

VIRGINIA: DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

(the “Agency” or “DBHDS”)

DECISION

Southeastern Virginia Training Center, a State Facility (the “Facility”)

In Re: Appellant (the “Grievant”)

EDR Case Number: 12304

Hearing Date: August 7, 2025

Decision Issued: September 4, 2025

I. PROCEDURAL HISTORY

On May 23, 2025, the Grievant was issued a Group III written notice of disciplinary action (hereinafter referred to as the “Written Notice” or “WN”), with termination, for a violation of the Department of Human Resource Management’s (“DHRM’s”) Standards of Conduct Policy, No 1.60, DRHM Policy No. 2.35 and the Facility’s Instruction No. 9008. The WN cited violations of agency policies and the Facility’s rule that employees must act civilly in the workplace and not resort to violence. The Facility terminated the Grievant for the three violations cited which the HR Department determined, cumulatively, to be Level III offenses.

On May 27, 2025, the Grievant timely appealed the Facility’s employment termination by filing a grievance with the Virginia Department of Dispute Resolution (“EDR”).¹

On June 23, 2025, EDR assigned the Grievant’s termination appeal to the Hearing Officer.

On August 7, 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 Grievant later provided written closing statements to supplement the record.

On August 12, 2025, the Grievant filed Written Closing Remarks.

A. Appearances.

1. For the Grievant: Grievant appeared Pro Se
2. Grievant Witnesses: Grievant’s Younger Daughter
Family Friend
Grievant’s Brother
3. For the Facility: Advocate
4. Facility’s Witnesses: Supervisory Investigator
Investigator No. 2

¹ See Facility Exhibit 3, Section 3, at 22.

Facility Director
Facility Assistant Director (“HR Representative”)

B. Exhibits.

1. For the Facility – Exhibit Book:

Exhibit 1 – Section 1, pgs. 1-7, (Group III Written Notice dated 5/23/25) containing: Grievant’s Statement and Due Process Letter.

Exhibit 2 – Section 2, pgs. 8-21, Administrative Investigation.

Exhibit 3 – Section 3, pgs. 22-24, Grievance Form A – Dismissal Grievance with attachments.

Exhibit 4 – Section 4, pgs. 25-37, Training Record and Policy Acknowledgement Form:

- (a) Initial orientation checklist.
- (b) Training record.

Exhibit 5 – Section 5, Performance Evaluations, pgs. 38-41.

- (a) 2025 Behavior Technician Position Description.
- (b) Performance evaluations.

Exhibit 6 – Section 6, pgs. 42-85, Policies and Departmental Instructions

- (a) Facility Instruction Number 9008: Workplace Violence.
- (b) DHRM Policy No. 2.35: Civility in the Workplace.
- (c) DHRM Policy NO. 1.60: Standards of Conduct.

Exhibit 7 – Videos showing footage of the termination incident occurring on 5/7/25.

2. For the Grievant:

The Grievant did not submit any exhibits. The Grievant made many references, however, to a specific video which she alleged she saw during her earlier scheduled appointment at the Facility when she reviewed the evidence against her. At the termination hearing on August 7, 2025, the Hearing Officer asked Facility personnel to look more carefully to find the exact view of the termination incident to which the Grievant referred. The Grievant was certain that the correct video of the incident was never shown at the hearing. In sum, the Facility Director stated, which the technical support staff emphasized, that the Facility cameras do not have the capacity to show facial expressions and zoom-in footage as the Grievant insisted she saw earlier at the Facility.

But at the termination hearing, the Hearing Officer learned that the technical capacity for the Facility's daily monitoring cameras is different than the Facility's permanent recordation cameras. The Facility's daily monitoring cameras completely erase all footage taken in the past 30 days and begin to record anew. The recordation capacity for the recordation of events is different from the daily camera viewing. The Grievant may have viewed the termination incident on a closer view because she may have viewed the termination incident from a daily camera, not from a permanent recordation of the incident.

But the Hearing Officer is satisfied that the Facility's technological staff made an extensive search for the termination incident video, to which the Grievant referred, to no avail. In the process, on August 7, 2025, the Hearing Officer saw many videos showing the termination incident. Thus, the Hearing Officer now believes that the Grievant is convinced that she saw a different video of the termination incident. But the Hearing Officer does not find that the instant scenario would be mitigated by showing the Grievant and the Food Service Boyfriend's facial expressions at a "zoomed-in view"² of the event. And the Hearing Officer is dubious that a video showing facial expressions or closer views would alter the import of the termination incident by reflecting a different scenario.

