



# COMMONWEALTH OF VIRGINIA

*Department Of Human Resource Management*

*Office of Employment Dispute Resolution*

## DECISION OF HEARING OFFICER

In re:

**Case number: 12258**

**Hearing Date: July 9, 2025**

**Decision Issued: August 8, 2025**

## PROCEDURAL HISTORY

On February 5, 2025, Grievant 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, policies on Use of Force and Standards of Ethics and Conflict of Interest.<sup>1</sup>

On March 3, 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. On July 9, 2025, a hearing was held at the Facility.

## APPEARANCES

Grievant  
Agency Legal Advocate  
Agency Party Designee  
Witnesses  
Agency Observer<sup>2</sup>

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<sup>1</sup> Agency Ex. at 1-3.

<sup>2</sup> On the day of the hearing, the Agency requested that an Agency employee be allowed to observe the proceeding for training purposes. The Grievant stated that he did not object to the Agency employee observing the hearing. Without objection from the Grievant, the Hearing Officer allowed the Agency employee to observe the proceeding for training purposes.

## **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:

The facts of this case were largely undisputed during the hearing.

Prior to his dismissal, Grievant was a Corrections Sergeant at a Department of Corrections Facility. Grievant had been employed by the Agency for approximately 15 years.<sup>3</sup> No evidence of prior active discipline was introduced during the hearing.

As a member of the Agency's security personnel, Grievant received training on how to write reports of incidents, including reporting uses of force.<sup>4</sup> Grievant and other security personnel received cell extraction training as recently as August 20, 2024.<sup>5</sup>

On August 26, 2024, Grievant was on duty at the Facility. Grievant was one of several officers who entered Inmate-A's cell as part of a cell extraction team to restrain Inmate-A and search his cell for contraband.<sup>6</sup>

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<sup>3</sup> Agency Ex. at 10-11.

<sup>4</sup> Hearing Recording at 1:09:07-1:15:54, 1:52:35-1:58:18 and see Agency Ex. at 56-99.

<sup>5</sup> Agency Ex. at 27, 37-38.

<sup>6</sup> Agency Ex. at 12-19.

Shortly before 7:00 pm on August 26, 2024, Captain-1, Captain-2, Lieutenant, Sergeant-1, Grievant, Sergeant-3, and Sergeant-4 responded to Inmate-A's Cell to conduct a search of Inmate-A's Cell for a wire or cable that Inmate-A was reported to have.<sup>7</sup>

After Inmate-A repeatedly refused to follow the officers' instructions to come to his Cell door to be restrained, the officers entered Inmate-A's cell to restrain him.<sup>8</sup>

Inmate-A was non-compliant and resisted the officers' efforts to restrain him. There was no evidence, however, that Inmate-A assaulted or attempted to physically harm the officers.<sup>9</sup>

While the officers were attempting to restrain Inmate-A, Sergeant-1 punched Inmate-A "several times."<sup>10</sup>

Footage of the incident from other officers' body worn cameras also showed that Sergeant-1 held Inmate-A in a chokehold and appeared to choke Inmate-A.<sup>11</sup>

After Inmate-A was restrained and the officers were able to conduct their search of Inmate-A's cell, they found contraband in the form of two cable cords.<sup>12</sup>

On August 26, 2024, at approximately 7:00 pm, Grievant submitted an Internal Incident Report regarding the cell extraction. Grievant reported that the incident occurred on August 26, 2024, at 7:00 pm. Grievant provided the following as his "Description of Incident:"

Monday, August 26, 2024, I [Grievant] was assigned to a cell extraction team to retrieve contraband from Inmate [redacted]. The team consisted of [Sergeant-1] as the Shield man, [Lieutenant] was assigned to the upper extremities, [Grievant] was assigned to the Upper extremities, [Sergeant-3] was assigned the Lower extremities and [Sergeant-4] was assigned the Low extremities. [Captain-1] and [Captain-2] was on the camera. The team entered [redacted] and placed [redacted] on the ground but inmate was still combative. Restraints were applied to the hands of [redacted]. While in cell [redacted] conducting the check for contraband, two altered cable cords

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<sup>7</sup> Agency Ex. at 18-19.

<sup>8</sup> See Agency Ex. 11, Video 2 and 3 (Captain-2 and Lieutenant BWC footage) and Hearing Recording at 10:32-45:30.

<sup>9</sup> See Agency Ex. 11, Video 2 and 3 (Captain-2 and Lieutenant BWC footage) and Hearing Recording at 10:32-45:30.

<sup>10</sup> See Agency Ex. 33 and Agency Ex. 11, Video 2 and 3 (Captain-2 and Lieutenant BWC footage).

