VIRGINIA: DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

(the "Agency" or "DHRM")

IN THE OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION

Eastern State Hospital, a State Facility (the "Hospital")

In Re: Appellant (the "Grievant")

Case Number: 12279

Hearing Date: July 14, 2025
Decision Issued: August 5, 2025

I. PROCEDURAL HISTORY

On April 7, 2025, the Grievant was issued a Group III written notice of disciplinary action (hereinafter referred to as the "Written Notice"), with termination, for a violation of DHRM's Standards of Conduct Policy, No. 1.60. The notice cited a violation of the Hospital's rule that employees must report convictions to the employee's supervisor and to the Hospital's Human Resource Department ("HR Department"). In addition, the notice cited the Grievant's prior contempt conviction which resulted in a breach of the Hospital's employee conduct regulation, Departmental Instruction ("DI") 506 (01-07). The Hospital terminated the Grievant for both violations which the HR Department determined to be Level III offenses.

On April 17, 2025, the Grievant timely appealed the Hospital's employment termination by filing a grievance with the Virginia Department of Dispute Resolution ("EDR").

On May 5, 2025, EDR assigned the Grievant's termination appeal to the Hearing Officer.

On July 14, 2025, the Hearing Officer conducted an in-person hearing for the Grievant in a conference room located at the facility. The Hearing Officer recorded the termination appeal proceeding and the parties later provided written closing statements to supplement the record.

On July 29, 2025, the Grievant filed Written Closing Remarks.

On July 30, 2025, the Hospital Representative filed Written Closing Remarks.

A. Appearances.

1. For the Grievant: Grievant appeared Pro Se

2. Grievant's Witnesses: Food Production Manager #2
   Food Production Manager #1
   Tray Line Supervisor II
   Tray Line Tech I
   Tray Line Tech II

Tray Line Tech Trainee
Supervising Dietitian
Food Procurement Manager

3. For the Agency: Hospital Advocate

4. Hospital's Witnesses: Hospital Human Resource Representative ("Hospital HR Representative")

   Former Human Resource Officer ("Former HR Officer")

B. Exhibits.

1. For the Hospital – Exhibit Book containing:

   Exhibit 1 – Tab 1, Written Notice. Pgs. 2-4.

   Exhibit 2 – Tab 2, Due Process Notice, Emails between Grievant and HR Officer, pgs. 5-9.

   Exhibit 3 - Tab 3, Williamsburg/James City County Court Details, Case #CR24000740-00, Defendant, Grievant, pgs. 10-14.

   Exhibit 4 – Tab 4, Grievant Acknowledgement of Understanding DI 505 (HRM), pgs. 15-16.

   Exhibit 5 – Tab 5, Departmental Instruction 506 (01-07) pgs. 18-26; Criminal History Checks and Background Verification Requirements; DRHM Policy 1.60, pgs. 27-30; Standards of Conduct, pgs. 31-49.

2. For the Grievant:

   Exhibit A – Email from Grievant to HR Officer dated 3/20/25, Response to HR Officer.

   Exhibit B – Email from HR Officer to Grievant, dated 3/20/25 @ 11: 42.

   Exhibit C – Email from Grievant to HR Officer, dated 3/20/25 @ 13:51.

   Exhibit D – Email from HR Officer to Grievant, dated 3/20/25 @ 14:51.

   Exhibit E - Email from Grievant to HR Officer, dated 3/23/25 @ 15:57.

   Exhibit F - Written Notice of Disciplinary Action, dated 4/17/25.

   Exhibit G – Email from Hearing Officer to Grievant, dated 6/24/25 @ 12:21.

   Exhibit H – Email from Hospital Representative to Hearing Officer, dated 6/24/25 @ 13:16.

   Exhibit I – Email from Grievant to Hearing Officer, dated 6/24/25 @ 18:10.

II. ISSUES

1. Did the Grievant engage in the conduct described in the Written Notice?

   The evidence was not preponderant to substantiate the written notice. Overall, the written notice is reduced to a Level 1 offense.

2. Did the conduct constitute misconduct?

   Violation of 506 (01-07) Criminal History Checks

   Yes. In part. The Hearing Officer believes that the Grievant forgot to report the court incident because she was under a doctor's care for illness related to the incident. She did report the arrest to an individual she believed to be her supervisor. She is subject to discipline for not reporting the court conviction to the HR Department, but she is entitled to mitigation of the charge. Therefore, the Written Notice charging the Grievant with failure to report the arrest to the HR Department is substantiated. The Written Notice charging the Grievant with failure to report the arrest to her supervisor is not substantiated. This charge is reduced to a Level I offense.

   Violation of 506 (01-07) DRHM Policy 1.60

   No. In the matter of the Written Notice charging the Grievant for the conviction itself, the Hospital's evidence did not prove a criminal conviction for contempt of court. Thus, the conviction charge is not supported by a preponderance of evidence.

3. Did the Agency's discipline comply with the law and policy?

   No. The HR Department was required to follow DI 506 (05) by providing guidance when confronted with an employee's court conviction. Per DHRM Policy, 506 (05), the HR Department must consider the weight of the Grievant's conviction, as a non-barrier crime. Disobedience to a judge's instruction is a non-barrier crime. The above policy instructs the HR Department to consider the conviction's severity and connection to the Grievant's job function.