The Hearing Officer is convinced also that the Facility's technical staff made a good faith effort to find the most accurate video depictions aligned with the Grievant's memory of the video she saw. But the Grievant's assertion that the video she saw either differs in context or that the video is exculpatory of her actions, is not convincing. In sum, the Facility's expert technological staff presented many compelling videos showing the termination details as the incident occurred on May 7, 2025.

The Hearing Officer requests, however, that the Facility's technical personnel continue to search for the termination video (which the Grievant asserts is most descriptive of her actions in the matter). The video is alleged to be taken from an "across the street camera."³ If the video is located, he Hearing Officer directs the Facility to immediately inform the Grievant of its existence and provide it to the Grievant. But at this juncture, the Hearing Officer will weigh the facts in the light most accurately depicted by the existing videos shown at the above hearing in the matter.

II. ISSUES

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

Yes. The Hearing Officer notes for the record the testimony taken at the hearing, the extensive Facility Administrative Report, prepared concurrently with the termination incident, and the facts and conclusions presented herein. The Hearing

² Recording @ 18.23 – 55.22. The Supervisory Security Officer and the Facility Security Officer both searched for and showed many videos to the Hearing Officer from different angles, from across the street and from exiting the building. But the Grievant insisted that she never saw the video that was closer, showed facial expressions and a "zoomed-in" view of the incident. Because she never saw the video to which she referred, the Grievant asserted that "something had happened to [the video] if it's not here." See Recording @ 53.57.

³ Recording @ 41.57.

Officer fully considered the credibility, truth and veracity of the witnesses who testified for both parties. Sadly, the evidence is preponderant to substantiate the WN.

2. Did the conduct constitute misconduct?
Yes.
3. Did the Facility's discipline comply with the law and policy?
Yes.
4. Were there mitigating circumstances justifying a reduction or removal of the disciplinary action?
No.
5. Did the Hearing Officer consider mitigating circumstances?

Yes. The Hearing Officer considered the Grievant's work record, her defenses and her sincere apology. But the magnitude of the termination incident overrides consideration for a lesser penalty because a serious injury or fatality might have resulted. This factor outweighed any other consideration and mitigating circumstances. Further, the Hearing officer is satisfied also that the Facility Director and the HR Department reasonably applied a Group III offense with termination to the incident only after considering the gravity of the offense.

III. BURDEN OF PROOF

The Facility 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 Facility is a Virginia state agency that provides behavioral health related and developmental training services to state employees.

At the Facility, the Grievant functioned as a Behavior Technician in the Facility's Psychology Department where she was employed for three years.

The Grievant's termination notice stated as follows:

"Violation of Policy 2.35 Civility In The Workplace & [Facility] Policy 9008 Workplace Violence"

"On May 7, 2025, an incident occurred at approximately 7:20 a.m. in the [Facility] parking lot involving [the] Food Service Boyfriend. On this date, you took the keys to a 2023 Jeep Compass from your

daughter [the Food Service Daughter] after a verbal exchange. Although the Food Service Daughter initially resisted, she handed over the keys when you became visibly agitated. The vehicle was co-owned by the Food Service Daughter and the Food Service Boyfriend, ⁴whom the Food Service Daughter informed of the situation.

When the Food Service Boyfriend tried to prevent you from leaving, he confronted you at the driver's door, you went around the vehicle and entered the passenger side. At that time, the Food Service Boyfriend stood behind the vehicle, and you reversed into him. He then moved to the front of the vehicle, and you accelerated, striking him again and causing him to land on the hood.

Video footage depicts the Food Service boyfriend struggling to stabilize himself before managing to turn and sit upright, facing forward. As you made the sharp left turn into Steppingstone Square, the momentum of the vehicle caused the Food Service Boyfriend to be violently thrown from the hood. He landed on the pavement and sustained injuries that required medical attention. You claimed you were driving slowly, stopped at the stop sign and looked twice and that the Food Service Boyfriend jumped onto the vehicle; however, video evidence contradicted these statements were contradicted as well as two eyewitnesses.” See Exhibit 1, Section 1, at 5; See also statements of New Security Officer and the Second Security Officer at Facility Exhibit 2, Section 2, at 13-14.

In response, the Grievant stated as follows:

“(Policy 2:35) The Food Service Boyfriend has aggressively approached me several times outside of work with verbal aggression, followed by profanity. Rudely telling my daughter, to hang up on me, telling the Food Service Daughter “What she should do with his flushed red face,” visibly agitated. Open the door to where I live, rushing Food Service Daughter out of the house, grabbing her and pushing her outside, and dismissing that I told him, “Don’t walk in my house again” and trying to rush what I was saying. At work he’s assertively approached me with verbal aggression (breathing heavy, and pacing in a circle), (heightened emotion displayed on the Food Service Boyfriend’s face). Interjecting his feelings about an active personal conversation my daughter and I were having more than once. Even in those moments I would either ignore him, or walk away, aborting the conversation.

