



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12281

Hearing Date: August 12, 2025

Decision Issued: August 28, 2025

PROCEDURAL HISTORY

On March 20, 2025, Grievant was issued a Group III Written Notice of disciplinary action with termination for sleeping during work hours.¹

On March 7, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On May 12, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On August 12, 2025, a hearing was held at an Agency Probation and Parole facility in Halifax County, Virginia.²

APPEARANCES

Grievant
Agency's Legal Advocate
Agency Party Designee
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group III Written Notice?

¹ Agency Ex. 1.

² The hearing was originally scheduled to take place at the Facility. When the Hearing Officer and the Grievant arrived at the Facility for the hearing, the Facility staff provided them with a new location for the hearing. The Hearing Officer confirmed with the Agency's Advocate that all of the witnesses for whom orders had been issued were made aware of the change in hearing venue, including all of the Grievant's witnesses.

2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

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

Prior to his dismissal, Grievant was a Corrections Officer at a Department of Corrections Facility. Grievant was employed with the Agency for approximately 13 years. Agency witnesses testified that Grievant had active prior discipline in the form of a Group I written notice issued on March 9, 2024, and two Group II written notices issued on June 2, 2023, and June 14, 2022.

On February 21, 2025, Grievant was working on a day shift at the Facility. Grievant's shift started at approximately 5:45 a.m. and was scheduled to end at approximately 6:15 p.m. At approximately 9:30 a.m., Grievant was on duty as the Basement Officer at the Facility. The Basement included a dayroom where the Facility's inmates could make telephone calls, play pool, and participate in other activities. As the Basement Officer, Grievant was responsible for observing inmates in the Basement area to ensure that they were safe and not engaging in conduct that could harm themselves or others.

Officer-OIT was an Officer-In-Training on February 21, 2025. Officer-OIT was on duty with Grievant as part of Officer-OIT's training.

During the hearing, Officer-OIT testified that while he was working in the Basement with Grievant on February 21, 2025, he observed Grievant sleeping. Officer-OIT testified that he observed Grievant's head drooping down and he could hear Grievant snoring a couple of times. Officer-OIT also testified that when Grievant's head was drooping down, Officer-OIT could see that Grievant's eyes were closed.

On the morning of February 21, 2025, Captain and Lieutenant were in the Lieutenant's office viewing live video from security cameras located in various parts of the Facility. After 9:30 a.m., Captain and Lieutenant observed live video from a security camera in the Basement. Captain and Lieutenant viewed Grievant and Officer-OIT seated at a desk in the Basement. Based on their observations of the live video from the Basement, Captain and Lieutenant believed that Grievant was sleeping at work. Captain and Lieutenant both testified that while they were watching the live video from the Basement, they observed that Grievant's head was slumped down and Grievant appeared to be sleeping. Captain described that Grievant appeared at points to nod in and out of sleep and that Grievant put his head down on the desk. Lieutenant recalled Grievant with his head down on the desk. Both Captain and Lieutenant testified that while they were watching the video from the Basement, an inmate ran past Grievant while Grievant had his head down on the desk and Grievant did not move or react to the inmate's movements.

Based on their observations of the live video from the Basement, Captain and Lieutenant believed that Grievant was sleeping while at work in the Basement.

Captain and Lieutenant called Grievant's radio. Captain recalled that it took Grievant a moment to respond and, as he and the Lieutenant watched the video of the Basement, they could see Grievant appear to wake up. Captain and Lieutenant asked Grievant to instruct Officer-OIT to report to the Watch Office. When Officer-OIT reported to the Watch Office, Captain and Lieutenant asked Officer-OIT if Grievant had been asleep while Officer-OIT was in the Basement. Officer-OIT confirmed that he had observed Grievant sleeping.

CONCLUSIONS OF POLICY

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

The Agency has met its burden of proving by a preponderance of evidence that Grievant was asleep while he was working on February 21, 2025.

Grievant denied that he was sleeping at work and recalled that he did not feel tired on that day. Grievant argued that the video from the Basement was not of sufficient quality for Captain or Lieutenant to be able to observe whether Grievant's eyes were closed. Grievant could not recall what he was doing when he put his head down on the desk while he was on duty in the Basement and suggested that he may have been praying. Grievant also argued that Officer-OIT may not be a credible witness because, according to Grievant, Officer-OIT could have been "out to get" Grievant or Grievant's job.

Even in the absence of video footage that would allow observation of Grievant's eyes, the Agency has presented sufficient evidence to meet its burden of proving by a preponderance of the evidence that Grievant was asleep while at work. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. Officer-OIT testified to his observation that Grievant was sleeping

because he observed Grievant with his head drooping down and he heard Grievant snoring. Officer-OIT's testimony during the hearing was clear, credible and consistent with the statement he provided to the Agency at the time of the incident.³ Officer-OIT's testimony also was consistent with the testimony and observations of Captain and Lieutenant. Captain and Lieutenant both credibly testified that when they viewed the live video of Grievant in the Basement, they believed that Grievant's movements suggested that he was asleep. They both observed that Grievant's head was down. They also testified that as they watched live video from the Basement, they observed Grievant with his head down on the desk when an inmate ran by the desk. Captain testified that he observed that Grievant did not move or react to the inmate's movements suggesting that Grievant was asleep at the time.

The Agency has met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct when he slept while he was at work on February 21, 2025.

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

Sleeping during working hours is a Group III offense.⁴ Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination.

Grievant was responsible for observing the inmates in the Basement to ensure their safety. Grievant could not perform that job duty while he was sleeping. Superintendent, Captain, and Lieutenant credibly testified to the risk posed when a corrections officer falls asleep on duty, including that inmates could hurt each other or an officer.

Grievant argued that the Facility did not follow protocol when it generally allowed Grievant to continue to work on the same shift as Officer-OIT after the Agency put Grievant on notice that the Agency had a statement from Officer-OIT regarding Officer-OIT's observations of Grievant sleeping. Grievant provided no evidence to support his assertions that the Facility had violated a policy or protocol. Even if the Facility did not follow protocol by allowing Grievant to continue to work on the same shift or in proximity to Officer-OIT, there was no evidence that such actions were relevant to the disciplinary action at issue in this case.

Upon the issuance of a Group III Written Notice, an agency may remove an employee.

The Agency has met its burden of proving that the discipline it issued to Grievant was consistent with law and policy.

³ See Agency Ex. 2.

⁴ See Virginia Department of Corrections Operating Procedure 135.1., Procedure XIV.B.7.

Mitigation

Virginia Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resource Management....”⁵ 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 III Written Notice of disciplinary action with termination is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer’s **decision becomes final** when the 15-calendar-day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must

⁵ Va. Code § 2.2-3005.

refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.⁶

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

⁶ 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.