COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12256

Hearing Date: July 22, 2025
Decision Issued: August 12, 2025

PROCEDURAL HISTORY

On February 5, 2025, Grievant (also referred to as Captain-2) 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 Sergeant-4, the Office of Employment Dispute Resolution consolidated for hearing this case with Case Nos. 12255 (Sergeant-4) and 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 103-105.
[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 Captain-2)
Grievants' Counsel
Agency Legal Advocate
Agency Party Designee
Captain-1 (Case No. 12257 grievant)
Sergeant-4 (Case No. 12255 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 Captain at a Department of Corrections Facility. As a Captain, Grievant was a security supervisor at the Facility, including serving as a shift commander responsible for facility security and safety. Grievant had been employed by the Agency for more than 19 years. Grievant had served in the role of Captain for approximately one year. Performance evaluations issued in December of 2024, October 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 the shift commander for the night shift. As the day shift was preparing to leave and the night shift was preparing to begin, Sergeant-3 notified Grievant 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 Lieutenant[8] 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]

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[3] Hearing Recording at 6:05:10–6:43:10, Joint Ex. at 115-120, 133-138, 144-148.
[4] Hearing Recording at 2:19:46–3:39:52, 4:12:30-4:52:24 and see Joint Ex. at 152-213.
[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 moved 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 leg 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 kneeled 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

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[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-2'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 worn 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.

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[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]

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 Incident Report that Grievant submitted regarding the events of August 26, 2024, was dated August 26, 2024, at approximately 7:10 pm.[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 "Cell Extraction." Under "Use of Force," Grievant noted "Cell Extraction – Security Reason." Grievant provided the following as his "Description of Incident:"

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[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.

> On the above date and time, I [Captain-2] was notified by [Sergeant-3] that inmate [redacted] had some type of plastic or cable like material around his neck in the outside rec cage. [Captain-1], [Lieutenant], [Sergeant-1], [Sergeant-4], [Sergeant-3] (CCIT) [Sergeant-2] and myself [Captain-2] entered Restorative Housing to conduct a search of inmate [redacted] cell to retrieve the contraband. Inmate [redacted] was told by [Captain-1], [Lieutenant], and myself [Captain-2] to back up to the tray slot several times to be restrained so we could conduct a search of his cell [redacted]. Inmate [redacted] responded by saying you all can come in if you want but I am going to give you some (REC) and someone is going to get fucked up. Inmate [redacted] then laid down on his bed and covered up with the sheets. [Sergeant-1] proceeded to [Control Room] to retrieve the [Shield] to enter the cell. [Sergeant-1], [Lieutenant], [Sergeant-3], [Sergeant-2], [Sergeant-4] made the 5 person Cell extraction Team to enter the cell. Upon entering the cell, Inmate [redacted] jumped off the bed and began to resist from being cuffed stating that y'all can't handle me. I [Captain-2] then stated numerous times stop resisting inmate [redacted]. Inmate [redacted] would not comply and kept stating look at y'all and still cannot handle me and kept resisting. After about several minutes of resisting inmate [redacted] complied and was restrained. All staff that was involved in this incident went to medical and was accessed. There were no injuries reported, inmate [redacted] was also taken to medical and was also accessed by [Nurse] with no injuries and return to Restorative Housing. [Sergeant-3] found two pieces of cable cord one about 6 feet long and the other piece about 2 feet long after conducting cell search of inmate [redacted]'s cell.[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 twice. Grievant also provided two written statements about the incident to Special Agent. Grievant stated that he did not know that "any punches were thrown by

[40] Joint Ex. at 308. 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.

[Sergeant-1]" and that he did not notice any injuries to [Inmate-A].[42] Grievant also stated that he "did not see [Sergeant-1's] arm around [Inmate-A's] neck."[43]

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."[44]

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 the Incident Report that Sergeant-1 repeatedly punched Inmate-A during the cell extraction on August 26, 2024.