   Here, the Grievant served as a court witness at her son's trial where she disobeyed a judge's order in his case. The Hospital HR Department was required to inquire further about the conviction details and the nexus between the non-barrier crime and the Grievant's job function. But the Hospital HR did not do so. Instead, the Hospital dismissed the Grievant without consideration for the basis of her conviction, time served, connection to her job and any other factors that DR 506 (05) requires.

   The Grievant's job function, Tray Line Supervisor, had little connection to the contempt of court charge. Therefore, the Hearing Officer does not opine that the Hospital rightfully terminated the Grievant.

Further, the Written Notice cited incorrect information as follows: "On December 20, 2024, you received criminal charges, and failed to notify the Agency. On March 6, 2025, you were convicted of misdemeanor criminal violations, and failed to notify the Agency. The charge and/or the conviction resulted in multiple days of detention in a jail. This was also not disclosed to the Agency."[1]

In fact, Grievant did not receive multiple violations and did not serve multiple days in detention or a jail. The record reflected that the Grievant was on medical leave for her anxiety, depression, high blood pressure and panic attacks due to the pending court issues caused by her son. She admitted that she received one conviction for speaking to her son about a letter he wrote when the judge instructed witnesses not to discuss the evidence. The Grievant stated also that she went in and out of the local jail within a short time, enough time served only to be processed at the local jail for a few hours.

4. Were there mitigating circumstances justifying a reduction or removal of the disciplinary action?

   Yes. The mitigating circumstances were extensive as above enumerated and explained.

5. Did the Hearing Officer consider mitigating circumstances?

   Yes. As stated above and applied.

III. BURDEN OF PROOF

The Hospital bears the burden of proof to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. *See* Grievance Procedure Manual ("GPM") Sec. 5.8. A preponderance of the evidence shows that what is sought to be proved is more probable than not.

IV. FACTUAL FINDINGS

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following factual findings:

The Hospital is a Virginia state facility that provides behavioral health related and developmental services to state residents. In so doing, the Hospital oversees patients' daily care, their personal needs, safety and welfare. The Hospital houses patients who are long-term and short-term residents.

At the Hospital, the Grievant functioned as a Tray Line Supervisor. She has performed the job for 36 years. Per the Supervisory Dietitian who testified, the Grievant worked before, during and after Covid, 30-60 days a week, without a break, and has always tended to patients' dietary duties with enormous attention to detail.[2] The Grievant has been a supervisor for 25 years.[3] The Supervisory Dietitian described

[1] See also Hospital Exhibit 2, Tab 2, pg. 6.
[2] Recording @ 2:31.
[3] See also the Grievant's Closing Remarks, pg. 1.

the Grievant as an employee whom she knew to be a Hospital employee who worked with dependability and perseverance, a most valuable employee. She stated that the Grievant is one who rarely took time off because of her job dedication and described the Grievant as an employee who did not knowingly break any Hospital rules.

However, in mid-March, 2025, there came a time when the Former HR Officer[4] purportedly learned that the Grievant was convicted of an offense. She believed that the Grievant served time in a local jail for a crime. Further, the Former HR Officer testified, the Grievant did not then inform the HR Department of her arrest and conviction as she was required to do. Also, she testified, "we gave her five days [to report the arrest and conviction to the HR Department]",[5] but the Grievant never did so.

Instead, in early March, 2025, the Former HR Officer testified that she was notified by the Hospital's HR Supervisor[6] that the Grievant's name appeared on a Facebook site entitled, "Busted,"[7] which named individuals who had recently been confined to local jails. After the Former HR Officer discovered the Grievant's conviction, she candidly admitted that she was confused about proceeding because she had never experienced an incident in which an employee's jail sentence had been presented to her for possible disciplinary action. The Former HR Officer alerted the HR Supervisor,[8] who "pulled the documents"[9] from the "Circuit Court"[10] to prove the employee's arrest and conviction. The paperwork purportedly showed that the Grievant was arrested and tried for a criminal contempt charge. The Former HR Officer testified that her HR Supervisor later shared the Circuit Court documents with her.

Subsequently, on March 19, 2025, the Hospital's HR Representative issued the Grievant a due process notice over the phone to the Grievant as follows:[11]

---

[4] The Former HR Officer testified by telephone from her current job because it was not convenient for her to travel to the termination hearing site. The Grievant objected to the Former HR Officer's telephone testimony, both before the witness testified and just prior to the Former HR Officer's testimony. The Grievant's oral objections are captured in the hearing recording. In response, the Hearing Officer overruled the Grievant's objection to this witness to testify by telephone testimony. The Hearing Officer noted that she would scrutinize the witness' credibility and require in-person testimony if the Former HR Officer's testimony did not appear to be credible by phone. The fact that her testimony was by phone did not prejudice the Grievant's due process right to a fair hearing.

[5] Recording @37.29.