(Facts): Every weekday morning, I would clock out, go visit Food Service Daughter’s department, ask her if she wanted breakfast, snacks or anything else she may have wanted. Then what time did she get off, exchange keys and leave.

The 2023 Jeep Compass, from the day it was purchased, it sat parked in front of my house, I drove it to NC, I also drove it to work the first weekend of May. The Food Service Daughter told her best friend, [the Family Friend who testified], another daughter, [Grievant’s Younger Daughter], and myself, we were all in my living room. The Food Service daughter stated that the vehicle [was] her car. No mention of a co-owner, even when asked, I asked her “Did he [Food Service Boyfriend] help you get it[?]” She said, “N[o].” All of us went shopping, Family Friend, Grievant’s Younger Daughter, and myself, went shopping that same day. No mention of the vehicle being owned or co-owned by Food Service Boyfriend.

On the night of May 6th Food Service Daughter drove me to work. My [Grievant’s Younger Daughter] rode along with us as she does every time the Food Service Daughter would bring me to work.

⁴ The vehicle was never owned by the Food Service Daughter. See Virginia State Registration at Facility Exhibit 2, Section 2, at 21. The Food Service Boyfriend also admitted that he had not ever personally given the Grievant permission to drive the vehicle in the past but did give permission to the Food Service Daughter to drive with the Grievant in the car, and knew that the Grievant drove the car, until he refused to allow the Grievant to drive the vehicle on the morning of May 7, 2025. See also Facility Exhibit 2, Section 2, at 11.

Again, on May 6th when the Food Service Daughter and my [Grievant's Younger Daughter] got home my [Grievant's Younger Daughter] called me and said the [Food Service Daughter] left to go to the Food Service Boyfriend's house. The morning of the 7th, I treated that day like every other workday. I'd clock out, went to her department and asked for the keys. I did not ask her if she needed anything because I did not have time to go get it. I had a doctor's appointment.⁵ I asked for the keys. [The] Food Service Daughter and I had an [amicable] verbal interaction. No one was loud, not many words said. I had to go to [hand] me the keys. She was texting when I walked in. When I asked for the keys, where she hesitated. Then when I [began] with keys in hand she was texting. I called my brother when I walked out of the office. The Food Service Boyfriend was waiting at the Jeep Compass for me. As I'm walking to the car and arrived at the back/[trunk] of the jeep he's stating, "I'm not letting you in this car."

Most interactions at this point have been, (tense and unaware of mood or intentions of the interactions).

Yes, defensive in anticipation of what he may say or try to get Food Service Girlfriend to do. He was blocking me from entering the car. Heavy breathing, face flushed red, and forcefully stating "I'm not letting you in this car." He also stated, "Despite your [Grievant's] personal vendetta." I said, "What are you talking about." He yelled my name "[Grievant's name]." I turned and removed myself creating distance avoiding a physical encounter furthermore protecting my personal space. I walked around the car to the passenger side got in [and] crossed over the seat. Still on the phone with my brother the entire time.

The Food Service Boyfriend has driven the Food Service Daughter to work on several occasions. (My Objective Fact): At any time, Food Service Boyfriend could have come to my house with police. Provided the necessary documentation, set the record straight about the vehicle, retrieved his keys, and there wouldn't have been any misunderstandings, (anything after that proof I would be at fault for). (My very important subject opinion): Food Service Boyfriend could have driven Food Service Daughter to work kept the Jeep Compass at his home. Allowed me and my daughter to figure it out, and he mind his own business. Why create this type of encounter at both of our workplace?! Everything was occurring quickly.

[The] Food Service Boyfriend was behind the vehicle. Blocking me in. Restraining my liberty⁶ to drive/leave the situation/protect myself/avoid conflict. That was imprisonment! "Restricting an individual's freedom to move and act, typically in a place of confinement."

Striking a person with a vehicle, looks force of impact that caused significant harm. [The] Food Service Boyfriend and/or also hits the ground. Parking lot view of video did not show him being struck, stumbling, falling or under the car. View from building 28 showed, [me] turning around, avoiding his presence and creating space, removing myself, walking around the car. [The] Food Service Boyfriend leaves the viewpoint "and admitted" to standing behind the vehicle.⁷ Then the Food Service Boyfriend is on top of the hood. Parking lot view showed nothing else besides [the] Food Service Boyfriend being behind the car. Building 28 view shows [the] Food Service Boyfriend on the hood.

