-A. A nurse was called to Inmate-A's Cell and then Inmate-A was taken to the Facility's medical department.³⁶ Sergeant-4 accompanied Inmate-A to the medical department.

Two cable cords were found during the search of Inmate-A's cell.³⁷

Sergeant-1, Sergeant-2, Sergeant-3, Sergeant-4, Captain-1, and Lieutenant each prepared an Internal Incident Report of the cell extraction. Captain-2 prepared an Incident Report of the cell extraction. None of the officers involved in the cell extraction reported that Sergeant-1 punched (or struck) Inmate-A or that Sergeant-1 held Inmate-A in a chokehold or choked Inmate-A during the cell extraction.³⁸

The Internal Incident Report that Grievant submitted regarding the events of August 26, 2024, was dated August 27, 2024, at approximately 5:30 am.³⁹ Grievant reported that the incident occurred on August 26, 2024, at 7:00 pm. In the area of the report identifying the "Type of Incident," Grievant listed "Other - Cell [Extraction]." Grievant provided the following as his "Description of Incident:"

On August 26, 2024 at approximately 7:00 am Inmate [redacted] refused to cuff up. [Captain-1], [Captain-2], [Lieutenant], [Sergeant-3], [Sergeant-1],

³⁴ See Joint Ex. 26, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

³⁵ See Joint Ex. 26, Video 3 and 5 (Lieutenant and Sergeant-4 BWC footage).

³⁶ See Joint Ex. 303 and see Joint Ex. 26, Video 5 (Sergeant-4 BWC footage).

³⁷ See Joint Ex. at 308 and Joint Ex. 26, Video 5 (Sergeant-4 BWC footage).

³⁸ Joint Ex. at 302-309. The Agency's Advocate stated during the hearing that the redactions to the incident reports were made by the Agency's Advocate to protect the privacy of Inmate-A and that the information redacted was Inmate-A's name, number, and cell number.

³⁹ Joint Ex. at 308.

[Sergeant-2], and myself [Sergeant-4] went in with the [Shield] to restrain Inmate [redacted]. Inmate [redacted] resisted and had to be placed on the floor and restrained. After Inmate [redacted] was placed against the wall restrained he suffered a seizure. Nurse checked his vitals and he was taken to Medical by wheelchair.⁴⁰

On or about September 10, 2024, the Agency received a complaint from Inmate-A about the cell extraction. Inmate-A reported that

. . . on the 26th of August, 2024 at the approximate time between 6:30 pm-7:30 pm I was subjected to [unnecessary] force/physical abuse by the following security staff [Sergeant-1] who struck me in my head with balled fists and choked me until I couldn't see anymore while [Sergeant-3], [a lieutenant], [Captain-1], [Captain-2,] and [Sergeant-2] ... watch me go into a seizure due to being abused by staff at [Facility]. I respectfully request you come see me concerning this matter, I'm in fear of my life as a result to the matter/incident. . .⁴¹

During the Agency's investigation of the incident, Grievant was interviewed by Special Agent. Grievant also provided a written statement about the incident to Special Agent. Grievant stated that he did not see Sergeant-1 hit Inmate-A during the cell extraction. In his written statement, Grievant admitted that he saw Sergeant-1 place his arm "momentarily" around Inmate-A's neck and that he believed Sergeant-1's actions prevented the other officers and Inmate-A from being hurt.⁴²

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include 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 require formal disciplinary action." Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."⁴³

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

The preponderance of the evidence showed that Grievant engaged in misconduct when he omitted the key information from his Internal Incident Report that Sergeant-1 placed Inmate-A in a chokehold during the cell extraction on August 26, 2024.

⁴⁰ Joint Ex. at 303. The Agency's Advocate stated during the hearing that the redactions to the Internal Incident Reports were made by the Agency's Advocate to protect the privacy of Inmate-A and that the information redacted was Inmate-A's name, number, and cell number.

⁴¹ Joint Ex. at 311-313.

⁴² Joint Ex. at 9, 339, and Hearing Recording at 6:43:23-7:32:01.

⁴³ See Virginia Department of Corrections Operating Procedure 135.1.

