



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12261

Hearing Date: July 1, 2025

Decision Issued: August 8, 2025

PROCEDURAL HISTORY

On February 5, 2025, Grievant was issued a Group II Written Notice of disciplinary action with termination for failure to follow instructions or policy related to ensuring that a body worn camera was active and recording during a cell extraction on August 26, 2024.¹

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 and policies on Use of Force and Standards of Ethics and Conflict of Interest.²

On March 5, 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 1, 2025, a hearing was held at the Facility.

APPEARANCES

Grievant
Agency Legal Advocate
Agency Party Designee
Witnesses

¹ Agency Ex. at 1-3.

² Agency Ex. at 4-6.

ISSUES

1. Whether Grievant engaged in the behavior described in the written notices?
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 Corrections Sergeant at a Department of Corrections Facility. As a Sergeant, Grievant was a line supervisor, that is he supervised correctional officers at the Facility. Grievant had been employed by the Agency for approximately 15 years.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 how to write reports of incidents, including reporting uses of force.⁴ Grievant also received training on the use of body worn cameras.⁵ Administrative Captain provided cell extraction training to Grievant and other security personnel as recently as August 20, 2024.⁶

Inmate-A was a correctional inmate housed in the Restorative Housing Unit of the Facility.

³ Hearing Recording at 2:59:37-3:00:37.

⁴ Hearing Recording at 1:35:43-1:42:47, 1:45:48-1:53:15 and see Agency Ex. at 69-117.

⁵ Agency Ex. at 88.

⁶ Agency Ex. at 41-42.

On August 26, 2024, Grievant was on duty at the Facility. Grievant observed Inmate-A wearing a cord or cable around his neck. Grievant notified Captain-2 of his observation.⁷

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

Captain-1,⁸ Captain-2,⁹ and Lieutenant¹⁰ 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 19:03:40.¹¹ 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.¹²

Footage from Grievant's body worn camera showed that Grievant's body worn camera was activated at approximately 18:52:25 on August 26, 2024. Video footage from Grievant's body worn camera showed the other officers standing outside of Inmate-A's cell. Captain-2 could be seen attempting to instruct Inmate-A to cooperate and comply with the instructions he was given. Grievant turned off (or deactivated) his body worn camera at approximately 18:54:36, shortly before the officers entered Inmate-A's cell.¹³

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. Grievant and Sergeant-4 also tried to persuade Inmate-A to comply with the instructions, but Inmate-A refused.¹⁴

After the repeated instructions to Inmate-A to "cuff up" had failed to gain compliance from Inmate-A, Captain-1 instructed the officers that they would enter the Cell, and the plan would be to pin Inmate-A down on the bed and then handcuff him. The officers then lined up to enter the Cell.¹⁵

At approximately 18:57:50, the officers entered Inmate-A's Cell. Sergeant-1 was the first to enter the Cell and carried a shield. Sergeant-1 was followed by Lieutenant, Sergeant-2, Grievant, and then Sergeant-4.¹⁶ 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.

⁷ See Agency Ex. at 22-23.

⁸ See Agency Ex. 12, Video 1 (Captain-1 BWC footage).

⁹ See Agency Ex. 12, Video 2 (Captain-2 BWC footage).

¹⁰ See Agency Ex. 12, Video 3 (Lieutenant BWC footage).

¹¹ See Agency Ex. 12, Video 5 (Sergeant-4 BWC footage).

¹² See Agency Ex. 12, Video 6 (Sergeant-2 BWC footage).

¹³ See Agency Ex. 12, Video 4 (Grievant BWC footage) and Hearing Recording at 2:31:24-2:40:15.

¹⁴ See Agency Ex. 12, Video 1, 2, and 4 (Captain-1, Captain-2, and Grievant BWC footage).

¹⁵ See Agency Ex. 12, Video 1, 2, and 3 (Captain-1, Captain-2, and Lieutenant BWC footage).

¹⁶ See Agency Ex. 12, Video 1 (Captain-1 BWC footage).