[The Grievant] continuing to progress forward out of the parking lot (fearing for my safety) trying to get away. I did not know what was going to happen). I did look both ways. I did not want to hit someone

⁵ The Grievant stated she had a medical appointment soon after arriving at work at 7:15 to 7:29 AM. Later the Grievant stated that she was on her way home. See Facility Exhibit 2, Section 2, at 13. Also, the Grievant stated she had "multiple things to do." But the incident occurred almost immediately after the Grievant arrived at work. See also Recording @ 2.21.

⁶ The Grievant appeared to assert that she was physically restrained by the Food Service Boyfriend's position, standing behind the vehicle. And at alternate times, the Grievant asserted she was blindsided, surprised, fearful and confused by the Food Service Boyfriend's behavior and refusal to let her drive the vehicle on May 7, 2025. Recording @ 1.46.

⁷ See Facility Exhibit 2, Section 2, at 11.

[else's] car. [The] Food Service Boyfriend sat on the hood then [the] Food Service Boyfriend jumped [off] landing on his feet. Not being flung or thrown to the ground. Very important fact to consider by the state of Va.:

Va. Code [Section] 46.2-894,

*Contributory negligence:*⁸

Virginia's strict contributory negligence rule means that if the pedestrian contributed to the accident, even slightly, even 1%, they may not be able to recover damages. In simpler terms you cannot cast the "blame [for] injury" on another that you caused/contributed to.

The Grievant would like to express her regret for the entire incident. No, I did not, nor would I ever want to bring personal affairs to work, let the scary incident that can harm myself or anyone else. It is with my deepest apology that [this] has happened and apologize for my part and actions." See Exhibit 1, Section 1, at 6-7.

Later, during the interview with an HR Representative, the Grievant expanded her recollection of the termination incident by stating as follows on May 8, 2025:

"The morning of 5/7/25 at around 7:15 ish, I clocked out from my shift. I always walk over to the "kitchen" food department where my daughter works. I usually ask (does she need anything and I get the car from her)she handed me the keys and I left. I walked out the side entrance door because the car was not parked in the direct front of the building where it usually is... and I see the Food Service Boyfriend standing behind my daughter's car... he says, I'm not letting you in here." I said "[B]oy move out of the way." Then he goes to block the entrance of the driver's door. He says, [I] don't care what your vendetta is against me" then I replied, "What the f--k are you talking about?"

I removed myself and walked around the cart to the passenger side unlocked the door and climbed over the seat to the driver seat and locked the doors. He stood behind the car, at this point he [tried] to compel me to engage with him. I beeped the horn once. [He] stood there I put the car in reverse, and [inched] out of the space. Using the [brake] the entire time, inching out of the parking spot.

The window was cracked, and I hollered out "[Y]ou don't even work today." He was using his body to block the car in on an angle [and] the left side of the car was blocked by his right thigh.

Again, he sees I'm attempting to leave the situation, he hits the hood and jumps on the hood and sits on it, back turned toward the window and I drive to the stop sign at the exit of building 1, I stop. I look both ways and inch out slowly hoping that would get him to get off, I'm driving literally 2 mph, but he sees I was not about to stop he jumps off, and I can only assume at this point walks in the [Facility] building to lie about it."

The Hearing Officer notes that the fact-finder does not deem the Grievant's above version of the termination incident to be necessarily accurate or credible. But her second version of the termination incident is believable regarding the hostile tenor of the words exchanged between the Grievant and the Food Service Boyfriend at the inception of this escalating crisis. But it is evident from the circumstances that the Grievant described on May 6th that the Grievant was deeply immersed in an unfolding family drama when the termination incident unfurled. The Grievant's maternal distaste for the Food Service Boyfriend likely

⁸ In the exigent circumstance presented by the facts, the Hearing Officer did not deem that the co-worker was contributorily negligent. The co-worker placed himself in unsafe positions to save his life or to avoid serious injury.

obliterated her better judgment but did not excuse her volatility by preventing her from knowing right from wrong on May 7, 2025.

In her written responses to the Facility, the Grievant did allude to the intense friction between the Grievant's family and the Food Service Boyfriend on the evening just prior to the termination incident. If only she had managed to control her private frustration at work, indeed, none of the acts would have happened. It is an unfortunate circumstance that the Grievant risks losing her livelihood because of this regrettable incident originating in her daughter's deception. But the Grievant bears sole responsibility for her dangerous behavior on May 7, 2025 which culminated in the termination incident.

