



COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12269

Hearing Date: July 31, 2025
Decision Issued: August 18, 2025

PROCEDURAL HISTORY

On December 6, 2024, Grievant was issued a Group II Written Notice of disciplinary action for using a racial slur in violation of the Agency's policies on civility in the workplace and standards of conduct. The disciplinary action included a three-day suspension and a transfer (without a pay reduction).¹

On December 26, 2024, Grievant timely filed a grievance to challenge the Agency's action. The outcome of the Third Resolution Step was not satisfactory to the Grievant and the matter advanced to hearing. On April 21, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On July 31, 2025, a hearing was held at the Virginia State Police Training Academy.

APPEARANCES

Grievant
Grievant's Counsel
Agency Advocate
Agency Party Designee
Witnesses
EDR Observer

ISSUES

¹ Agency Ex. 8.

1. Whether Grievant engaged in the behavior described in the Group II 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:

Grievant is a Senior Trooper with the State Police. Grievant has worked for the Agency as a Trooper for almost 15 years.² Evidence provided during the hearing showed that Grievant's performance has been satisfactory to the Agency and that recent performance evaluations rated Grievant's performance as "Extraordinary Contributor" and "Major Contributor." No evidence of active discipline was introduced during the hearing.

As a Senior Trooper with the Agency, Grievant had received training on civility in the workplace and cultural diversity.³

In May 2024, Grievant began working in the Division. As a trooper in the Division, Grievant's work would require him regularly to interact with members of the public, including individuals of different races and ethnicities.

The work that Grievant would be required to perform for the Division differed from his previous work responsibilities, so SR-Trooper was assigned to provide in the field training to Grievant.

² Grievant Ex. 10.

³ Agency Ex. Attachment B.

On June 17, 2024, Grievant, SR-Trooper, and Supervisor-Sergeant were discussing work. As part of that discussion, Grievant advised SR-Trooper and Supervisor-Sergeant that he would be working on the Juneteenth holiday and stated that it was "not my holiday." Supervisor-Sergeant testified that he was taken aback by the comment which he believed could be interpreted as negative toward the purpose of the Juneteenth holiday. Supervisor-Sergeant was concerned that if he could interpret Grievant's comment in a negative manner, other people also may interpret such a comment in a negative manner. Supervisor-Sergeant decided to address Grievant's comment by providing him with informal guidance on or about June 19, 2024. At that time, Supervisor-Sergeant advised Grievant of the importance of professionalism and being mindful of how other people may interpret his comments. In the context of that conversation and guidance, Supervisor-Sergeant also informed Grievant that SR-Trooper's family was multi-racial.

On July 3, 2024, SR-Trooper and Grievant were working together and traveling in an Agency-issued vehicle. SR-Trooper was driving with Grievant as the only passenger in the vehicle. Grievant received a text message from a contractor who was performing work for Grievant. Grievant was frustrated because he had received several text messages from the contractor throughout that day. Grievant believed the messages were unnecessary. According to Grievant when he received the text message from the contractor, out of frustration, he said something along the lines of "This f'ing "n----r," what does he want." Grievant testified that he realized that he "messed up" so he then said, "what does this dog want."

SR-Trooper heard Grievant's comment. SR-Trooper testified that his wife is black, and they have children and that when Grievant used the word "n----r," SR-Trooper felt angry and upset. SR-Trooper testified that he did not say anything to Grievant about the comment at the time because he was angry and he believed that if he said anything to Grievant about it in the moment it would escalate the situation.

Later that day or the next, Supervisor-Sergeant overheard SR-Trooper discussing Grievant's use of the word "n----r" with another trooper. Supervisor-Sergeant asked SR-Trooper about the incident and SR-Trooper described what happened while he was driving Grievant. Supervisor-Sergeant reported the incident to the First Sergeant and the Agency opened an internal investigation into the incident.

On December 6, 2024, the Agency issued Grievant a Group II Written Notice with a three-day suspension and a transfer. The Written Notice described the nature of the offense as:

This matter arose on July 3, 2024, when you used a racial slur while training with [SR-Trooper], riding in his Department vehicle. On that day, you were having some remodeling done on your house, and you had a roofer on site at your residence. You advised the roofer was constantly messaging, and it was starting to bother you. You received another text from the roofer and you said something to the effect of, "this [n----r] keeps bothering me." In accordance with General Order ADM 12.02 paragraph 6.b. of the State Police Manual, one Group II Written Notice is being issued to you. Your

conduct in this matter equates to a violation of "civility in the workplace" and is being addressed through our Standards of Conduct with respect to Civility in the Workplace, Discrimination and Maintaining the Department's Reputation (General Orders ADM 11.00 paragraph 6.b.1., 13.a. and 13.u.1, and ADM 11.01 paragraph 3.c.⁴

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."⁵

Consistent with the Commonwealth's policy on Civility in the Workplace (DHRM Policy 2.35), the Agency has adopted General Order ADM 11.01 regarding Civility in the Workplace. General Order ADM 11.01 makes clear that "[b]ehaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable."⁶

The Agency's Standards of Conduct also set forth the Agency's expectations that employees will maintain civility in the workplace. The Standards of Conduct prohibit the use of "obscene or abusive language."⁷ The Standards of Conduct also set the expectation that employees maintain the Agency's reputation by prohibiting employees from:

- (1) Engaging in conduct, whether on or off the job, that undermines the effectiveness or efficiency of the Department's activities. This includes actions which might impair the Department's reputation as well as the reputation or performance of its employees.
- (2) Being rude/discourteous.⁸

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

During the hearing, Grievant did not dispute that he engaged in the behavior and that the behavior constituted misconduct. Grievant admitted that he used the word "n----r" while working with SR-Trooper. Grievant did not appear to dispute that his behavior constituted misconduct that violated the Agency's standards of conduct and policies on civility in the workplace. Grievant argued that the discipline was too harsh.