Almost immediately after the officers entered the Cell, the handle on the shield broke.¹⁷ Sergeant-1 then handed the shield to Lieutenant who moved the shield out of the way of the other officers.¹⁸

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 and the officers tried to restrain him. 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. Sergeant-1 moved his closed right fist in a forceful punching motion down toward the covered Inmate-A at least three times.¹⁹ Grievant was facing the bed and Inmate-A and appeared to have grabbed onto either Inmate-A's leg or Inmate-A's sheet or mattress and was attempting to pull Inmate-A off the bed.²⁰

The officers were then able to pull Inmate-A with his mattress onto the floor of the Cell.²¹

After Inmate-A was on the floor, at approximately 18:58:13, Lieutenant's body worn camera footage showed Sergeant-1, who was standing to the left of Inmate-A bend over toward Inmate-A and again move his closed right fist in a punching motion toward Inmate-A.²² Grievant was facing Inmate-A and Sergeant-1 and appeared to be pulling on Inmate-A or Inmate-A's mattress.²³

The Lieutenant, Sergeant-2, and Sergeant-4 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."²⁴

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 to say, "I'm not resisting" and "I'm standing my ground."²⁵ 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.²⁶

Sergeant-2, Sergeant-4, Grievant 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

¹⁷ See Agency Ex. 12, Video 2 and 3 (Captain-2 and Lieutenant BWC footage) and Agency Ex. at 22-23.

¹⁸ See Agency Ex. 12, Video 2 and 3 (Captain-2 and Lieutenant BWC footage).

¹⁹ See Agency Ex. 12, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

²⁰ See Agency Ex. 12, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

²¹ See Agency Ex. 12, Video 2, 3 (Captain-2 and Lieutenant BWC footage).

²² See Agency Ex. 12, Video 3 (Lieutenant BWC footage).

²³ See Agency Ex. 12, Video 3 (Lieutenant BWC footage).

²⁴ See Agency Ex. 12, Video 1, 2, (Captain-1 and Captain-2 BWC footage) and see Video 3 (Lieutenant BWC footage).

²⁵ See Agency Ex. 12, Video 1, 2, 3 (Captain-1, Captain-2 and Lieutenant BWC footage).

²⁶ See Agency Ex. 12, Video 1, 2, 3 (Captain-1, Captain-2, and Lieutenant BWC footage).

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 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.²⁷ 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. Footage from Captain-2's camera showed Grievant standing and facing the Cell floor where Sergeant-1 held Inmate-A in the chokehold. 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."²⁸

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.²⁹

Lieutenant's camera footage showed that Sergeant-4 and Sergeant-2 held the handcuffed Inmate-A in a corner of the Cell as Grievant and other officers began their search of the Cell for contraband. 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...." Grievant and Captain-2 could be seen inside the Cell searching for contraband when Inmate-A made this statement.³⁰

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. A nurse was called to Inmate-A's Cell and then Inmate-A was taken to the Facility's medical department.³¹ Grievant was among the officers who accompanied Inmate-A to the medical department.

The officers found contraband in the form of two cable cords during their search of Inmate-A's cell.³²

Grievant telephoned Administrative Captain at home that evening and told Administrative Captain that the cell extraction did not go as it should have and that Administrative Captain needed to look into it. Grievant did not provide Administrative Captain with details as to what happened during the cell extraction that prompted Grievant's call or what aspects of the cell extraction did not go as they should have. In

²⁷ See Agency Ex. 12, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

²⁸ See Agency Ex. 12, Video 2 and 3 (Captain-2 and Lieutenant BWC footage).

²⁹ See Agency Ex. 12, Video 3 (Lieutenant BWC footage) and see Video 1 and 2 (Captain-1 BWC footage and Captain-2 BWC footage).

³⁰ See Agency Ex. 12, Video 3 and 5 (Lieutenant and Sergeant-4 BWC footage).

³¹ See Agency Ex. 17 and see Agency Ex. 12, Video 5 (Sergeant-4 BWC footage).