[6] The Former HR Officer identified the employee, her former HR Supervisor, by name, who originally notified her that he had learned of a hospital employee's conviction. The named HR Supervisor did not testify. Another HR Officer was scheduled to testify by phone, but he was unavailable when the Hospital Advocate attempted to contact him. Thus, the former HR Supervisor who informed the Former HR Officer of the Grievant's arrest and conviction did not verify how he obtained the Circuit Court documents. But the Former HR Officer testified that the HR Supervisor who acquired the Circuit Court documents to show the Grievant's arrest and conviction, did so by accessing a Facebook page entitled, "Busted." Thus, the Hospital HR Department was unable to show how the Hospital obtained evidence of the Grievant's arrest and conviction. The court documents did not come from the State Criminal Record Registry to which DI506 refers.

[7] Recording @ 28.30.

[8] A Hospital HR Officer who was scheduled to testify did not answer when called by the Hospital Advocate. Because no Hospital employees testified regarding obtaining any court documents, the Hospital was unable to lay a foundation to authenticate the court documents supporting the Grievant's arrest or conviction.

[9] Recording @29.09.

[10] Id.

[11] See also Hospital Exhibit 2, Tab 2, at 6.

"*This letter serves as your due process notice that [the Hospital] is considering giving you formal Disciplinary Actions, up to and including a Group III Written Notice and termination from employment, for your violations of state policy and DBHS Departmental Instructions. Specifically, for violations of DHRM Policy 1.60 Standards of Conduct, and DBHDS DI 506 Criminal History Checks and Background and Verification Requirements, which state that employees must disclose criminal charges and convictions within five (5) business days.*

On December 20, 2024, you received criminal charges and failed to notify the Agency. On March 06, 2025, you were convicted of misdemeanor criminal violations and failed to notify the Agency. The charge and/or the conviction resulted in multiple days of detention This also was not disclosed to the Agency. If you choose not to respond to this notice by 12:00 pm, March 21, 2025, a decision regarding disciplinary actions will be made based upon to [the Hospital].

If there is any reason why you are unable to provide a response on the date and time listed above, please let me know immediately so that an alternative time can be selected. If you have any questions, please do not hesitate to contact me or [the Hospital HR Representative] at [the Hospital HR telephone number]. Please provide a written Response by 12:00 p.m on March 21, 2025, of any mitigating circumstances for us to consider."[12]

On March 19, 2025, the Former HR Officer testified also that the documents she received are the same documents that the HR Supervisor gave to her. But the HR Supervisor did not appear at the termination hearing. The only witness available who had seen the Circuit Court documents, used to prove the Grievant's arrest and conviction, was the Hospital's HR Representative. But she was unable to lay a foundation or authenticate the Circuit Court documents because she did not receive them from the Circuit Court. Thus, there was no Circuit Court document, verifiable, to certify that the Grievant was ever arrested and convicted of a crime. *See also* Hospital Exhibit 3, Tab 3, pgs. 11-14.

By return correspondence, the Grievant timely advised the Hospital HR representative that she had been absent from work since February 18, 2025, pursuant to doctor's orders that she should "take off time from work for health reasons."[13]

Regarding the Grievant's alleged failure to report her conviction, the Grievant also stated in response to the Hospital's due process notice as follows:

"*With regards to my reporting receiving a misdemeanor, I sincerely had no knowledge of this requirement. On December 20, 2024, I learned, in court, of a letter my son had written. When I spoke to my son later that evening I asked him about the letter, for that I was convicted of Contempt of Court on March 5, 2025. Again, I had no idea I had to promptly report this to Human Resources."*[14]

On March 23, 2025, after the Grievant was apparently granted leave to supplement her due process notice and she stated therein as follows to explain her work absence (for which she was not being

[12] *See also* Hospital Exhibit 2, Tab 2, at 6.
[13] Recording @ 53.04.
[14] *See also* Grievant's Exhibit A; See also Hospital Exhibit 2, Tab 2, Pgs. 8-9.

disciplined) and her reasons for not earlier informing the HR Department why she was convicted of a misdemeanor and her memory lapse in her failure to report it as follows:

"I have been a dedicated employee for the State of Virginia at [the Hospital] for 36 years, with 25 years as a supervisor, exceeding expectations on all evaluations. I have always gone over and beyond to support the organizations missions and goals to include working in many additional departments as needed and performing many hours of overtime. And I was never out sick for long periods until this current period for which documentation has already been submitted to [the HR Department].

I have been out under doctor's orders due to depression and stress, to include anxiety and panic attacks, related to, what I believe is my son's "undue incarceration." My youngest was incarcerated in June of 2023 for a crime he did not commit. I have been a mess ever since. Trying all I could do to hold it together. Then in December of 2024, after having my son incarcerated for eighteen months without him being convicted of anything, he gets a trial. My periods of depression and anxiety got much worse. My doctor prescribed medication, but I was still a mess.