⁴ Agency Ex. 8.

⁵ See Agency General Order ADM 12.02.

⁶ Agency General Order ADM 11.01 and see DHRM Policy 2.35.

⁷ See Agency General Order ADM 11.00, 6.

⁸ See Agency General Order ADM 11.00, 13.u.

Grievant's use of the word "n---r" was rude, unprofessional, and violated the Agency's policies on civility in the workplace. Even if Grievant was not directing the word toward SR-Trooper, his use of the word in front of SR-Trooper showed a lack of regard for, and offended, SR-Trooper. That Grievant did not intend to offend is beside the point. Grievant was in a professional setting with SR-Trooper and SR-Trooper was offended as a "reasonable person" would have been offended.

The Agency has met its burden of proving by a preponderance of the evidence that Grievant violated the Agency's standards of conduct and policies on civility in the workplace when he used the word "n---r" while on duty and working with SR-Trooper.

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

The Agency has met its burden of proving by a preponderance of the evidence that its discipline was consistent with law and policy.

Group II offenses include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level of offense is appropriate for offenses that significantly impact business operations and/or constitute neglect of duty, insubordination, the abuse of state resources, violations of policies, procedures, or laws. Examples of Group II level offenses include, but are not limited to, failure to follow a supervisor's instructions, policy violations, a violation of safety rules where there is no threat of bodily harm, refusal to work overtime, inadequate investigation.⁹

Consistent with DHRM Policy 2.35, General Order ADM 11.01 and General Order ADM 12.02 permit the Agency to assess the severity of an offense and its effect on the workplace in selecting the appropriate level of discipline. These determinations are fact-specific and subject to substantial discretion by Agency management.

During the hearing, Grievant asserted that he no longer contested the three-day suspension and the transfer, but that the issuance of a Group II Written Notice for the offense was too harsh.

Grievant argued that he made an offhand comment out of frustration, that the comment was not directed at any person, and that he did not use the word as a racial slur or in a racial context. Grievant argued that his misconduct was more appropriately classified as a Group I offense.

Although Grievant may not have intended his use of the word "n---r" as a racial slur or to be offensive, the word "n---r" is offensive and is a racial slur that carries with it the history of its use as such. Indeed, the word may be considered one of the most offensive words in the English language.¹⁰

⁹ See Agency General Order ADM 12.02.

¹⁰ Merriam-Webster's on-line dictionary defines the word as follows:

1 offensive; see usage paragraph below

—used as an insulting and contemptuous term for a Black person

2 offensive; see usage paragraph below

The preponderance of the evidence showed that Grievant violated the Agency's policies on civility in the workplace when he used the word "n----r" in the presence of a colleague who he knew or should have known would be offended by his use of the word. Grievant engaged in this behavior less than a month after he had been provided with informal guidance from Sergeant-Supervisor on the importance of professionalism and being mindful of how other people may interpret his comments. This type of behavior by its nature is serious and has significant impacts on business operations as it undermines team cohesion, staff morale, and productivity. In this case, SR-Trooper described feeling angry and upset by Grievant's use of the word "n----r." SR-Trooper also testified that he changed his work schedule and his way of performing his work in order to avoid having any interactions with Grievant.

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

Mitigation

Grievant argued that the Agency disciplined him too harshly for an offhand comment made out of frustration and that the Agency failed to appropriately consider mitigating factors, including Grievant's forthcomingness during the investigation and seriousness with which he has taken this incident, years of service, and history of good work performance without any prior discipline.

The Standards of Conduct provide that an Agency may reduce the level of discipline 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.

In this case, Captain and Major both testified that the Agency considered mitigating factors, including Grievant's years of service, history of satisfactory work performance, and other factors and the Agency determined that it was not appropriate to reduce the discipline further. That the Agency could have mitigated the discipline further but determined that it was inappropriate to do so, is not a reason for the Hearing Officer to conclude that the Agency's action exceeds 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

—used as an insulting and contemptuous term for a member of any dark-skinned race (see [race entry 1 sense 1a](#))

3 now often offensive; see usage paragraph below: a member of a class or group of people who are systematically subjected to discrimination and unfair treatment.

Usage of the [N-word]:

an infamous word in current English, so much so that when people are called upon to discuss it, they more often than not refer to it euphemistically as "the N-word." In senses 1 and 2, the word ranks as almost certainly the most offensive and inflammatory racial slur in English, a term expressive of hatred and bigotry. Sense 3 is also now rarely used and is often considered offensive. The word's self-referential uses by and among Black people are not always intended or taken as offensive (although many object to those uses as well), but its use by a person who is not Black to refer to a Black person can only be regarded as a deliberate expression of contemptuous racism.

must be “in accordance with rules established by the Department of Human Resource Management....”¹¹ 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 II Written Notice with a three-day suspension and transfer 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.

¹¹ Va. Code § 2.2-3005.

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.¹²

Angela Jenkins

Angela Jenkins
Hearing Officer

¹² 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.