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

DIVISION OF HEARINGS

In the matter of: Case No. 12270

Hearing Date: August 6, 2025
Decision Issued: August 26, 2025

PROCEDURAL HISTORY

On January 9, 2025, Grievant was issued a Group II Written Notice of disciplinary action, for failure to follow instructions and/or policy during an incident that occurred on June 16, 2024. On February 7, 2025, Grievant timely initiated a grievance to challenge the Agency's action. On April 17, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. The hearing was initially set for June 12, 2025; however, on June 3, 2025, a continuance was requested by counsel for the Grievant and granted by the Hearing Officer. On August 6, 2025, a hearing was held at a mutually agreed-upon location within the locality where Grievant is employed.

At the hearing, the Agency was represented by its advocate and the Grievant was represented by counsel. The Hearing Officer received all proposed documentary exhibits of the parties into evidence at the hearing. Agency Exhibits 1-13, consisting of pages 1-401[1] from the agency were entered without objection and Exhibits 1-9 (pages 1-137) from the Grievant were entered without objection.[2]

ISSUES

1. Whether the 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 and policy?

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?

[1] The agency's submission included an additional three pages, marked as Tab 14, to represent video evidence; however, neither party sought its admission. Accordingly, the Hearing Officer has not reviewed or considered the video evidence.

[2] The parties noted that Grievant's Exhibits 1-8 were encompassed in their entirety within the agency's exhibits as well. Within this decision, the Hearing Officer may cite to both sets of exhibits, using "A. Ex." when referring to the agency's exhibits and "G. Ex." when referring to the Grievant's exhibits.

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of 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.

APPEARANCES

Representative for Agency
Agency's Legal Advocate
Grievant
Grievant's Counsel
Witnesses

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer sets forth her findings of fact below:

1. During the time relevant to this proceeding, the Grievant was employed by the Agency (or, the "Department") as a Senior Trooper. He has worked for the Agency for approximately nine years.

2. Grievant has one active Group I Written Notice in his personnel file.[3] That Written Notice was based upon a sustained allegation of "Impairing Efficiency/Reputation of Department – Improper Actions on Duty" and issued on September 13, 2023. A. Ex. 14, p. 400. Additionally, Grievant received written counseling memos on several occasions throughout the course of his employment with the Department. A. Ex. 3.

3. On June 16, 2024, the Grievant was dispatched to a motor vehicle crash. Trooper H, who was new to the Agency and had graduated from its Academy approximately two months prior, assisted him.

4. While on the way to the scene of the crash, Grievant and Trooper H were informed by dispatchers that the vehicle had multiple occupants and had crashed into a tree which in turn damaged a power line. They were also informed that the occupants were attempting to remove the vehicle from the crash scene and a woman who appeared to be injured (she was reported to be limping and crying) was leaving the scene of the crash. A. Ex. 2, p. 33, 58, 61, 100.

[3] The parties stipulated that at the time this Written Notice was issued (January 9, 2025), Grievant had *two* active Group I Written Notices in his personnel file. However, by the date of this hearing, one of those Written Notices had been rescinded. The rescinded Written Notice should not have a direct bearing on the outcome of the case at hand; however, the Grievant raised this issue as a potentially mitigating factor, which will be discussed below.

5. Upon their arrival at the scene, multiple occupants of nearby houses were outside at the scene. While still in his vehicle, Grievant was approached by Ms. B.

6. Ms. B. had not witnessed the actual occurrence of the accident but indicated to Grievant where she believed that the driver of the vehicle in question lived. Ms. B. told Grievant "we do not know if anyone got hurt or not, we did not go down there." While talking with Ms. B., Grievant noted a sign reading "End of State Maintenance" mounted on a paved portion of the road. Tire marks were clearly observable on the paved portion of the road. Grievant believed those tire marks to have been made by the vehicle involved in the crash. A. Ex. 2, p. 52, 70, 85.

7. Grievant's primary objective at that time was to locate and speak with the driver of the vehicle. He and Trooper H walked to the home indicated by Ms. B, passing by Ms. A, who was standing in the front yard with another person. Ms. A. had witnessed the accident firsthand and called 911.

8. Upon Grievant's arrival at the residence, Mr. C. emerged, holding a partially consumed beer in his hand. Grievant and Trooper H observed another opened, partially consumed beer can sitting abandoned at the end of the home's driveway.

9. Mr. C. admitted to being the driver of the vehicle that crashed but claimed that he had not consumed alcohol prior to the crash, only afterwards. Mr. C. denied having a female passenger in the car with him.

10. Grievant did not ask any additional questions about alcohol consumption, the beer can at the end of the driveway, nor did he give Mr. C. a field sobriety test.