Consistent with the Agency's Operating Procedure 420.1, Agency security personnel are trained in the approved methods of control and defensive tactics. They also are trained, consistent with policy, that the use of force is a last resort to control inmates and they are authorized to use only the amount of force reasonably necessary to overcome resistance, mitigate an incident, or gain control under the circumstances.⁴⁴ Agency security personnel are not trained to strike, punch, or choke inmates or to restrain inmates using a chokehold.⁴⁵

Operating Procedure 420.1 also requires Agency employees to report any use of force that they engage in, that they observe, or that is reported to them by an inmate. The policy makes clear that reports of use of force must be accurate and complete.⁴⁶ Security personnel are trained, consistent with Agency policy to include in their incident reports the "who, what, when, where, why, and how" of an incident. This includes, among other things, unusual events or activity, the type of force used, area of body affected, control technique, method of restraint, and other information.⁴⁷

When Sergeant-1 hit Inmate-A with a closed fist, Sergeant-1 engaged in a use of force that was not consistent with the defensive tactics and restraint methods that Agency security personnel are trained to use. When Sergeant-1 placed Inmate-A in a chokehold, Sergeant-1 engaged in a use of force that was not consistent with the defensive tactics and restraint methods that Agency security personnel are trained to use.⁴⁸

Grievant admitted that he saw Sergeant-1 wrap his arm around Inmate-A's neck and place Inmate-A in a chokehold "momentarily" during the cell extraction. Grievant asserted that he believed Sergeant-1's use of force was reasonable under the circumstances. Grievant testified that he did not see Sergeant-1 punch Inmate-A during the cell extraction. When questioned about his position in the Cell near Sergeant-1 when Sergeant-1 punched Inmate-A, Grievant testified that he did not remember seeing Sergeant-1 punch Inmate-A and that he was focused on trying to restrain Inmate-A while also working around the sheet and the mattress that Inmate-A had used as cover. Grievant also testified that he wrote his Internal Incident Report well after the end of his shift that night and that he was exhausted from the long day and the physical exertion of the cell extraction.⁴⁹

The preponderance of the evidence did not support a finding that Grievant observed Sergeant-1 punch Inmate-A. Although footage from the body cameras of Lieutenant and Captain-2 showed Grievant standing near Sergeant-1 and Inmate-A when Sergeant-1 punched Inmate-A, it is not clear that Grievant was in a position to observe Sergeant-1's actions. At approximately 18:58:01 when Sergeant-1 punched Inmate-A while Inmate-A was still positioned on the bed, Grievant appeared to be attempting to move around Sergeant-3. Although Grievant's head was turned in the direction of the

⁴⁴ Joint Ex. at 370-391.

⁴⁵ Hearing Recording at 4:12:30-4:52:24, and see 27:37-2:12:56, 2:19:46-3:39:52.

⁴⁶ See Joint Ex. at 376.

⁴⁷ Hearing Recording at 4:12:30-4:52:24, and see 27:37-2:12:56, 2:19:46-3:39:52 and see Joint Ex. at 350-369.

⁴⁸ Hearing Recording at 4:12:30-4:52:24, and see 27:37-2:12:56, 2:19:46-3:39:52.

⁴⁹ Hearing Recording at 6:43:23-7:32:01.

bed, he also appeared to be looking down toward the floor. It is not clear that Grievant was in a position to observe Sergeant-1's actions while he maneuvered around Sergeant-3 who was attempting to pull Inmate-A with a sheet and mattress onto the Cell floor. When Sergeant-1 punched Inmate-A after Inmate-A had been pulled onto the Cell floor, the camera footage showed Grievant standing in close proximity to Sergeant-1. Grievant appeared to have been pushed slightly behind Sergeant-1 such that he did not appear to have a view of Sergeant-1's right arm. Although Grievant appeared to be looking toward Inmate-A, it is not clear that he would have been able to view Sergeant-1 punching Inmate-A from his position and with the other officers also engaging in close proximity with Inmate-A.⁵⁰

Grievant admitted that he observed Sergeant-1 place Inmate-A into a chokehold. The available camera footage showed that Grievant was in very close proximity to Inmate-A's head and neck for the more than 27 seconds that Sergeant-1 held Inmate-A in the chokehold, including when Sergeant-1 appeared to lift Inmate-A up by that chokehold. Even if Grievant believed that Sergeant-1's actions were force that was reasonably necessary, Operating Procedure 420.1 required Grievant to report Sergeant-1's actions.⁵¹ That Grievant worked a long and exhausting shift on August 26, 2024, may have explained a failure to report his observations that night, it did not excuse him from the requirement that he report those observations. There was no evidence that Grievant reported or attempted to report his observation of Sergeant-1's actions at any time after that evening and before the Agency began investigating Inmate-A's complaint. Additionally, although Grievant described his observation and perception of the chokehold as being "momentary," it was a moment that Grievant recalled weeks later when he was interviewed by Special Agent and without first reviewing video footage of that moment. Even if Grievant perceived Sergeant-1's actions as "momentary," Operating Procedure 420.1 required Grievant to report Sergeant-1's actions.