At the Williamsburg Courthouse, while waiting to be called as a witness, a few people started talking about a letter my son had written. That night, when I spoke with my son on the phone, I asked him about this letter. When I returned to court the next day I learned I was being charged with Contempt of Court. The judge asked me about having discussed my testimony and I told her I heard about a letter my son had supposedly written and asked him about it. I explained to the judge that I was not familiar with court procedures. This was the first I had heard of this letter and wanted to know what it was about. I was not trying to manipulate any process. I still feel that if witnesses were secluded, as I understand that we were supposed to be, but the court was short staffed, I would never have heard people talking, I wouldn't have a misdemeanor conviction, and we wouldn't be here today, but I accept responsibility for my actions.

I did not know that I had to report that I was being charged and later convicted of Contempt of Court to my job. Had I known this, I would have reported it.

I see no benefit in not reporting it. There was no malice or ill-intent.

I was unaware of the Agency's policy on reporting arrests. I was not trying to deceive the state in any way. I acknowledge receiving training on this subject in 2010 but did not remember. I know I should be well-versed in the Agency's policies and need training in that area. I should have reported earlier and would have if I had known.

I was not trying in any way to deceive the state in any way.

I respectfully request the minimum disciplinary action. I have already been punished by the courts, as well as financial penalties. I believe additional training is appropriate for this infraction."[15]

[15] *See also* Grievant's Exhibit C. The Hearing Officer notes that the above expansive response to the Written Notice did not appear in the Hospital's exhibits. Though the Grievant's above response was dated March 23, 2025, it does appear to the Hearing Officer that the Grievant was given additional time to respond to the Hospital's Written Notice.

Notwithstanding the Grievant's statement to the effect that she did not recall having to report her arrest and conviction to the HR Department, the Hospital proceeded with termination on April 7, 2025. The Grievant's Written Notice stated as follows regarding the Hospital's rationale for termination:

After receiving the Grievant's supplemental due process statement noted above, the Hospital HR Representative followed up with the conclusion below:

"***Circumstances Considered***

[The Grievant's] due process statement was received, reviewed and considered. However, due [to] her failure to notify her supervisor of the arrest, charges or convictions is a violation of DHRM Policy I.60 Standards of Conduct, and DBHDS DI 506 Criminal History Checks, the Agency has decided to issue a Group III WN[16] with termination of employment."[17]

Regarding the Hospital's consideration of the Grievant's circumstances in the termination, the Hospital HR Representative stated that the fact that the Grievant had not informed the Hospital of her arrest and conviction weighed heavily in their determination that the Grievant ought to receive a Group III termination notice rather than to grant leniency. The HR Representative testified that, if the Grievant had notified the Hospital of her court issues, the Former HR Officer, or the HR Department, of her arrest and conviction, we could have given her "leeway."[18]

Further, the Hospital HR Representative elaborated in her testimony that another outcome might have been possible for the Grievant if the Hospital had been timely notified (within 3-5 days) of the Grievant's arrest and conviction. But as the Hospital's HR Representative, she clarified, she also believed that the Grievant had not notified her supervisor, the Production Manager #1 or the HR Department. For that reason, the Former HR Representative deemed that the Grievant was not entitled to further consideration. At that point, the HR Department elected to terminate the Grievant. But the Former HR Representative testified that she did not remember if the Grievant informed her that she did inform Production Manager #2 of her pending charges.[19]

During her testimony at the termination hearing, however, the Grievant informed the participants that she did notify Production Manager #2, whom she believed to be her supervisor, of her pending charges. Further she stated at the termination hearing "… and he [Production Manager #2] signed off on it."[20] Also, the Grievant asserted at the termination hearing, that she understood Production Manager #2 to be her supervisor because of an organizational chart that the Former HR Officer had provided at a weekly staff meeting she had attended. The Former HR Officer admitted on the record that she had provided an earlier organizational chart to that effect, that she did have weekly staff meetings on Wednesdays and that she was unclear if Production Manager #2 had been the Grievant's supervisor in the past.[21]

Further, the Former HR Officer dismissed the Grievant's defensive claim that the Grievant had, in fact, reported the criminal charge and conviction to an employee she believed to be her supervisor,

---

[16] "WN" is the acronym for "Written Notice."
[17] See also Hospital Exhibit 1, Tab 1, pg. 3.
[18] Recording @ 1:11-1.16.
[19] Recording @ 1:10-1:15.
[20] Recording @54.23-55.00.
[21] Recoding @ 55.08-55.06.

Production Manager #2. But the Former HR Officer was certain that the Grievant should not be given any leniency or mitigation. The Former HR Officer asserted emphatically that the Grievant knew, or should have known, that Production Manager #2 was not her supervisor. She testified also that, according to a later organizational chart, that the Former HR Officer produced for Hospital employees to follow, Production Manager #1 was clearly the Grievant's superior, not Production Manager #2.

But the Former HR Officer did not produce the organizational chart, to which the Former HR Officer referred, during her testimony. Also, the Hospital's evidentiary package does not include any organizational chart showing that either Production Manager #1, or Production Manager #2, was the Grievant's supervisor.