11. Grievant admitted that his experience and training indicate that individuals will sometimes attempt to consume alcohol after a crash to hide the fact they were drinking alcohol prior to the crash.

12. Mr. C. advised Grievant that the vehicle was not registered, and that he was test driving the vehicle to determine if it would be a good racing car. Mr. C. stated that the vehicle's accelerator had gotten stuck and caused the crash. He also indicated that he did not have insurance but was willing to pay for damages. Grievant later confirmed that the vehicle was not registered. A. Ex. 2, p. 108.

13. Trooper H did not believe Mr. C. was telling the truth about the cause of the crash.

14. Grievant told Mr. C. that the crash was not reportable because it occurred on private property. Grievant did not place charges against Mr. C. for any alleged violation of law.

15. Grievant and Trooper H then observed the damaged vehicle. Grievant estimated that repairs to the vehicle would cost approximately $5000. Grievant did not enter the interior of the vehicle or look at its accelerator.

16. Grievant and Trooper H returned to the patrol car. Trooper H. did not observe Grievant speak with any other witnesses. A. Ex. 2, p.102.

17. Grievant completed field notes on the Department's SP-50 report. He cleared the crash with a

disposition of "ANR," which indicates that the crash does not need to be reported to the Department of Motor Vehicles (a "non-reportable" crash).

18. Grievant did not complete Form FR-300, which is required to be sent to the Department of Motor Vehicles when a crash is reportable under statute (Va. Code § 46.2-373).

19. First Sgt. K, the area commander overseeing officer compliance, ran an audit on crashes marked as non-reportable by Grievant. Because of Grievant's past counseling and discipline, he was concerned regarding Grievant's performance in this area. After reviewing the details of the June 16, 2024 incident, he assigned Sgt. S. to conduct an administrative investigation.

20. As part of his investigation, Sgt. S. reviewed relevant video footage, visited the scene and took measurements of the tire marks, and interviewed witnesses, including Grievant and Ms. A. (the 911 caller).

21. Ms. A. told Sgt. S. that she saw the vehicle spin its tires before it left the paved portion of the road, hitting the tree. Ms. A. was upset that Grievant had walked past her without speaking to her on the day of the incident.

22. Sgt. S. also interviewed the driver, Mr. C. During the interview with Sgt. S., Mr. C. admitted that there was a female passenger who was injured but had since recovered.

23. Sgt. S. did not make a determination of whether the crash should have been reportable as part of the administrative investigation. Senior Trooper K was assigned to re-investigate and make that determination. Senior Trooper K holds advanced certification in accident reconstruction. He was not given any details about Grievant's earlier investigation.

24. An additional witness came forward during Senior Trooper K's investigation. That witness wished to remain anonymous and did not come forward the day of the incident because he believed the driver of the vehicle to be a troublemaker. He advised Senior Trooper K that the car had come from the paved road and struck the tree.

25. Senior Trooper K determined that the crash was reportable. Senior Trooper K primarily based this finding upon the additional witness, as well as the fact that Mr. C. had admitted to being on the paved portion of the road when he lost control of the vehicle.

26. During his interview with Sgt. S., Grievant admitted that on the day of the incident he had evidence that the vehicle had been on a state road, lost control, and struck a tree on private property. A. Ex. 2, p. 75. During that interview, Grievant also agreed that if a vehicle had been on a state road, lost control, and struck a house then the accident would be reportable. *Id*.

27. Grievant received training on Basic Motor Vehicle Crash Investigation upon his hire in 2016, and again in 2022 as a remedial measure for another incident. A. Ex. 11, p. 222-269, Tab 13 p. 400.

28. The administrative investigation against Grievant ultimately sustained two allegations: that he failed to investigate a reportable vehicle crash and failed to submit the FR-300 crash report.

29. On January 9, 2025, Grievant was issued a Group II Written Notice based upon these allegations by Captain D.

30. Captain D. testified that, while he thought Grievant "absolutely" should have done more regarding the field sobriety test for Mr. C., there was no way to get enough information after the fact that would have indicated Mr. C. was consuming alcohol prior to the crash.

31. Investigating motor vehicle crashes is a regular part of Grievant's job responsibilities, and his Employee Work Profile ("EWP") indicates it comprises 20% of his core responsibilities. A. Ex. 4, p. 134.

CONCLUSIONS OF LAW AND POLICY

The General Assembly enacted the Virginia Personnel Act, *Va. Code* § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides:

> It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

Pursuant to § 2.2-1201 of the *Code of Virginia*, the Virginia Department of Human Resource Management ("DHRM") promulgated Policy 1.60, *Standards of Conduct*. Policy 1.60 provides a set of rules governing professional and personal conduct and acceptable standards for work performance of employees and establishes a fair and objective process for correcting or treating unacceptable conduct or work performance.