³² See Agency Ex. at 22-23 and Agency Ex. 12, Video 5 (Sergeant-4 BWC footage).

his role, Administrative Captain did not have access to body worn camera footage. Administrative Captain contacted Captain-1 and advised him that he should review the body worn camera footage from the August 26, 2024, cell extraction because Grievant because Grievant had told him that the cell extraction “did not go right.”³³ Administrative Captain did not look into the matter further.

Grievant submitted an Internal Incident Report regarding the cell extraction. The document was dated August 27, 2024, at approximately 6:05 am. Grievant reported that the incident occurred on August 26, 2024, at 7:00 pm. Grievant provided the following as his “Description of Incident:”

On the above date and approximate time, I [Grievant] was assigned to the Cell extraction team to retrieve contraband from Inmate [redacted] cell. The team consisted of [Sergeant-1] as the Shield man, [Lieutenant] was assigned to the upper extremities, [Sergeant-2] was assigned to the Upper extremities, [Grievant] 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 Cell [redacted] and placed [redacted] on the ground but inmate was still combative. Restraints was applied to the hands of [redacted]. While in cell [redacted] conducting the check for contraband, two altered cable cords 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.³⁴

Grievant, Sergeant-1, Sergeant-2, 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 may have punched (or struck) Inmate-A or that Sergeant-1 may have choked or placed Inmate-A in a chokehold during the cell extraction.³⁵

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 [Grievant], [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. . .³⁶

³³ Hearing Recording at 1:42:47-1:45:48, 2:31:24-2:36:14, 2:44:35-2:58:19.

³⁴ Agency Ex. at 18. The Agency's Advocate stated during the hearing that the redactions to the Internal Incident Report 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.

³⁵ Agency Ex. at 16-23. 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.

³⁶ Agency Ex. at 25-27.

During the Agency's investigation of the incident, Grievant was interviewed by Special Agent. Grievant also provided a written statement that stated that he saw Sergeant-1 hit Inmate-A with a "closed fist at least once" and he saw Sergeant-1 "grab Inmate-A in a chokehold." Grievant wrote in his statement that he did not include the information in his report because he was taught when reporting about a cell extraction to "write his role in a cell extraction."³⁷ Grievant also told Special Agent that he relayed concerns about the cell extraction to Administrative Captain.³⁸

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."³⁹

Group II Written Notice – Body Worn Camera Use

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

The preponderance of the evidence showed that Grievant engaged in misconduct by failing to follow Agency policy when he turned off his body worn camera and did not have his body worn camera activated before entering Inmate-A's Cell for the cell extraction on August 26, 2024.

Agency Operating Procedure 430.6, Body Worn Camera Equipment, establishes guidelines for the operation of body worn camera equipment by designated corrections officers for the purpose of enhancing transparency and accountability, decreasing allegations of excessive or unnecessary force as well as other complaints against staff, and documenting disruptive inmate activities in the Agency.⁴⁰

Security Supervisors, including Corrections Sergeants, up through Chief of Security positions, must activate their body worn camera at certain times, including when:

- Making rounds in inmate Housing Units, Recreation Area, Visitation Areas, etc.
- Asking inmates assigned to the Restorative Housing Unit if they wish to participate in outside recreation.
- Supervising meals in the inmate dining area.
- Interacting with or managing a disruptive/assaultive or potentially disruptive/assaultive inmate.

³⁷ Agency Ex. at 55.

³⁸ Agency Ex. at 30 and 55 and see Agency Ex. 12, Video 7 (Special Agent body worn camera footage).

³⁹ See Virginia Department of Corrections Operating Procedure 135.1.

⁴⁰ See Agency Ex. at 152-159.