<sup>11</sup> See Agency Ex. 11, Video 2 and 3 (Captain-2 and Lieutenant BWC footage). Grievant wore a body worn camera which was activated at approximately 18:57:13. Grievant also wore an activated body worn camera during the cell extraction. Grievant's body worn camera was knocked to the floor shortly after the cell extraction began at approximately 18:58:06. See Agency Ex. 11, Video 6 (Grievant BWC footage).

<sup>12</sup> See Agency Ex. at 15, 18-19 and Agency Ex. 11, Video 5 (Sergeant-4 BWC footage).

were found in the wall of the cell. The cables were taken to watch office and the inmate was taken to medical to be assessed.<sup>13</sup>

Grievant, Sergeant-1, 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 choked or placed Inmate-A in a chokehold during the cell extraction.<sup>14</sup>

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

on the 26<sup>th</sup> 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 [Grievant] ... 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. . . .<sup>15</sup>

As part of the Agency's investigation of the complaint by Inmate-A, Special Agent interviewed each of the officers involved in the cell extraction as well as body worn camera footage of the cell extraction. Special Agent first interviewed Grievant on October 17, 2024. At that time, Grievant provided the following written statement to Special Agent:

In addition to my incident report I did not see [Sergeant-1] strike offender [redacted]. I have not seen camera footage until today. It appears that fists were thrown during this incident. It should have been reported. I would have done so if I had seen it. We were all on top of each other and turned around.<sup>16</sup>

A few days after the interview, Grievant contacted Special Agent and indicated that he wanted to speak with him again. Special Agent conducted a second interview with Grievant on October 22, 2024. Grievant told Special Agent that he wanted to change his statement. Grievant then provided the following written statement:

I, [Grievant] observed [Sergeant-1] punching offender [redacted] in the head several times during a cell extraction August 26, 2024. He also struck me in

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<sup>13</sup> Agency Ex. at 15. 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.

<sup>14</sup> Agency Ex. at 12-19. 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.

<sup>15</sup> Agency Ex. at 21-23.

<sup>16</sup> Agency Ex. at 31 and see Agency Ex. 11, Video 7 (Special Agent BWC camera footage, Interview of Grievant #1).

the hand during this incident. I am changing my statement because it is the correct thing to do.<sup>17</sup>

Special Agent did not ask Grievant whether he had observed Sergeant-1 hold Inmate-A in a chokehold or choke Inmate-A. Grievant did not make any statements to Special Agent regarding whether he observed Sergeant-1 choke Inmate-A or hold Inmate-A in a chokehold.

On February 5, 2025, the Agency issued Grievant a Group III Written Notice of disciplinary action with termination for falsification of records by omission, including violating the Agency's Standards of Conduct, policies on Use of Force and Standards of Ethics and Conflict of Interest.<sup>18</sup>

### **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."<sup>19</sup>

#### 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 punched Inmate-A in the head several times.

Consistent with Agency Operating Procedure 420.1, Use of Force,<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> Security personnel are trained to report any use of force, including the "who, what, when, where,

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<sup>17</sup> Agency Ex. at 33 and see Agency Ex. 11, Video 7 (Special Agent BWC camera footage, Interview of Grievant #2).

<sup>18</sup> Agency Ex. at 1-3. During the hearing, Regional Administrator testified that the discipline was based on Grievant's failure to include in his Internal Incident Report his observation that Sergeant-1 punched Inmate-A. See Hearing Recording at 47:15-1:25:44.

<sup>19</sup> See Virginia Department of Corrections Operating Procedure 135.1.

<sup>20</sup> Agency Ex. at 133-154.

<sup>21</sup> Agency Ex. at 140-141 and Hearing Recording at 10:32-45:30.

<sup>22</sup> Agency Ex. at 139.

why, and how” of any 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.<sup>23</sup>

The facts of this case related to the misconduct were largely undisputed. Grievant did not testify during the hearing and argued that the discipline was too harsh.