As the Facility Director stated quite perceptively,⁹ there were two points in time when the Grievant's actions were to result in termination. The first event occurred when the Grievant elected to back the Jeep Compass into the Food Service Boyfriend's leg. The second terminable event happened when the Grievant chose to press the accelerator and move the vehicle into the Food Service Boyfriend's torso which left him no option but to leap, jump or be thrown across the car hood.¹⁰ As the Grievant pointed out at the hearing, it is not readily evident from the video if the Food Service Boyfriend jumped or was pushed by the car's momentum onto the hood.¹¹ But the Security Supervisor credibly testified, that if the Food Service Boyfriend had not elected to jump off after he was forced onto the car hood, the Food Service Boyfriend would have been pressed under the car and likely would have perished.¹²

In pursuit of certain details that might have indicated that the Food Service Boyfriend somehow caused his own injuries, the Grievant questioned whether the Food Service Boyfriend raised his right or left leg indicating that he voluntarily jumped onto the vehicle's car hood.¹³ Obviously, whether his left leg or right leg were first to be raised, voluntarily or by the car's momentum, was not part of the fact-finder's consideration. In the fact-finder's query, it was discernable from the surveillance videos that the Food Service Boyfriend was in front of the car, and about to be crushed by it, if he did not quickly move his body out of the way. And the fact-finder is fully cognizant that human nature sometimes requires quick thinking to save one's life. But it appears also that the Food Service Boyfriend did not fully comprehend the Grievant's fury at the Food Service Boyfriend and his actions related to the Food Service Daughter's deception about the vehicle's ownership. To the fact-finder, it was clear also that the Food Service Boyfriend did not anticipate the risk he was about to encounter at the hands of the Grievant who drove his vehicle that morning.

As the termination incident unfolded, however, there were many points in time when either participant could have deescalated. Each one of the participants could have called for assistance or even better, walked away. But only one, the Grievant, was behind the wheel of a car she knew she did not own which is difficult to understand.

Against her better judgment that day, unfortunately, the Grievant did exit the parking lot and proceeded into Steppingstone Square when the incident became more wanton: When the Grievant left the Facility parking lot, she knew that the Food Service Boyfriend was positioned, rather awkwardly, on the car's hood. Obviously, from her view inside the car, the Grievant could see that the Food Service Boyfriend dangled unsafely on the hood. But instead of stopping, the Grievant took off without any regard for the

⁹ Recording @ 1.31-1.32.

¹⁰ Id.

¹¹ Id.

¹² Recording @1.10.

¹³ Recording @ 1.15-1.19.

Food Service Boyfriend's injuries. And, per the New Security Officer, and the Second Security Officer, the Grievant drove "at a high rate of speed toward the stop sign" not at 2mph as she claimed.¹⁴

But the fact-finder notes that the most compelling action in the termination incident was to follow: The Grievant admitted that she stopped at a stop sign to check for coming cars on Steppingstone Square,¹⁵ presumably to protect herself from approaching vehicles. She admitted that she "looked both ways."¹⁶ Thereafter, she made a sharp turn which ejected the Food Service Boyfriend from the car hood. It is evident that she immediately knew that the Food Service Boyfriend was no longer on the car hood. The incident videos clearly showed that the Grievant never stopped. Her final action, turning the corner onto Steppingstone Square, had left the Food Service Boyfriend somewhere, possibly injured, to fend for himself. It is unjustifiable that the Grievant never stopped the vehicle to check on his wellbeing.

Regarding any mitigation of the above incident, the Grievant did assert that she was confused, in shock, "did not know what was going on"¹⁷ when the Food Service Boyfriend told her he would not let her in the car. The Grievant asserted that she honestly believed the vehicle belonged to her daughter. Also, the Food Service Daughter admitted that on May 6th, a family argument had erupted between the Food Service Daughter, the Food Service Boyfriend and the Grievant about the vehicle's ownership. At the termination hearing the Grievant continued to assert that she believed the Food Service Daughter was the owner of the vehicle and was unaware of the Food Service Boyfriend's sole ownership.¹⁸ The Grievant asserted, "my daughter stated it was her vehicle... [and] every single morning [we] drove together to work."¹⁹

But the Family Friend, who was familiar with the car ownership debate within the family, testified that the car's ownership was indeed a major source of disagreement among the Grievant, the Food Service Daughter and the Family Friend. The latter related a group discussion about the Food Service Daughter's recent car purchase. Originally, the Food Service Daughter related to the Grievant that she "got the car on her own,"²⁰ but that the Food Service Boyfriend was "in the parking lot"²¹ when the car was purchased. The Family Friend clarified, however, that the Food Service Daughter honestly believed that the Food Service Boyfriend had "gifted"²² her the car. But the Family Friend pointed out that all believed this to be "manipulation"²³ on his part.²⁴ The Grievant asked the Family Friend if the Food Service Daughter now knew the Food Service Boyfriend to be the record owner of the vehicle. She testified, "But now, she does not believe she owns the car."²⁵ Further, the Family Friend testified, she believed that the Food Services Boyfriend would repossess the vehicle when the two break up.²⁶