- Responding to an incident.⁴¹
- Interacting with a staff member, volunteer, intern, visitor, or other individual who has become disruptive and/or assaultive.
- Monitoring Count
- Monitoring Institution Lockdowns/Searches
- Documenting an inmate's visitors request for and consent to a strip search.⁴²

Operating Procedure 430.6 makes clear that the officers assigned to a cell extraction team must wear a body worn camera when removing an uncooperative inmate from their cell. Each team member is required to wear a camera and team members wearing the camera must attempt at all times to position themselves properly, so the camera has a clear, unobstructed view of the extraction.⁴³

Once a body worn camera is activated, Operating Procedure 430.6 requires that the body worn camera stay on until the incident is contained, the situation is resolved, or the assignment is complete.⁴⁴ If security personnel fail to activate the body worn camera, fail to record the entirety of an interaction, interrupt or mute the recording, or the body worn camera malfunctions or is damaged, the officer must document the circumstances in an incident report.⁴⁵

Grievant admitted that he turned off his body worn camera during the moments before he entered Inmate-A's Cell with the other officers. Grievant did not dispute that he had access to the Agency's policies regarding the use of body worn cameras. Grievant generally asserted that he did not have time to review the policies due to understaffing at the Facility.⁴⁶ Grievant testified to his recollection of the past practice of having at least one officer filming the entire cell extraction with a hand-held camera. Grievant did not recall receiving any instruction regarding the use of body worn cameras during the cell extraction training he received on August 20, 2024. Grievant testified that he observed that other officers, including two superior officers, had their cameras turned on, so he turned his body worn camera off. Grievant asserted that he did not believe that there was a need to keep his camera activated because there were two Captains that would be standing outside of the cell with their body worn cameras on and recording the cell extraction. Grievant also testified that Sergeant-2's camera was knocked off during the cell extraction which, Grievant noted, could have happened to Grievant's camera even if he had left it activated during the cell extraction.⁴⁷

⁴¹ An "incident" is defined as "An actual or threatened event or occurrence outside the ordinary routine that involves:

- The life, health and safety of employees, contractors, volunteers, guests, or inmates....
- Damage to state property
- Disruption or threats to security, good order, and discipline of a facility or organizational unit
- Exposure of the Department of Corrections to significant media or public attention. See Agency Ex. at 134.

⁴² Agency Ex. at 156-157.

⁴³ Agency Ex. at 156-157.

⁴⁴ Agency Ex. at 157.

⁴⁵ Agency Ex. at 157-158.

⁴⁶ Hearing Recording at 2:41:26-2:44:35.

⁴⁷ Hearing Recording at 2:31:24-2:40:15

Although Grievant did not recall being specifically trained with respect to operation of the body worn camera during a cell extraction or when entering a cell, Grievant testified that he received “broad” training about when to activate the body worn camera, including during “any incident that you’re going to have direct contact with an inmate.”⁴⁸ Both Special Agent and Administrative Captain testified that, consistent with Agency policy, Grievant was required to have his body worn camera turned on when he entered Inmate-A’s cell.⁴⁹ Administrative Captain testified that during the training he provided on August 20, 2024, he reviewed with the training participants that every officer had to wear a body worn camera during a cell extraction and that those cameras had to be activated, but that he did not “mock” or practice use of the body worn cameras during the training.⁵⁰

On August 26, 2024, Grievant entered Inmate-A’s cell in order to gain compliance by Inmate-A to allow officers to search Inmate-A’s cell. This was an incident during which Grievant expected to have direct physical contact with Inmate-A in order to gain compliance and during which there was the potential that Inmate-A could become further disruptive and even assaultive. Grievant also entered Inmate-A’s Cell as part of a cell extraction team. Operating Procedure 430.6 required Grievant to have his body worn camera on and activated when he entered Inmate-A’s cell on August 26, 2024. Grievant had his body worn camera on his person and activated as the officers were preparing to enter Inmate-A’s cell for the cell extraction and, contrary to policy, Grievant chose to turn off his body worn camera such that it was no longer activated, before entering the Cell and before the incident had concluded. Grievant was not ordered to turn off his body worn camera. That Grievant’s camera “could” have been knocked off during the cell extraction was not a reason to turn the camera off. If Grievant was unsure of the need to keep his body worn camera activated, he could have asked one of the Captains involved in the cell extraction for guidance. Even if Grievant’s actions were unintentional and due to a misunderstanding of policy, Grievant’s actions were a violation of policy nonetheless.