In fact, Production Manager #2, whom the Grievant asserted she notified as her supervisor, testified that he also believed the Grievant was "supposed to come to [him] first."[22] In support of his belief, he recalled a staff meeting in which [the Former HR Officer] stated that he was the Grievant's "boss… then you're supposed to go to [Production Manager #1."[23] Production Manager #2 was credible in his testimony. He testified regarding the Grievant's good character and skills as a food services professional. Further, he testified that he never knew the Grievant to "break a policy."[24] He chuckled slightly when asked by the Grievant if he remembered every Hospital policy. "I have to read up on most of it," he stated.[25]

When Production Manager #1 testified, he seemed at first to disagree that Production Manager #2 was the Grievant's supervisor. He offered that Production Manager #2 had once asked him [Production Manager #1] if he could be notified when [kitchen] employees were given leave by Production Manager #1 because Production Manager #2 did not want to be unaware when [kitchen] employees were absent. But Production Manager #1 testified that he thought Production Manager #2 knew that he had no authority or responsibilities in [independently] granting leave.[26]

Later, Production Manager #1 equivocated regarding Production Manager #2's supervisory role. Production Manager #1 contradicted his earlier statement when he was asked if Production Manager #1 was ever given permission to grant leave to kitchen employees. Production Manager #1 clarified that Production Manager #2 oversees "production" in the kitchen, and "being in charge of the [kitchen] production, he was pretty much in charge of everything [in the kitchen].[27] When the Grievant asked Production Manager #1 if Production Manager #2 was able to sign leave slips, Production Manager #1 stated that [Production Manager #2] did approve leave time by stating, "Well, he did if other people weren't taking time off."[28] He testified,"[Production Manager #2] did not kick [leave requests] it back. But I'm in charge of the department."[29]

When the Hearing Officer asked Production Manager #1 if the [organizational hierarchy] was clear to the employees, Production manager #1 candidly admitted, "I thought [the organizationalstructure] was clear to everyone, but apparently it was not."[30] Production Manager #1 alluded only briefly to the

[22]Recording @ 1:26.
[23] Id. @ 1.26.
[24] Recording @ 1:31.
[25] Recording @ 1.29
[26] Recording @ 1.37.
[27] Recording 1:47.
[28] Recording @ 1:48.
[29] Recording @1.44.
[30] Recording@1:47.

"organizational chart that's floating around some place"[31] and did not produce the organizational chart to which the Former HR Officer referred.

Also, regarding the Former HR Officer's organizational chart, the Supervisory Dietitian[32] referred to the organizational chart as being "confusing" and to the identification of the Grievant's supervisor as also being "confusing." Her testimony validated the Grievant's assertion that, at different times and depending on the absentee status, alternate supervisors substituted for absent supervisors.to sign leave slips. for food production employees as follows:

Grievant: "Were you present when we were told that [Production Manager #2] was our supervisor?"

Supervisory Dietitian: "Yes."

Grievant: "Is your understanding that [Production Manager #2] or [Production Manager #1] is our supervisor?"

Supervisory Dietitian: "Hmm…. That is also confusing."

Grievant: "So [Production Manager #2] is the one that signs our [leave] slips, right? Giving us our days off., is that what we were told?"

Supervisory Dietitian: "I believe he is one of the ones who can sign off on your [leave] slips. That is also confusing. There are different people that can sign off on our time slips. We as supervisors will sign off on other people's time slips if they are not available."

Grievant: "Who can sign leave slips… There are different people who can sign off on our slips…. There are separate people who can sign leave slips … if you follow [the organizational chart]."

Grievant: "So you were told in a meeting that Production Manager #2 is our supervisor?"

Supervisory Dietitian: "Yes, ma'am."[33]

The organizational chart appeared to cause "confusion" to most employees who testified. The Former HR Officer who testified stated that she "… did not specifically recall if the Grievant told her that she thought Production Manager #2 was her supervisor."[34] But the Former HR Officer who testified was

---

[31] Recording @ 1.48.

[32] The Supervisory Dietitian did not testify as an expert witness, but it should be noted that her position requires a college degree in dietetic science, a state examination to acquire certification and extensive training. She has been employed by the Hospital for 10 years. Her testimony was valuable and enlightening regarding the Hospital's administrative staff functioning. As an essential member of the Hospital's administrative team, her testimony was wholly credible and convincing. After working with the Grievant for ten years, she described the Grievant's laudable contributions to the Hospital workforce as a Tray Line Supervisor. She noted the Grievant's perseverance, dependability, and her consistency in following the Supervisory Dietitian's daily instructions. During the Covid crisis when the Hospital was short-handed, she testified, meeting the patients' dietary needs was a critical necessity. At that time, she stated, the Grievant sometimes worked 30-60 days without a break. Also, she stated, she did not know the Grievant to be one likely to break a hospital rule.

[33] Recoding @ 2:28-2:29.

[34] Recording @ 55.54.

certain that the Grievant knew that Production Manager #1 was her supervisor because the employees have access to her organizational chart which appears on Sharepoint.[35] to which all employees have access.[36]

Thus, the Hearing Officer concluded that the Hospital's administrative structure was clearly subject to many alternate concepts for understanding the Hospital's organizational hierarchy.