So, the fact-finder infers that the Grievant, the Food Service Daughter and the Food Service Boyfriend were all, wholeheartedly at odds, over the car's ownership on the morning of May 7, 2025 at 7:15-7:20 A.M. Though the fact-finder did not reach the conclusion that the Food Service Boyfriend caused the termination incident, but he was certainly determined that the Grievant would not set foot in the vehicle

¹⁴ See Facility Exhibit 2, Section 2, at 12-13.

¹⁵ Recording @ 2.25. Grievant stated, "I didn't want to go forward [at Steppingstone Square at the stop sign] without seeing if another car was coming and he jumped off."

¹⁶ See Facility Exhibit 1, Section 1, at 7.

¹⁷ Recording @ 1.46.

¹⁸ Recording @ 2.50.

¹⁹ Recording @ 2.27.

²⁰ Recording @ 2.50

²¹ Recording @ 2.51.

²² Recording @ 2.51.

²³ Recording @ 2.51.

²⁴ Recording @ 2.51.

²⁵ Recording @ 2.53.

²⁶ Recording @ 2.51.

that day. Regarding the Food Service Boyfriend's intent to escalate the car issue at work, the Investigative Report stated that he immediately left his work post and stopped making food deliveries, causing his supervisor to finish the task, so that the Food Service Boyfriend could quickly reach his car. At this point, the Food Service Boyfriend had received numerous texts from the Food Service Daughter informing him that the Grievant was heading to the vehicle to drive it.

The Hearing Officer assumes that the reciprocal texting between the Food Service Daughter and the Food Service Boyfriend, prior to the May 7th incident, prompted the two of them to prevent the Grievant from entering and driving the car. But the facts are clear: When the Food Service Boyfriend and the Grievant met at the vehicle on May 7th, both individuals were highly charged, and both bent on continuing the argument that began on May 6th, to which the investigative report referred.²⁷

On May 7, 2025, the Food Service Boyfriend and the Grievant had set the stage to settle the dispute between them as a standoff erupted between the two co-workers as tempers flared, tensions mounted and lines were drawn. The Hearing Officer has no doubt that the Grievant and the Food Service Boyfriend exchanged angry words and the record succinctly describes the incident that followed. But from all the evidence presented, the Hearing Officer concludes that the Grievant and the Food Service Boyfriend set out, deliberately, on a path to have a workplace meltdown on this date.

But it was obvious to the fact-finder that the Grievant had good reason to question or know that the Food Service Daughter did not own the vehicle. Thus, the Grievant should never have driven the vehicle at the crux of the matter prior to seeing the registration.²⁸ The fact-finder surmises also that the Grievant was likely not mistaken about the vehicle's ownership. And it is likely that she knew who owned the vehicle. It is not credible that the Grievant was shocked, blindsided or didn't have an understanding from the Food Service Boyfriend's demeanor that she was not permitted to drive the vehicle that morning. But the Grievant appeared to be determined to drive the vehicle. Thus, it is believable that the Grievant may have been "hysterical" as the Grievant's Brother testified.²⁹

The facts also reflect that even though the Food Service Boyfriend meant to prevent the Grievant from entering the vehicle on May 7th, he knew clearly that the Grievant had formerly had permission from the Food Service Daughter to drive the vehicle. But the evidence was clear that the Grievant was not to drive the vehicle that day. In fact, he said to the Grievant, "You're not driving this car"³⁰

After the Grievant and the Food Service Boyfriend met at the side of the car, the confrontation unfolded exactly as the surveillance video reflected. At the termination hearing, the Facility's competent Security Team conducted an exhaustive search for incident videos. An eyewitness, who was a New Facility Security Officer, recorded the following summary of the May 7, 2025 incident:

"A [New Security Officer] ... employed by the Facility for approximately three weeks, recorded that on May 7, 2025 a.m., he was walking from Building 1 alongside a [Second Security Officer]. The New Security Officer observed a man hanging onto the hood of a vehicle as it exited the Building 1 parking lot at a high rate of speed.

²⁷ Exhibit 2, Section 2, at 12. In the Food Service Daughter's statement, she confirmed that, "Although [the Grievant] had driven the Jeep Compass in the past with permission, the Food Service Daughter stated she no longer wanted her mother to use the vehicle following an argument the night before." The Food Service daughter's statement appeared in the investigative report taken on May 7, 2025.