Operating Procedure 135.1 describes the offense of falsifying records as "[f]alsifying any records either by creating a false record, altering a record to make it false, or omitting key information, willfully or by acts of negligence including but not limited to all electronic and paperwork and administrative related documents generated in the regular and ordinary course of business, such as count sheets, vouchers, reports statements, insurance claims, time records, leave records, or other official state documents."⁵² An incident report is a document that is created and kept in the Agency's course of business to document incidents, including uses of force, that happen at the Facility. Grievant knew, or should have known, that he observed Sergeant-1 use force on Inmate-A and that use of force was unusual and not consistent with the tactics and methods on which the Agency trains security personnel. Even if Grievant believed that Sergeant-1's actions were force that was reasonably necessary, Operating Procedure 420.1 required Grievant to report Sergeant-1's actions. Grievant's observation of Sergeant-1 holding Inmate-A in a chokehold was key information about the cell extraction that occurred on August 26, 2024. Grievant omitted that key information from the Internal Incident Report he submitted to the Agency.

⁵⁰ See Joint Ex. 26, Videos 2 and 3 (Captain-2 and Lieutenant BWC footage).

⁵¹ See Joint Ex. at 370-391.

⁵² Virginia Department of Corrections Operating Procedure 135.1, Procedure XIV.B.2.

The Agency has met its burden of proving by a preponderance of evidence that Grievant's omission of key information from his Internal Incident Report of the August 26, 2024, cell extraction was a failure to follow Operating Procedure 420.1 and a falsification of records by omission.

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

Failure to follow policy is a Group II offense. Falsifying records is a Group III offense.⁵³ Because of Grievant's supervisory role, it was reasonable for the Agency to hold Grievant to a higher standard with the expectation that he would set an example for appropriate behavior.

Absent mitigating circumstances, job termination is the normal result of a Group III written notice.

Grievant argued that he was denied due process to the extent the Agency relied on Operating Procedure 038.1, Reporting Serious or Unusual Incidents, to determine that Grievant had engaged in misconduct because the Agency did not charge Grievant with violating Operating Procedure 038.1 in the Written Notice. The Written Notice charged Grievant with violating Operating Procedure 420.1 and falsifying records by omitting key information from an internal incident report. The Written Notice put Grievant on notice that the Agency's discipline was based on the Agency's determination that Grievant omitted key information from an internal incident report. Grievant was not denied due process by Agency witnesses testifying that provisions of Operating Procedure 038.1 supported the Agency's determination that the information omitted was key information and that Grievant knew or should have known such information was key information for the report.

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

Mitigation

Grievant appeared, at times, to argue that the discipline should be mitigated because of Grievant's long years of service at the Facility and his history of good work performance.

The Standards of Conduct provide that an Agency may reduce the level of disciplinary action if there are mitigating circumstances, such as conditions that compel a reduction to promote the interests of consistency, equity and objectivity, or based on an employee's otherwise satisfactory work performance.

Regional Administrator testified that in determining the appropriate discipline for Grievant's misconduct, the Agency considered mitigating factors, including Grievant's years of service and work performance. But, because of the severity of Grievant's misconduct and Grievant's role as a supervisor to other correctional officers, the Agency

⁵³ See Virginia Department of Corrections Operating Procedure 135.1, Standards of Conduct, Procedure.

determined that it was not appropriate to reduce the discipline.⁵⁴ That the Agency could have mitigated the discipline, but determined that it was inappropriate to do so, is not a reason for the Hearing Officer to conclude that the Agency's actions exceed the limits of reasonableness.

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...."⁵⁵ 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 Grievant of a Group III Written Notice with termination 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.

⁵⁴ Hearing Recording at 2:19:46–3:39:52.

⁵⁵ Va. Code § 2.2-3005.

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.⁵⁶

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

⁵⁶ 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.