Another witness, Tray Line Supervisor II, also testified regarding the duality between Production Manager #2, to whom the Grievant stated she reported the court charge, and Production Manger #1, whom HR asserted was the Grievant's supervisor. This witness identified herself as a close friend and the Grievant's co-worker for 38 years. When asked if Production Manager #2 was the individual to whom food production employees were "supposed to go to for days off,"[37] the witness stated, "[y]es." Then she stated, "[f]irst it was [Production Manager #2] then it was [Production Manager #1]."[38]

Also, regarding the Grievant's assertion that she forgot about the Hospital policy requiring that she inform HR about her arrest and conviction, this witness testified that she remembered speaking to the Grievant on the day the Grievant was found guilty. The witness recalled the day specifically because she was off work and remembered receiving the Grievant's call as she drove through a carwash. When asked if she remembered the Hospital's reporting policy, the witness stated that she did not remember it. If she had then recalled the Hospital's reporting policy, she stated, she was certain that she would have immediately informed her close friend to report the conviction.

Also, three Hospital employees who worked with the Grievant in the kitchen, Tray Line Tech I, Tray Line Tech II and the Food Production Manager attested to the Grievant's good character, her excellent work ethic and to her status as a dedicated employee and supervisor. Each one testified that he or she had not known the Grievant to ever break a hospital policy.[39] In sum, eight employees testified on behalf of the Grievant, all of whom respected her for her professionalism.

V. DISCUSSION

Regarding the Hospital's evidence in support of terminating the Grievant, the Hospital submitted a Circuit Court document which appears to be an abstract of the Grievant's contempt of court misdemeanor conviction. The Circuit Court document, which is reflected at Hospital Exhibit 3, Tab 3, pgs. 11-14, is not especially instructive for the purpose of terminating the Grievant. The Circuit Court document submitted, cites therein that the Grievant's offense was for Code Section, 18.2-456(A)(5) but it does not specifically identify what that "Code Section" means or whom the Grievant disobeyed. It is only by further examination, outside of the hearing environment, that the factfinder must examine further to understand the import of the "Code Section: 18.2-456(A)(5)."[40]

---

[35] Recording @38.27.
[36] Recording @55.49. The Grievant is not proficient with a computer. Her emails were sent by a family member.
[37] Recording @38:37.
[38] Id.
[39] Id. Recording @2:53.
[40] *See also Code of Virginia*, 18.2-456(A)(5). The Code section addresses disobedience or resistance to lawful court process, judgment, decree, or order by an officer of the court, juror, witness or other person. The court may summarily punish contempt which means that a judge may find an individual guilty of contempt without providing a trial.

In short, only an attorney might competently dissect the import of this document, which is presented in a cursory format, not in its substantive form. Without experiential knowledge, by way of further explanation, or an investigative report to present the document for inclusion in the administrative record, the abstracted document is not especially informative to the factfinder. On the face of the Circuit Court document which the Hospital presented to prove the Grievant's arrest and conviction, the Circuit Court finding noted the Grievant's name, "12/20/24," "March 3, 2025," "Guilty," "fine," "0," "$145.00," "10 days, and "8 days" in response to various printed questions on a pro-forma sheet. The document does not explain what the offense is as described in Code Section, 18.2-456(A)(5). The Document merely says, "Disobey Judgement: Contempt."[41] Yet, the form does not differentiate between criminal contempt versus civil contempt other than to say the "case type" is "misdemeanor."[42]

Arguably, the Grievant admitted having been found guilty of contempt of court but did not differentiate between criminal and civil contempt. She stated that her jail sentence amounted to being processed, in and out of the local jail, within a couple hours. From these events, the factfinder does not determine a nexus between serving food to patients in a tray line, supervising others to properly serve patients in a tray line, and the Grievant's offense: disobeying a judge's instruction.

Also, regarding the document alleged to be a Circuit Court document, Hospital Exhibit 3, the Hearing Officer noted that the foregoing document was not certified by the Circuit Court for veracity, for the purpose of entering the document into evidence at the termination hearing. And the Hospital did not provide alternate authentication of the document. The individuals who obtained the document did not testify. Also, per the document, a Circuit Court transcript of the proceeding was available. Finally, if HR did obtain the document, presumably, from the Circuit Court, no HR employees laid a proper foundation in support of it for entry into the record. And in fairness, the Hospital used the document, primarily, to terminate the Grievant. To the Hearing Officer, the Hospital's use of the above document, offered to terminate the Grievant, a valued 36-year employee, is flimsy at best.

Regarding the statute under which the Grievant was alleged to have violated, Departmental Instruction 506-02 (HRM) at Hospital Exhibit 5, Tab 5, pg. 18, the Section sets out the purpose underlying "Criminal History Checks and Background Verification Requirements." Under "Purpose," the Section states that the Department sets out procedures for:

1. Verifying the employment and credentials of applicants, employees or individuals providing paid, unpaid or contractual services, for the Department.

2. Conducting background or criminal history checks or both, for applicants, employees or individuals providing paid, unpaid or contractual services within the Department; and

3. Notifying the Department anytime an employee is arrested, charged or convicted while employed or providing unpaid or contractual services.

