



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12282

Hearing Date: September 9, 2025

Decision Issued: September 15, 2025

PROCEDURAL HISTORY

On January 30, 2025, Grievant was issued a Group I Written Notice for violating DHRM Policy 2.35, Civility in the Workplace.

On February 25, 2025, 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 May 12, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On September 9, 2025, a hearing was held remotely via a video conferencing platform.

APPEARANCES

Grievant
Grievant's Advocate
Agency's Advocate
Agency Party Designee
Witnesses

ISSUES

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

An Equal Opportunity Employer

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 works as a licensed practical nurse (LPN) at a Department of Behavioral Health and Developmental Services Facility. Grievant has been employed by the Agency for approximately 26 years. No evidence of prior active discipline was introduced during the hearing.

On December 16, 2024, Nurse Manager and another manager met with Grievant at approximately 2:40 pm. During the meeting, Nurse Manager issued a written counseling to Grievant related to an incident involving Nurse-1 and allegations that Grievant bullied Nurse-1. As part of the written counseling, Nurse Manager set forth the following expectations for Grievant:

1. Review Policy #A-29 Workplace Harassment.
2. Be professional and respectful to coworkers and patients at all times.
3. Discuss concerns and suggestions with coworkers in non-intimidating/confrontational tone.
4. Involve supervisor to resolve any conflict with coworkers.¹

After Grievant left the meeting with Nurse Manager, Grievant observed Nurse-1 and Psychiatrist working in the chart room. Grievant entered the room and confronted Nurse-1 about the written counseling. Grievant questioned Nurse-1 about the complaint that Grievant had bullied or harassed Nurse-1. Nurse-1 described Grievant's voice as

¹ Agency Ex. at 19-20.

loud when she confronted Nurse-1. Nurse-1 and Psychiatrist both described Grievant as upset and angry when she confronted Nurse-1.

At approximately 3:15 pm on December 16, 2024, Nurse-1 reported to Nurse Manager that Grievant had confronted Nurse-1 for reporting the behavior that led to the written counseling.²

On January 30, 2025, the Agency issued a Group I Written Notice to Grievant. The Agency described the nature of the offense as follows:

... for violation of DHRM policy 2.35 Civility in Workplace as evidenced by the incident that occurred on 12/16/2024. On 11/23/2024 you behaved unprofessionally with a co-worker. You were given a formal written counselling by your manager for this behavior on 12/16/2024. After receiving the counselling, you immediately went to the employee who had reported the incident and confronted her and asked her why she lodged a complaint. You also called another employee after hours and inquired if she was interviewed by her manager. This action made your colleagues feel uncomfortable and demonstrates behavior of a bullying nature. You threatened that you will be "reporting on everybody." This disciplinary action is in accordance to DHRM Policy 1.60 Standards of Conduct.³

CONCLUSIONS OF POLICY

The Standards of Conduct set forth the expectation for state employees to resolve work-related issues and disputes in a professional manner and through established processes.⁴ DHRM Policy 2.35, Civility in the Workplace, makes clear that

[t]he Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties in the workplace.

Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable."⁵

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

On December 16, 2024, Nurse Manager counseled Grievant regarding her behavior toward Nurse-1. Although Grievant disputed the underlying basis for the counseling, Grievant did not dispute that she received the counseling. As part of the counseling, Nurse Manager made clear the expectation that Grievant would be "professional and respectful" to coworkers, discuss concerns and suggestions with co-

² Agency Ex. at 21.

³ Agency Ex. at 4-5.

⁴ See DHRM Policy 1.60, Standards of Conduct.

⁵ See DHRM Policy 2.35, Civility in the Workplace, General Provisions.

workers in a “non-intimidating/confrontational tone,” and involve her supervisor to resolve any conflict with coworkers. Nevertheless, the preponderance of the evidence showed that moments after receiving that counseling, Grievant confronted Nurse-1 in a loud and angry manner about the allegations that led to Grievant’s receipt of the counseling. Grievant’s behavior was inappropriate, unprofessional, and showed a lack of regard for Nurse-1.

Grievant asserted that Nurse Manager did not specifically prohibit Grievant from speaking to Nurse-1 about the complaint that led to the written counseling. Grievant testified that on December 16, 2024, she was “surprised and frustrated” by the written counseling and the allegation that she engaged in bullying behavior toward Nurse-1. Grievant admitted that she told Nurse-1 that she received a written counseling and tried to ask Nurse-1 about the allegations. Grievant testified that Nurse-1 told her she did not want to talk about it, so Grievant left the room. According to Grievant, she did not “argue” with Nurse-1 and did not ask Nurse-1 to “take back” her complaint.