The Agency has met its burden of proving by a preponderance of the evidence that Grievant’s deactivation of his body worn camera in the moments before entering Inmate-A’s Cell was a failure to follow Operating Procedure 430.6 and was misconduct.

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

Failure to comply with policy or procedure is a Group II offense.⁵¹ Grievant failed to follow policy when he deactivated his body worn camera before entering Inmate-A’s cell on August 26, 2024.

A Group II offense may result in termination only if there are other active written notices such that the accumulation of offenses warrants termination.

The Agency’s termination of Grievant’s employment for this Group II offense is consistent with policy if Grievant has another active Group II (or Group III) offense.

⁴⁸ Hearing Recording at 3:00:37-3:01:36, see also Agency Ex. at 88.

⁴⁹ Hearing Recording at 53:07-54:24, 1:45:48-1:46:19.

⁵⁰ Hearing Recording at 1:45:48-1:46:19.

⁵¹ See Department of Corrections Operating Procedure 135.1, Procedure XIII, B.2.

Group III Written Notice – Falsification of Records by Omission

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 hit Inmate-A at least one time with a closed fist and that Sergeant-1 placed Inmate-A in a chokehold.

Consistent with Agency Operating Procedure 420.1, Use of Force,⁵² 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. Agency security personnel are not trained to strike, punch, or choke inmates or to restrain inmates using a chokehold.⁵³

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 also makes clear that reports of use of force must be accurate and complete.⁵⁴

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.⁵⁵

During the hearing, Grievant did not deny that he observed Sergeant-1 hit Inmate-A with a closed fist.⁵⁶ Grievant also did not deny that he observed Sergeant-1 place Inmate-A in a chokehold.⁵⁷ Grievant did not dispute that he had access to the Agency's policy regarding use of force. Grievant argued that his failure to include his observations of Sergeant-1's actions in his Internal Incident Report was not misconduct. According to Grievant, he was taught, at another Agency facility, to include in the Internal Incident Report his role or involvement in the cell extraction and that the higher-ranking officers involved in the cell extraction would be responsible for filling in any remaining details.⁵⁸

Agency witnesses credibly testified that, consistent with Operating Procedure 420.1, Agency security personnel are trained to report any use of force that they engage in, that they observe, or that is reported to them. Security personnel also are trained, consistent with Agency policy to include in their incident reports the "who, what, when,

⁵² Agency Ex. at 132-151.

⁵³ Agency Ex. at 167-168 and Hearing Recording at 16:30-57:34, 1:06:00-1:33:00, 1:34:00-1:53:15.

⁵⁴ Agency Ex. at 166.

⁵⁵ Hearing Recording at 32:09-36:00, 46:22-47:32, 51:12-53:07, 57:00-57:34, 1:47:02-1:53:15.

⁵⁶ See Agency Ex. at 55 and Hearing Recording at 2:30:33-3:15:07.

⁵⁷ See Agency Ex. at 55 and Hearing Recording at 2:30:33-3:15:07.

⁵⁸ Hearing Recording at 2:30:33-3:15:07.

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.⁵⁹

Grievant’s understanding of his reporting responsibility as limited to reporting only his role in the cell extraction in his Internal Incident Report is inconsistent with the requirements of Operating Procedure 420.1. Grievant’s testimony as to his understanding of his reporting responsibility also is inconsistent with the credible testimony of Special Agent and Administrative Captain, who testified that, consistent with Operating Procedure 420.1, security personnel are trained to report more than just their role in an incident and that they are trained to report any use of force, including the who, what, when, where, and how of any incident.⁶⁰ Grievant’s testimony as to his understanding that he was only required to report his own role in the cell extraction and rely on superior officers to fill-in other details in their report of the incident was uncorroborated and would directly undermine the purpose of the Agency’s policy which specifically requires that each individual involved in the cell extraction submit their own report of the incident to ensure that all aspects and views of an incident are captured through the reporting.