Consistent with the Agency's Operating Procedure 420.1, Agency security personnel are trained in 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.[45] Agency security personnel are not trained to strike, punch, or choke inmates or to restrain inmates using a chokehold.[46]

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.[47] 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.[48]

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 which Agency security personnel are trained to use. When Sergeant-1 placed Inmate-A in a

[42] Joint Ex. at 331.
[43] Joint Ex. at 333.
[44] *See* Virginia Department of Corrections Operating Procedure 135.1.
[45] Joint Ex. at 370-391.
[46] Hearing Recording at 4:12:30–4:52:24, and see 27:37–2:12:56, 2:19:46–3:39:52.
[47] Joint Ex. at 376.
[48] 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.

chokehold, Sergeant-1 engaged in a use of force that was not consistent with the defensive tactics and restraint methods which security personnel are trained to use.[49]

Grievant testified that he did not see Sergeant-1 punch Inmate-A during the cell extraction and that after reviewing the video, it was not clear that Sergeant-1 made contact with Inmate-A when he punched him. Grievant also asserted that he did not see Sergeant-1 choke Inmate-A or place Inmate-A in a chokehold. Grievant argued that he could not report what he did not see.[50]

The video and audio footage from Grievant's body worn camera supported the Agency's assertion that Grievant observed Sergeant-1 punch or strike Inmate-A. Video footage from Grievant's body worn camera showed that at approximately 18:58:01, Sergeant-1 repeatedly moved his closed right fist in a punching motion down toward the covered Inmate-A. Sergeant-1 was positioned kneeling on the bed, leaning above the covered Inmate-A. Footage from Grievant's body worn camera showed Sergeant-1 make that punching motion with a closed fist at least three times before the camera's view was blocked by other officers at approximately 18:58:03. The audio footage from Grievant's body worn camera also captured Inmate-A accusing the officers of beating him up.[51]

Grievant was wearing his body worn camera during the cell extraction and it is reasonable to assume that Grievant would have seen and heard what was seen and heard by his body worn camera and captured on video and audio recording. It is reasonable to assume that, as captured by Grievant's body worn camera, Grievant also would have observed Sergeant-1 punching Inmate-A at least three times. Unlike the sergeants and the Lieutenant, Grievant was not physically engaged in attempting to restrain Inmate-A, Grievant was stepped slightly back from that effort in a position to provide instructions to the Inmate and observe the inmate and the other officers. Even if Grievant was unsure as to whether Sergeant-1's punches made contact with Inmate-A, Inmate A answered that question when he moments later accused the officers of beating him up as captured by the audio recording from Grievant's body worn camera. Further, even if Sergeant-1's punches did not make contact with Inmate-A, those punches were a use of force that was not consistent with the methods trained and used by Agency security personnel and should have been reported pursuant to Operating Procedure 420.1.

The preponderance of evidence showed that Grievant observed Sergeant-1 repeatedly punch Inmate-A. Even if Grievant was unsure as to whether Sergeant-1's punches made contact or Grievant believed that Sergeant-1's actions were force that was reasonably necessary in the moment, Operating Procedure 420.1 required Grievant to report Sergeant-1's actions.[52]

The evidence did not support a finding that Grievant observed Sergeant-1 place Inmate-A in a chokehold or choke Inmate-A. During the period of time that Sergeant-1 held Inmate-A in the chokehold, Grievant's body worn camera did not capture clear video of Sergeant-1 holding Inmate-A in the chokehold due to Grievant's movements in and out

[49] Hearing Recording at 4:12:30–4:52:24, and see 27:37–2:12:56, 2:19:46–3:39:52.
[50] Hearing Recording at 6:05:10-6:43:10.
[51] See Joint Ex. 26, Video 2 (Captain-2 BWC footage).
[52] See Joint Ex. at 370-391.

of the Cell and the movements of other officers within the Cell around Inmate-A and in front of Grievant.[53] Although Agency witnesses testified to their belief that Grievant was able to see Sergeant-1 choking Inmate-A, they also admitted that they could not see Sergeant-1 choking Inmate-A from the review of Grievant's body worn camera video footage during the hearing.[54]

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."[55] 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 punching Inmate-A was key information about the cell extraction that occurred on August 26, 2024. Grievant omitted that key information from the Incident Report he submitted to the Agency.

The Agency has met its burden of proving by a preponderance of evidence that Grievant's omission of key information from his 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.[56] 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 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

[53] Joint Ex. 26, Video 2 (Captain-2 BWC footage).
[54] Hearing Recording at 1:01:35-1:05:01, 3:12:37-3:15:43.
[55] Virginia Department of Corrections Operating Procedure 135.1, Procedure XIV.B.2.
[56] *See* Virginia Department of Corrections Operating Procedure 135.1, Standards of Conduct, Procedure.

information from an 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 and 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 at the Facility, the Agency determined that it was not appropriate to reduce the discipline.[57] 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…."[58] 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**.

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[57] Hearing Recording at 2:19:46–3:39:52.
[58] Va. Code § 2.2-3005.

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.[59]

Angela Jenkins

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Angela Jenkins, Esq.
Hearing Officer

[59] 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.