Further, Departmental Instruction 506-06 requires "Disclosures of Subsequent Arrests and Convictions," as follows: Workforce members shall notify their supervisors of any arrests, charges (to include pending), convictions, and motor vehicle violations, including motor vehicle violations (such as

[41] Id.
[42] Id.

DUI and reckless driving) that could result in a suspended or revoked license **within five workdays** of the event… Upon receipt of such notification, the supervisor, human resource manager, and the agency head shall determine the appropriate action in accordance with the *Standards of Conduct* and state laws/regulations. Until this point in the written instruction, the guideline appears to be clearcut. The Section ends by asserting that "Workforce members who fail to disclose a charge, arrest or conviction within five workdays of the event may be subject to discipline under the *Standards of Conduct*, up to and including termination.

But this section, providing general guidelines for disciplining employees who have been arrested and convicted, is modified by distinguishing barrier crimes[43] from non-barrier crimes. If an employee is arrested, and convicted thereafter, the regulation instructs the Department's HR officers to follow the format set forth as follows:

"If a workforce member has been convicted of a crime <u>not</u> specified as a "barrier"[44] crime by law, has a founded or relevant administrative charge, including a founded complaint of child abuse or neglect, the process outlined in the "Guidelines for Determining the Significance of a Criminal History Record or Other Background Check Results" (Attachment A) shall be used in this determination."[45]

The Hearing Officer notes that the Hospital did not follow the above guideline in terminating the Grievant. There is no "Attachment A" in the Grievant's termination packet and there was no testimony indicating that the Hospital's HR Office observed the Departmental Guideline to assess the impact of the Grievant's conviction as it related to her Hospital employment as a Tray Line Supervisor, The Hospital HR Representative merely asserted that the Grievant would have been provided "leeway" if she had reported the arrest and conviction at an earlier date. But the statute does not state that latitude is to be provided, only that certain instructive guidelines in "Attachment A" are to be applied before the most serious penalty, termination, can be imposed on a reporting employee.

Notwithstanding the above, the Hospital adamantly asserted that the Grievant knew, or should have known, to report the arrest and conviction because she signed a form entitled, "Acknowledgement of Understanding DI 506 (HRM) in 2010.[46] Eight witnesses testified for the Grievant. The witnesses uniformly testified credibly that the Grievant was not one to knowingly break a hospital policy. In her impassioned correspondence to the Hospital HR Department, she mentioned her overwhelming anxiety, depression, high blood pressure and panic attacks over what she believed to be her son's unlawful incarceration.

In fact, during the timeframe when this drama evolved in her personal life, the Grievant was under a doctor's order to take time off from work as of February 18, 2025. Had she not been terminated, she would have returned to work on April 18, 2025. It is not difficult to understand the Grievant's mindset

---

[43] A barrier crime in Virginia is one that bars state employment. *See also Code of Virginia* Sec. 32.1-126.01 and Sec. 32.1-162.9:1.

[44] A non-barrier crime in Virginia is a criminal offense that appears on an individual's criminal record but does not prevent them from being employed in certain fields, but particular scrutiny is to be made if the employment involves children, the elderly, or the disabled.

[45] *See also* Hospital Exhibit 5, Tab #5, at p. 21.

[46] *See also* Hospital Exhibit 4, Tab # 4, at pg. 16.

during the relevant timeframe. And it was unlikely that she thought much about a document she signed upwards of 15 years prior to the December 20, 2024 arrest and subsequent March 6, 2025 conviction.

Certainly, it is also understandable that the Grievant sought the assistance of Production Manager # 2. He testified credibly that the Grievant came to him and told him about her son's court predicament and her arrest before her son's trial. In order to take time off for the court case, the Grievant asserted to Production Manager #2 that she needed time off to address the problem. It follows that Production Manager #2 was available in the kitchen where the Grievant and he worked together. Further, Production Manager #2 admitted that he believed himself to be the Grievant's supervisor because of the organizational chart the Former HR Officer had given to the employees.

In retrospect, Production Manager #2 may have misunderstood the organizational chart. But Production Manager #1 was confusing in his testimony. On one hand, he stated that Production Manager #2 did not possess the authority to grant leave but affirmed that Production Manager #2 was responsible for all the kitchen employees. The hierarchy within the two realms was confusing as the Supervisory Dietitian confirmed. As an example, Production Manager #1 stated that [Production Manager #2] was not given *carte blanch*e to permit employees leave … but [Production Manager #2] did not "kick back leave requests." The Hearing Officer translated the slang term to mean that Production Manager #2 was permitted to handle leave requests which would have included the Grievant's request and notification to Production Manager #2 of her pending court issues.

And many employees appeared to be confused about supervisory designation in the kitchen. The Supervisory Dietitian verified that she was confused about which Production Manager was the Grievant's supervisor according to the organizational chart to which the Former HR Officer referred. And, curiously, Production Manager #1 referred to an "organizational chart" that was "floating around someplace." The Hearing Officer noted that the Hospital did not produce the "organizational chart" to which many of the Grievant's witnesses, and the Former HR Officer referred, to sort out the discrepancy. Thus, if the Grievant stated that she believed that Production Manager # 2 was her supervisor for reporting purposes, the Hearing officer believes her.