Grievant argued that he contacted Administrative Captain because Grievant wanted to make sure that he was correct in his observations during the incident and that he expected Administrative Captain to “get back to him” after reviewing the camera footage from the cell extraction. Based on the evidence presented, however, Grievant did not provide Administrative Captain with any detailed information about his concerns as to what went wrong with the cell extraction or about why Administrative Captain, rather the security Captains overseeing the shift, should review the footage. Grievant testified that he asked Administrative Captain to review the footage and to get back to him. Although Grievant testified that he would have included information about his observations of Sergeant-1’s actions in his Internal Incident Report if Administrative Captain had gotten back to him and confirmed his observations, it was Grievant’s responsibility, not Administrative Captain’s responsibility, to ensure that Grievant’s report of the incident was accurate and complete. Further, the evidence showed that Grievant spoke to Administrative Captain by telephone on the evening of August 26 while Administrative Captain was at home and Grievant submitted his Internal Incident Report of the incident by 6:05 am on August 27, 2024.⁶¹ There was no evidence or testimony that Grievant advised Administrative Captain that Administrative Captain should review the footage immediately or that Grievant would wait for him to confirm any of Grievant’s observations before Grievant submitted his Internal Incident Report. Grievant did not follow-up with Administrative Captain before he submitted his Internal Incident Report to determine whether Administrative Captain shared his observations or to seek Administrative Captain’s guidance as to what Grievant should do with respect to his Internal Incident Report while he awaited Administrative Captain’s review of the footage. There was no evidence that at any time after Grievant submitted his Internal Incident Report and before the Agency began investigating Inmate-A’s complaint that Grievant contacted Administrative Captain or anyone else at the Facility to amend his Internal Incident Report

⁵⁹ Hearing Recording at 32:09-36:00, 46:22-47:32, 50:25-53:07, 57:00-57:34, 1:06:00-1:17:04, 1:34:00-1:53:15 and see Agency Ex. at 132-151.

⁶⁰ Hearing Recording at 41:54-47:32, 50:25-53:07, 56:21-57:34, 1:10:46-1:17:09, 1:34:00-1:53:15.

⁶¹ Agency Ex. at 18.

or otherwise report his observations of Sergeant-1's actions during the cell extraction on August 26, 2024.

Grievant observed Sergeant-1 hit Inmate-A with a closed fist at least once. Grievant observed Sergeant-1 place Inmate-A in a chokehold. 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.⁶²

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."⁶³ 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 hitting Inmate-A with a closed fist was key information about the cell extraction that occurred on August 26, 2024. Grievant's observation of Sergeant-1 placing Inmate-A in a chokehold also 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

Failure to follow policy is a Group II offense. Falsifying records is a Group III offense.⁶⁴ 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 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. Although agencies are encouraged to engage in

⁶² Agency Ex. at 160-181 and Hearing Recording at 32:09-36:00, 46:22-47:32, 51:12-53:07, 57:00-57:34, 1:47:02-1:53:15.

⁶³ Virginia Department of Corrections Operating Procedure 135.1, Procedure XIV.B.2.

⁶⁴ See Virginia Department of Corrections Operating Procedure 135.1, Standards of Conduct, Procedure.

progressive discipline, agencies are not required to do so. The Agency has presented sufficient evidence to support its disciplinary actions.

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, history of good work performance, and the fact that he contacted Administrative Captain about the cell extraction.

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 and work performance, as well as, the fact that Grievant contacted Administrative Captain. But, because of the severity of Grievant's misconduct, Grievant's role as a supervisor to other correctional officers, and that Grievant did not provide sufficient information to Administrative Captain to satisfy his reporting requirements, the Agency determined that it was not appropriate to reduce the discipline.⁶⁵

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...."⁶⁶ 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.

⁶⁵ Hearing Recording at 1:06:00-1:33:00, 2:02:05-2:27:05.

⁶⁶ Va. Code § 2.2-3005.

DECISION

For the reasons stated herein, the Agency's issuance to Grievant of a Group II Written Notice with termination and 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.

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.⁶⁷

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

⁶⁷ 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.