



COMMONWEALTH of VIRGINIA
Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 12332

Hearing Date: September 5, 2025
Decision Issued: September 11, 2025

PROCEDURAL HISTORY

On May 14, 2025, Grievant was issued a Group I Written Notice of disciplinary action for failure to follow instructions.

On June 13, 2025, Grievant timely filed a grievance to challenge the University's action. The outcome of the Third Resolution Step was not satisfactory to Grievant and he requested a hearing. On August 4, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On September 5, 2025, a hearing was held by virtual conference.

APPEARANCES

Grievant
University Representative
Witness

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?

3. Whether the University'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 University 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:

The University of Virginia employs Grievant as a Lead Administrative Assistant. He has reported to Supervisor for three years. Grievant provides administrative support for his department and supervises five staff. No evidence of prior active disciplinary action was introduced during the hearing.

The Supervisor believed Grievant had not been completing tasks as assigned. On February 13, 2025, Supervisor met with Grievant and presented him with a Letter of Expectations (LOE).¹ The LOE provided:

This Letter of Expectations (LOE) is provided to assist you in meeting the expectations the department has for you as a valued member of the UVA organization. Please consider this as an attempt to clarify expectations for you regarding your responsibilities, given your leadership role in the department, the importance of administrative professionalism, and ongoing changes within the department. To document these expectations, this letter serves as a guideline for clarifying your job duties and performance expectations.

¹ The Letter of Expectation was a written counseling and not disciplinary action. Disciplinary action is given pursuant to a written notice.

This LOE outlines set guidelines regarding daily performance in your role related to current job responsibilities with respect to communication style and task ownership. As a result of recent concerns that have arisen over the past few months, these expectations are designed to address areas that require immediate improvement to ensure success within the department.

Please complete the following LinkedIn Learning trainings by March 13, 2025 and send me a screen shot as proof of completion:

1. Communicating with Emotional Intelligence (43 mins)
2. Demonstrating Accountability as a Leader (15 mins)
3. Critical Thinking and Problem Solving (45 mins)

I am confident that you will accept this guidance as an effort to improve your overall performance and that you will make all necessary efforts to improve your performance. If there are any expectations you cannot meet or perform, please address those concerns with management, such that clarity, training, and/or educational opportunities can be provided. Please contact me if you have questions.²

The LOE contained a section stating, “I have read this memo and understand the information presented to me” below which Grievant could sign his signature and enter the date.

On February 13, 2025, Supervisor sent Grievant the LOE as an attachment and asked Grievant to sign the letter and return it to Supervisor.

In order to send screen shots to Supervisor, Grievant could have used “snipping tool” software to put an image of his screen into an email and send the email to Supervisor.

On February 14, 2025, Grievant completed Critical Thinking and Problem Solving. On February 17, 2025, Grievant completed Demonstrating Accountability as a Leader and Communicating with Emotional Intelligence. Grievant did not send screen shots to Supervisor to show he had completed the training.

On March 17, 2025, Supervisor sent Grievant an email regarding the LOE:

The deadline to complete the three LinkedIn Learning trainings outlined in the letter of expectations has passed. As of today, I have not received the confirmation screenshots from you as instructed in the letter. Please send these to me by 4pm today.³

² University Exhibit pp. 36-38.

³ University Exhibit p. 39.

On March 17, 2025, Grievant replied to the Supervisor with an email:

During the meeting we had regarding the document you and [Ms. S] issued you indicated that I would have a chance to address each of the examples raised. However, once [Ms. S] joined the meeting and you finished listing off your/ her perceived concerns I was not given that opportunity. I would like an opportunity to address the criticisms you wrote down as I feel that they lack the relevant context in order to fairly assess what occurred in each situation. As such, I am not certain that taking specific actions as requested would be appropriate at the moment.

I look forward to the opportunity to address this matter more fully. Perhaps we can do so at our next 1-on-1 meeting?⁴

Grievant and Supervisor met on March 19, 2025. They discussed various matters including next steps such as, “[Grievant] to review the letter of expectations in detail and address any remaining concerns with [Supervisor] in a future meeting.”⁵ Grievant did not inform Supervisor he had completed the training.