Did the Grievant engage in the behavior, and did the behavior constitute misconduct?

The Written Notice in this matter contains two allegations: that the Grievant failed to properly investigate the motor vehicle crash and that he failed to submit a Crash Report (FR-300P), in violation of Department policy. At the hearing, the Department asserted that it originally purported to issue two separate Written Notices to Grievant - one for each of these allegations; however, when considering mitigation, it combined the two into one Written Notice. The Hearing Officer also notes that Grievant did not dispute that he did not submit the Crash Report; rather, he argues that he was not required to do so under relevant law and policy based upon the facts in this case.

The Agency's General Order 4.00, Motor Vehicle Crash Investigation establishes "uniform guidelines for traffic crash investigations by Department personnel…" A. Ex. 10, G. Ex. 5. The Hearing Officer has carefully reviewed this policy in order to determine whether the Grievant engaged in misconduct.

Pursuant to General Order OPR 4.00, the purpose of a motor vehicle crash investigation is "to determine if there has been a violation of the law, and if so, to obtain the necessary evidence to prosecute the violator. A secondary purpose is to obtain the necessary information to file the required report." A Ex. 10, p. 216.

This policy goes on to mandate that "all motor vehicle crashes coming to the attention of sworn employees that meet any of the conditions stated below shall be investigated…

a) … crashes involving personal injury, death and/or hit and run…

b) … crashes that involve an apparent extent in total property damage of the dollar value stated in §46.2-373 of the Code of Virginia, except those on private property…

c) …crashes involving a state-owned or state-leased vehicle…

d) …all other property crashes when directed to do so by a supervisor or when it is the opinion of the sworn employee that the best interest of law enforcement will be served by investigating the crash. Crashes involving DUI suspects, habitual offenders, or other offenses that warrant immediate enforcement action should be investigated." *Id*.

Further, General Order OPR 4.00 sets forth the following requirements when an investigation of a motor vehicle crash is warranted:

a) Conduct a detailed examination of the crash site in order to locate, mark for identification, and preserve all physical evidence. When needed to complete a crash investigation, available expert of technical assistance may be obtained from the crash reconstruction team and/or from sworn employees of the motor carrier safety team.

b) Locate and interview all persons who may have information relative to the crash under investigation, including the motor vehicle operators.

c) Utilize the Crash Investigation Field Note Pad (SP-50) to record the details of their investigation. A. Ex. 10, p. 217-218.

Additionally, "[a]ll motor vehicle crash investigations which by statute are required to be reported to the Department of Motor Vehicles will be submitted on the Police Crash Report (FR 300P)." *Id.*, p 219.

The testimony in this case indicates that Grievant failed to "conduct a detailed examination of the crash site" as well as "locate and interview all persons who may have information relative to the crash…" The Hearing Officer bases this conclusion on the following: first, it is undisputed that the Grievant did not seek out or speak with the 911 caller. Grievant used his discretion to locate and speak with the driver of the incident first; however, by the time he concluded that interview, Ms. A. was no longer at the scene. To this, Sgt. S. testified that the 911 dispatch would have, and did, capture her contact information, so

Grievant should have gone back and retrieved that information in order to locate and interview the caller. It was also undisputed that Grievant did not speak with the female passenger of the vehicle, who was likely injured by the crash. When Mr. C. denied having a female passenger, Grievant asked no further questions on that point, nor did he seek additional information about that issue from either 911 dispatch or other witnesses (including the 911 caller). Grievant should have made efforts to speak with both of these persons under the provisions of General Order OPR 4.00 (b).

Additionally, Grievant did not conduct a detailed examination of the crash site as required under General Order OPR 4.00 (a). Though the vehicle in question had been removed from the site, it was available to be examined, but Grievant did not look inside the vehicle in order to verify Mr. C.'s statements, nor did any evidence show that he measured or marked tire tracks as did Sgt. S.[4] The Department's Basic Motor Vehicle Crash Investigation training, which Grievant completed twice, reinforces General Order OPR 4.00 in stating that the primary purpose of crash investigation is "to determine if there has been a violation of law and, if so, obtain necessary evidence to prosecute." A. Ex. 11, p. 226. In this instance, the evidence indicates that Grievant was alerted to several potential violations of law, including the driver's potential reckless driving and/or intoxication, as well as his failure to maintain proper registration, insurance, and a current vehicle inspection. Nevertheless, Grievant did not pursue questioning in these areas or impose charges against the driver.