²⁸ Exhibit 2, Section 2, @ 21.

²⁹ Recording @ 2.57.

³⁰ Recording @ 2.29.

As the vehicle made a sharp left turn onto Steppingstone Square, the New Security Officer saw the man slide and jump off the hood toward the passenger side of the vehicle. Although he did not see the driver or recall specific details about the vehicle, he noted that it accelerated during the turn

After the individual later identified as the Food Service Boyfriend got off the vehicle, he proceeded toward Building 1, where he encountered the New Security Officer and the Second Security Officer. When asked what had happened, the Food Service Boyfriend responded, "She stole my car."³¹ The officers escorted him to the Fiscal conference room where the Food Service Boyfriend explained that "the mom"³² had taken the keys from someone in the kitchen and that he'd been called to intervene.

The New Security Officer confirmed that the Food Service Boyfriend appeared visibly upset during the encounter. At the direction of the Second Officer, the New Security officer retrieved the Food Service Daughter from the kitchen. Upon arrival, the Food Service Daughter confirmed the Food Service Boyfriend's account of events. Shortly afterward, the Security Supervisor arrived at the scene." See Exhibit 2, Section 2, at 13.

Regarding additional rationale for mitigation of the termination incident, the Grievant asked her Younger Daughter to testify. The Grievant's witness was credible and clear in her testimony. During a recent court hearing, emanating from the termination incident, the Younger Daughter related that the Food Service Boyfriend had stated under oath that "no altercation"³³ occurred between the Grievant and the Food Service Boyfriend. Without greater commentary from the fact-finder, if the Food Service Boyfriend chose to lie to the court,³⁴ his dishonesty does not alter, lessen or mitigate the enormity of the risk shown by the surveillance videos. *See Facility Exhibit 7, Surveillance Videos.*

The Grievant also asked her brother to testify at the termination hearing. The Grievant's Brother was credible and clear in his testimony. He verified that the Grievant was excited to the point of hysteria and he was "alarmed"³⁵ and "afraid"³⁶ for her safety. Given the circumstances, the Grievant's Brother's concern was justified but it is notable also, as the Facility Advocate pointed out, that the Grievant's Brother did not call 911 or other security to the scene. He testified, "[He] thought the police were already there."³⁷

But the fact that the Grievant was confused, hysterical, surprised or shocked does not lessen the Grievant's accountability for the termination incident. Regarding the Grievant's other defenses, that she believed the Food Service Boyfriend voluntarily jumped on or off the vehicle, was contributorily negligent or unlawfully restraining her, are nonsensical defenses. In fact, in consideration of the termination event, there simply are no factors presented to mitigate the incident and the fact-finder fully considered the totality of the incident. But twice striking another individual with a vehicle, then speeding, while the individual grips the vehicle, then stopping to look twice for your own safety, is callous. But to then flip the individual and watch him either fall or jump off the vehicle, and leave him struggling on the bare pavement, are indefensible acts. Thus, the weight of the evidence does not call for mitigation.

³¹ "She" refers to the Grievant.

³² The mom" is the Grievant.

³³ Recording @ 2.40.

³⁴ During the termination hearing, the Grievant related to the Hearing Officer that she and the Food Service Boyfriend have pending local court actions and have been ordered to stay away from one another.

³⁵ Recording @ 2.57.

³⁶ Id @ 2.57.

³⁷ Recording @ 3.0.

V. DISCUSSION

Regarding the Facility's evidence in support of terminating the Grievant, the Facility submitted a completely thorough investigative report,³⁸ which included two interviews with the Grievant plus nine additional witnesses. The Hearing Officer is satisfied also that the Facility's Security Staff made an exhaustive search for videos purporting to show the termination incident from existing camera angles which did not appear to have been altered or changed in any manner to prevent the Hearing Officer from optimally viewing the termination incident. The Hearing Officer acknowledges, however, that the Grievant does not agree that the most accurate surveillance footage was provided at the hearing. The Hearing Officer overrides the Grievant's objection to the Facility's surveillance videos shown. The Facility personnel and Facility Security Staff who testified were convincing. They testified credibly that zoom-in facial views and closer photographic shots are simply not possible for the Facility's recordation cameras to permanently store.

The Facility stated that it is the policy of DBHDS to promote the well-being of its employees by maintaining high standards of work performance and professional conduct. The DHRM Standards of Conduct Policy 1.60 outlines conduct expectations of employees that support the mission and values of their agencies and to conduct themselves in a manner deserving of public trust. DHRM Standards of Conduct Policy 1.60 also outlines due process procedures that consist of advance written notice of potential discipline, which includes written notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond.