The Hearing Officer is convinced that the employee was wrongfully terminated and should immediately be placed back on the job.

VI. CONCLUSIONS OF LAW AND POLICY

The Commonwealth of Virginia establishes procedures and policies that apply to state employment matters in the hiring, promoting, compensating, discharging, and disciplining of state employees.[47] The *Grievance Procedure Manual,* Sec. 5.8, requires a state agency to show by preponderance of evidence that the disciplinary action is warranted and appropriate under the circumstances.

The procedural standards for disciplinary actions in employment are set forth in the *Code of Virginia,* Sec. 2.2-1201, as established and set forth in the Department of Resource Management, Standards of Conduct, Policy No. 1.60 (the "SOC"). The SOC provides criteria by which state agencies may consider employee misconduct ranging in seriousness from least severe (a Group I offense) to most serious and warranting the employee's removal (a Group III offense).

[47] *See generally DHRM Department of Human Resource Management, Policy 1.60 Standards of Conduct.*

The purpose of the SOC's underlying policy is for state agencies to apply "a progressive course of discipline that fairly and consistently addresses employee behavior, conduct, or performance that is incompatible with the state's SOC for employees and /or related Agency policies."[48] The SOC's stated objective is grounded in due process which requires the hearing officer to consider a vast range of disciplinary alternatives applicable to the employee's misconduct charged by the Agency. If the offense fits the discipline, the hearing officer is not at liberty to dismiss the seriousness of the charge(s) and to insert his or her own subjective thoughts and apply the sensibilities of a human resource officer.

Regarding the SOC's applicability to state employees, as stated therein, the SOC's legislative intent is to "help employees to become fully contributing members of the organization."[49] But when employees do deviate from the Agency's standards, and employees commit misconduct, the SOC describes penalties for the employee's converse behavior and provide the hearing officer available options for the hearing officer to consider in assessing the employee's misconduct charges.

In the instant case, the Agency did not reasonably assess the Grievant's offense as a Group III offense because the SOC describes Group III Level Offenses as "Offenses in this category include acts of misconduct of such severe nature that a first occurrence normally should warrant termination."[50]

VII. MITIGATION

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 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.

Considering the above standard, the Grievant was entitled to mitigate the charge of Failure to Report her arrest. Based upon the employee's truthful testimony and her assertion that she reported her arrest to her supervisor but did not report her criminal conviction to the HR Department, the Hearing Officer reduces the charge of non-reporting a conviction to the Hospital as a Level I offense.

Regarding the Hospital's charge of failure to Report a Criminal Conviction, for the reasons cited herein, the Hearing Officer concludes that the Hospital has not met the burden of proof. The Grievant did not violate DHRM Policy 1.60 Standards of Conduct, and DI 506 Criminal History Checks and Background Verification Requirements, stating that employees must disclose criminal charges convictions within five (5) days. The Hospital improperly considered the Department guidelines in deciding on termination as the Hospital's option per departmental Instructions.

The Grievant is to be reinstated and receive full back pay and benefits from April 18, 2025.

DECISION

The Agency has not met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated Agency policies including Policy No 1.60 and that the violation

[48] *Id.,* at p. 5.
[49] *Id.*, at p. 5.
[50] *Id.,* at p. 11.

rose to the level of the Group III offense charged in the Written Notice. The Hearing Officer DOES NOT UPHOLD the written notice in its entirety.

APPEAL RIGHTS

You may file an administrative review request within 15 calendar days from the date the decision **was issued, if any of the following apply:**

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.

2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to: Director of Human Resource Management, 101 North 14th Street, 12th Floor, 22219 or send by fax to (804) 371-7401, or email.

3. If you believe that the hearing decision does not comply with the grievance procedure, or if you have new evidence that could not have been discovered before the hearing, you may request the Office of Employment Dispute Resolution to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to: Office of Employment Dispute Resolution, Office of Employment Dispute Resolution, Department of Human resource Management, 101 North 14th Street, 12th Floor, Richmond, VA 23219 or send by email to EDR@dhrm.va.gov , or by fax to (804) 786-1606.

4. You may request more than one type of review. Your request must be in writing and must be received by the reviewer within 15 calendar days of the date when the decision was issued. You must give a copy of all your appeals to the other party and to EDR. The hearing officer's decision becomes final when the 15 calendar days has expired, or when the administrative review has been decided.

5. You may file a request for judicial review if you believe the decision is contrary 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.

   [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].

- *Signature Page to Follow* -

Enter: August 5, 2025

Sarah Smith Freeman, Hearing Officer
Sarah Smith Freeman, Hearing Officer

CERTIFICATE

I certify that I have emailed/mailed the above Decision to all parties on this 5th day of August, 2025.

Sarah Smith Freeman, Hearing Officer
Sarah Smith Freeman, Hearing Officer

Sarah. S. Freeman, Esq., VSB# 21354
Freeman and Associates
780 Lynnhaven Parkway, Suite 400
Virginia Beach, Virginia 23452
757-821-2931 Office

757-821-2901 Facsimile
757-535-4767 Cell