Based on the written statement that Grievant provided to Special Agent, Grievant admitted that he observed Sergeant-1 “punching Inmate-A in the head several times during the cell extraction on August 26, 2024.” During his initial interview with Special Agent, Grievant also admitted that if someone had observed Sergeant-1 punching (or striking) Inmate-A, that observation should be reported.<sup>24</sup>

During the hearing, Grievant did not deny that he observed Sergeant-1 punch Inmate-A. To the extent that Grievant argued that he was coached by another Sergeant involved in the cell extraction about what to include in his Internal Incident Report, it was unclear whether Grievant and the other Sergeant discussed Grievant’s observations of Sergeant-1 punching Inmate-A in the head during the cell extraction. Another Sergeant, however, would not be in a supervisory role to Grievant. If another Sergeant advised Grievant to leave out details of his observations, that advice was inconsistent with the Agency policies that Grievant had been trained on and that required Grievant to report any use of force he observed. That advice also would have been inconsistent with Agency policy that required Grievant to ensure that his reporting was accurate and complete. And any such advice was inconsistent with Grievant’s acknowledgment during his first interview with Special Agent that such observations should be reported. Consistent with Grievant’s acknowledgement to Special Agent, Regional Administrator, Deputy Chief HRO, and Warden all credibly testified that, consistent with Operating Procedure 420.1, all security personnel are trained to report any use of force, including all of their observations, any unusual events, and the “who, what, when, where, why, and how” of any incident.<sup>25</sup>

Grievant observed Sergeant-1 “punch Inmate-A in the head several times.” Even if Grievant believed that Sergeant-1’s actions were force that was reasonably necessary, Operating Procedure 420.1 required Grievant to report those uses of force.<sup>26</sup>

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.”<sup>27</sup> An incident report is a document that is created and kept in the Agency’s course of business

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<sup>23</sup> Hearing Recording at 47:15-1:25:44, 1:35:02-1:51:03, and 1:51:50-1:55:46 and Agency Ex. at 113-132.

<sup>24</sup> Agency Ex. at 31-33 and Agency Ex. 11, Video 7 (Special Agent BWC footage of interview with Grievant).

<sup>25</sup> Hearing Recording at 47:15-1:25:44, 1:35:02-1:51:03, and 1:51:50-1:55:46 and see Agency Ex. at 113-132.

<sup>26</sup> Agency Ex. at 160-181 and Hearing Recording at 10:32-45:30.

<sup>27</sup> Virginia Department of Corrections Operating Procedure 135.1, Procedure XIV.B.2.

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. 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 in the head several times 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.

The Agency has met its burden of proving by a preponderance of the 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

Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."<sup>28</sup> Group III offenses include but are not limited to endangering others in the workplace, constituting illegal or unethical conduct, indicating significant neglect of duty; resulting in disruption of the workplace; or other serious violations of policies, procedures, or laws.

Failure to follow policy is a Group II offense. Falsifying records, including omitting key information from a record, is a Group III offense.<sup>29</sup>

Grievant argued that in this case the penalty was too harsh because Grievant was new in his role as a Sergeant at the Facility and had served in that role for only a couple of months at the time of these events. It is reasonable for an Agency to hold employees in supervisory positions to a higher standard with the expectation that they will set an example for appropriate behavior. Even if Grievant were not held to the higher standard of a supervisor in this case, the Agency has met its burden of proving that Grievant falsified records by omission which is a Group III offense.

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

Grievant at times appeared to argue that the Agency failed to engage in progressive discipline. Grievant argued that the Agency's discipline was too harsh because he was a dedicated employee with a long history of good performance and long service to the Agency. Although agencies are encouraged to engage in progressive discipline, agencies are not required to do so.

The Agency has presented sufficient evidence to support its disciplinary actions.

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<sup>28</sup> See Virginia Department of Corrections Operating Procedure 135.1.

<sup>29</sup> See Virginia Department of Corrections Operating Procedure 135.1, Standards of Conduct, Procedure.

### Mitigation

Grievant argued that the discipline should be mitigated because of Grievant's long years of service and history of good work performance, including a good attendance record. Grievant also argued that his discipline should be mitigated because he was new to the Facility and new in his role as a supervisor.

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 and Deputy HRO both testified that in determining the appropriate discipline for Grievant's misconduct, the Agency considered mitigating factors, including Grievant's years of service, work performance, and other mitigating factors. Although Regional Administrator and Deputy HRO both testified that they believed that Grievant had been employed by the Agency for more than six years when he was terminated, rather than 15 years as Grievant argued, they also both testified that, whether Grievant had been employed by the Agency for six years or 15 years it would not change the Agency's determination as to discipline because of the severity of Grievant's misconduct and Grievant's supervisory role.<sup>30</sup>

A Hearing Officer is not a super personnel officer and must give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy. 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...."<sup>31</sup> 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.

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<sup>30</sup> Hearing Recording at 47:15-1:25:45, 1:35:02-1:51:03.

<sup>31</sup> Va. Code § 2.2-3005.



## 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 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto: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.<sup>32</sup>

*Angela Jenkins*

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Angela Jenkins, Esq.  
Hearing Officer

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<sup>32</sup> 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.