The Facility charged the Grievant with violations of the following:

DHRM Policy No. 1.60: "Standards of Conduct" expectations which include: (1) "demonstrate respect for the agency and behave in a civil and professional manner toward agency coworkers, supervisors, managers, subordinates, residential clients, students and customers," (2) "Support efforts that ensure a safe and healthy work environment," (3) "comply with the letter and spirit of all state and agency policies and procedures, and Commonwealth laws and regulations," (4) "always conduct themselves in a manner that supports the mission of their agency and the performance of their duties whether on duty or off duty."

DHRM Policy No. 2.35: "Civility in the Workplace" defines violence in the workplace as "any physical assault, threatening behavior, or verbal abuse occurring in the workplace or third parties. Threatening behaviors create a reasonable fear of injury to another person or damage to property or subject another individual to extreme emotional distress."

Facility Instruction No. 9008: "Workplace violence" is described as "any physical assault, threatening behavior, or verbal abuse occurring in the workplace by employees or third parties. The policy also includes, but is not limited to, "beating, stabbing, shooting, rape, attempted suicide, psychological trauma such as threats, obscene phone calls, and intimidating presence and harassment of any nature such as stalking, shouting or swearing."

As reflected in the Hearing Officer's above factual findings and after due consideration, the Grievant violated all three DHRM policies and conduct standards applicable to Facility employees as set

³⁸ See Exhibit 2, Section 2, at 8-21. Administrative Investigation dated May 7, 2025.

forth above,. Specifically, the Hearing Officer finds that the Grievant violated the above DHRM Policy No. 1.60, DRHM Policy No. 2.35 and the Facility Regulation No. 9008 applicable to workplace violence.

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.³⁹ 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).

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.”⁴⁰ 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.”⁴¹ 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 reasonably assessed 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.”⁴²

On May 7, 2025, the Grievant violated the following policies, procedures and state regulation:

DRHM Policy No. 1.60:

- (1) The Grievant behaved in an unprofessional manner toward a Facility co-worker and, in so doing, exhibited disrespect for the agency.
- (2) The Grievant acted in an unsafe manner to a Facility co-worker, likely to cause physical harm, serious injury or death.

³⁹ See DHRM Department of Human Resource Management, Policy 1.60 Standards of Conduct.

⁴⁰ *Id.*, at p. 5.

⁴¹ *Id.*, at p. 5.

⁴² *Id.*, at p. 11.

- (3) The Grievant did not comply with agency policies and procedures by demonstrating unprofessional, uncivil behavior toward a Facility co-worker.
- (4) The Grievant did not conduct herself in the Facility parking lot in a manner that supported the agency's mission.

DRHM Policy No. 2.35:

The Grievant physically assaulted a Facility co-worker by moving and accelerating a vehicle in reckless disregard for injury to his person.

Departmental Instruction No. 9008:

The Grievant physically assaulted and threatened a co-worker with a vehicle by doing the following:

- (1) Causing a vehicle, under her direction and control, in the workplace parking lot to move backward onto a co-worker.
- (2) Causing a vehicle, under her direction and control, in the workplace parking lot to accelerate onto her co-worker's person.
- (3) Causing a vehicle, under her direction and control, to speed from the workplace lot to a stop sign when she knew the co-worker was positioned on the car hood.
- (4) Causing a vehicle, under her direction and control, to turn out of the workplace parking lot and cause the co-worker to leap or fall, landing on the pavement, then to leave without stopping to check on the co-worker's wellbeing.

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 not entitled to mitigate the termination charges.

DECISION

The Agency met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated Agency policies including Policy No 1.60, Policy No. 2.35 and Facility Departmental Instruction No. 9008 and that the violations rose to the level of the Group III offense charged in the Written Notice. The Hearing Officer UPHOLDS the written notice in its entirety.

APPEAL RIGHTS

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

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resources Management
101 North 14th Street, 12th Floor
Richmond, Virginia 23219

Or send by email to EDR @EHRM.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 day period has expired, or when the request for administrative review has been decided.

A challenge that the hearing decision is inconsistent with state law or agency policy must refer to a particular mandate or state 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 produce newly discovered evidence, must refer to the 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 contrary to law. You must file a notice of appeal with the clerk of the circuit court of the jurisdiction in which the grievance arose within **30 days** from the date in which the decision becomes final.

– Signature Page to Follow –

Enter: September 4, 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 4th day of September, 2025.

Sarah Smith Freeman Hearing Officer
Sarah Smith Freeman, Hearing Officer

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