Finally, much testimony focused on whether Grievant should have reported the crash under the provisions of General Order OPR 4.00. The Hearing Officer finds that, under the totality of the circumstances, Grievant should have reported the crash. Grievant admitted to Sgt. S. that, had a vehicle lost control on a state road, then run off the road and hit a house, that crash would have been reportable. Considering the Department's role in maintaining the safety of the public, that conclusion appears logical to the Hearing Officer, and the situation at hand is practically indistinguishable. All testimony indicates that the tire marks clearly showed that the vehicle had "spun out" and created the marks on the state road prior to running off the road and hitting the tree. The Hearing Officer is not convinced by Grievant's argument that this scenario should constitute two separate events. The crash began on the state road and should have been reported, thus, according to General Order OPR 4.00, Grievant should also have completed the Police Crash Report (FR300P).

Based upon the foregoing, the Agency has met its burden of proving that Grievant engaged in misconduct.

Was the discipline consistent with law and 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

[4] It is unclear to the Hearing Officer whether providing a field sobriety test to Mr. C. should have been part of conducting a detailed examination of the crash site itself; however, the evidence suggests that Grievant should have done so. Grievant argued that it would have been impossible to verify exactly how much alcohol had been consumed prior to the crash since Mr. C. admittedly was drinking alcohol *after* the crash. However, other Agency witnesses testified that because Mr. C. was interviewed so close in time to the incident, a blood alcohol test could have shown if he were excessively impaired (i.e., if there was no way he could have consumed a vast amount of alcohol in the time between the crash and the test).

offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."

A violation of policy is normally considered a Group II offense. *See* DHRM Policy 1.60, Attachment A (which gives examples of offenses grouped by level). In this case, a Group II Written Notice was deemed appropriate by the Department, which also referred to Grievant's history of similar behavior as aggravating factors. EDR has cited to the *Rules for Conducting Grievance Hearings* VI(B)(2), which state that "a hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances." Thus, even if hearing officers disagree with an agency's assessment of severity of the offense, they are not free to substitute their judgment for that of the agency, as long as the discipline was consistent with law and policy.

In this instance, the Agency's discipline was consistent with law and policy.

Mitigation

Va. Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies, including "mitigation or reduction of the agency disciplinary action." As with all mitigating factors, the grievant has the burden to raise and establish any mitigating factors. *See e.g.,* EDR Rulings Nos. 2010-2473; 2010-2368; 2009-2157.

Under the *Rules for Conducting Grievance Hearings* VI (A), "a hearing officer is not a 'super-personnel officer' …[and] the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy." Accordingly, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. Because reasonable persons may disagree over whether and to what extent discipline should be mitigated, a hearing officer may not simply substitute his or her judgment on that issue for that of agency management.

A non-exclusive list of factors to consider 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. Here, the Grievant challenges the Department's mitigation determination because the Agency considered that, at the time of the issuance of the Written Notice, the Grievant had two active Group I Written Notices in his personnel file. He also points to many letters of commendation received in recognition of extraordinary performance/major contributions. G. Ex. 9. While past service to the agency may be a mitigation consideration, EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. Further, Department management considered Grievant's prior counseling and disciplinary history to be aggravating factors, which they may do under policy.

As to the recission of one Group I Written Notice prior to this hearing, the Hearing Officer finds that whether the Department considered the Grievant to have had one or two active Group I Written Notices in his record is not dispositive. The Captain who issued this Group II Written Notice testified that he considered the totality of Grievant's employment history and there were no additional mitigating factors

that would support reducing the Written Notice.

When an agency does not mitigate disciplinary action, the Hearing Officer's authority to mitigate arises only when the disciplinary action exceeds the limits of reasonableness. Here, the Agency's disciplinary action in this case is consistent with the *Standards of Conduct* and does not exceed the limits of reasonableness. In light of the above standard set forth in the *Rules*, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

In summary, the hearing officer determines for the Written Notice and the offenses specified in the Written Notice (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct; (iii) the Department's discipline was consistent with law and policy and that there are no additional mitigating circumstances justifying a further reduction or removal of the disciplinary actions.

DECISION

For the reasons stated herein, the Agency has sustained its burden of proof, by a preponderance of the evidence, and the Group II Written Notice is **upheld**.

APPEAL RIGHTS

Either party 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 from the date the decision was issued.

Please address your request to:

Office of Employment and 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 day when the decision becomes final.[5]

ENTERED: August 26, 2025

_____

Brooke Kennington, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

[5] Agencies must request and receive prior approval from EDR before filing a notice of appeal.