This Hearing Officer found the testimony of Nurse-1 and Psychiatrist to be credible and consistent. Nurse-1 and Psychiatrist both described Grievant as upset and angry when she confronted Nurse-1 in the chart room on December 16, 2024. Nurse-1 described Grievant’s voice as “loud and angry” when she spoke to Nurse-1. Nurse-1 recalled that Grievant said something along the lines of “do you see what you have done to me.” According to Nurse-1, Grievant then waved papers in front of Nurse-1, told Nurse-1 that Grievant had been written up because of Nurse-1, and asked Nurse-1 when Grievant had harassed or bullied Nurse-1. Nurse-1 testified that she felt threatened, trapped, and uncomfortable during the interaction with Grievant. Psychiatrist testified that Grievant appeared upset and angry at Nurse-1 about what was written on a piece of paper that Grievant held in her hand when she confronted Nurse-1 in the chart room. Psychiatrist also described that Grievant questioned Nurse-1 about why she complained and asked Nurse-1 to “take it back.” Psychiatrist testified that she considered Grievant’s interaction with Nurse-1 to be inappropriate because of Grievant’s angry and hostile tone and because Grievant chose to have the interaction in an area that was not private.

Although Nurse Manager did not specifically instruct Grievant not to discuss the written counseling with Nurse-1, Nurse Manager made clear her expectation that Grievant would be “professional and respectful” to coworkers, discuss concerns and suggestions with co-workers in a “non-intimidating/confrontational tone,” and involve her supervisor to resolve any conflict with coworkers. When Grievant confronted Nurse-1 in a loud and angry manner to question Nurse-1 about Nurse-1’s reporting of Grievant’s behavior, Grievant did not behave in accordance with those expectations.

To the extent Grievant disputed the Agency’s investigation and basis for issuing the written counseling that she received on December 16, 2024, such issues are not matters before this Hearing Officer. The Written Notice at issue in this case related to Grievant’s conduct on December 16, 2024, after she received the written counseling.⁶

⁶ If Grievant believed that the Agency failed to provide her with proper access to the grievance procedure to address her concerns with the written counseling or that the Agency improperly closed her grievance of the written counseling, then the appropriate mechanism for Grievant to address those concerns would have

That Grievant disagreed with, or had concerns about, the written counseling she received may explain her conduct on December 16, 2024, but it does not excuse it.

The preponderance of the evidence showed that on December 16, 2024, Grievant confronted Nurse-1 in a loud and angry manner to question Nurse-1 about Nurse-1's reporting of Grievant's behavior that Grievant believed caused Grievant to receive written counseling earlier that day. Grievant's behavior was inappropriate, unprofessional, and showed a lack of regard for Nurse-1. Grievant's behavior was misconduct that violated DHRM Policy 2.35, Civility in the Workplace.

Whether the Agency's discipline was 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."⁷ 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."

Violation of DHRM Policy 2.35 may be a Group I, Group II, or Group III offense depending upon the nature of the violation.

On December 16, 2024, Grievant was counseled regarding her behavior toward Nurse-1 and advised of the expectation that she be "professional and respectful" to coworkers, discuss concerns and suggestions with co-workers in a "non-intimidating/confrontational tone," and involve her supervisor to resolve any conflict with coworkers. The preponderance of the evidence showed that moments after receiving that counseling, and contrary to the expectations made clear by that counseling, Grievant engaged in inappropriate, unprofessional, and disrespectful behavior when she confronted Nurse-1 in a loud and angry manner to question Nurse-1 about Nurse-1's reporting of Grievant's behavior.

The discipline was consistent with law and policy.

Grievant appeared, at times, to argue that the Agency did not properly investigate the allegations that led to the Agency's issuance of the Written Notice. Grievant essentially argued that the Agency failed to provide her with sufficient due process. The hearing process cures any such deficiency. Grievant had the opportunity to present relevant evidence and arguments during the hearing.

Mitigation

Virginia Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation

been through a timely request for a compliance ruling from the Office of Employment Dispute Resolution consistent with the provisions of the Grievance Procedure Manual.

⁷See DHRM Policy 1.60, Standards of Conduct.

must be “in accordance with rules established by the Department of Human Resource Management....”⁸ 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 I Written Notice 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.

⁸ 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.⁹

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

⁹ 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.