On March 31, 2025, the Supervisor met with grievant as part of a disciplinary predetermination meeting to discuss the Supervisor’s instruction to Grievant. During the meeting, Grievant turned the screen of his computer to Supervisor to allow her to briefly see a screen showing he had completed the three training sessions. Grievant expressed concern about perceived unfairness in the circumstances and the opportunity to address certain elements. Grievant said he had completed the trainings but disagreed with the merits of the document and said he was not given a full opportunity to address them. Grievant asked for a separate meeting to discuss definitions, process, and options as an employee.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “generally have a minor impact on agency business operations but still require intervention.”⁶ Group II offenses include, “acts of misconduct, violations of policy, or performance of a more serious nature that significantly impact the agency’s services and operations.” Group III offenses include, “acts of misconduct, violations of policy, or performance that is of a most serious nature and significantly impacts agency operations.”

⁴ University Exhibit p. 39.

⁵ University Exhibit p. 41.

⁶ DHRM Policy 1.60, Attachment A.

Group II offenses include failure to follow a supervisor's instructions. Under the Standards of Conduct:

This offense focuses on the ability of agency managers and supervisors to direct work and the workforce. Management must demonstrate the employee was given proper, reasonable and lawful instructions and the employee improperly failed to follow the instructions or perform the assigned work regardless of whether the failure to act was intentional or unintentional. Generally speaking, an Agency is entitled to have all instructions followed, unless following the instruction would place the employee or client in imminent danger, cause irreparable harm or violate laws, policy or protocols.⁷

In this case, the University issued Grievant a Group I Written Notice.

The University has presented sufficient evidence to support the issuance of a Group I Written Notice for failure to follow a supervisor's instructions. On February 13, 2025, Supervisor instructed Grievant to:

Please complete the following LinkedIn Learning trainings by March 13, 2025 and send me a screen shot as proof of completion:

1. Communicating with Emotional Intelligence (43 mins)
2. Demonstrating Accountability as a Leader (15 mins)
3. Critical Thinking and Problem Solving (45 mins)

Supervisor's instruction was proper, reasonable, and lawful. It was appropriate for Supervisor to require proof of completion because Grievant previously had failed to follow Supervisor's instructions.

On March 17, 2025, Supervisor again instructed Grievant to send screen shots showing he had completed the training.

Grievant had completed the training by February 17, 2025, but did not notify Supervisor he had completed the training until March 31, 2025. Grievant never sent screen shots to Supervisor to show he had completed the training. Grievant failed to comply with Supervisor's instruction to send screen shots showing completion of the training thereby justifying the issuance of a Group I Written Notice.

Grievant presented evidence contesting the legitimacy of the LOE. As part of his grievance, Grievant wrote:

⁷ DHRM Policy 1.60, Attachment A. University Exhibit p. 53.

At the same time, I must clearly express that the LOE, as written, omits key context, assigns intent where none was meant, and frames certain actions in ways I find both unfair and inaccurate. Many of the perceived concerns were raised long after the situations occurred without prior discussion, and in some cases without giving me an opportunity to clarify or explain.

To the extent Grievant believed the LOE was unfair, inaccurate, and omitted key information, it would not have affected his obligation to comply with Supervisor's instruction. Supervisor's instruction was clear and Grievant knew how to send Supervisor screen shots. Grievant did not timely inform Supervisor he had completed the training.

Grievant argued he did not notify Supervisor he had completed the training because doing so would be the equivalent of signing the LOE and indicating his agreement with the LOE. He did not agree with the LOE. Grievant's argument fails for several reasons. First, nothing in the LOE indicates that by signing the LOE he was agreeing to its contents. By signing the LOE, Grievant only would have indicated he had received the memorandum and understood the information presented to him. Second, Grievant was not disciplined for failing to sign the LOE. Third, no evidence was presented to show that sending screen shots of completed training was tantamount to signing the LOE.

Grievant asserted that the LOE was formal discipline and he was not notified of his opportunity to grieve the LOE. The LOE was a written counseling and not formal disciplinary action. The University was not obligated to inform Grievant that he could file a grievance to challenge the LOE.

Va. 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"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

⁸ Va. Code § 2.2-3005.

For the reasons stated herein, the University's issuance to the Grievant of a Group I Written Notice of disciplinary action 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.

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.^[1]

[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].

/s/ Carl Wilson Schmidt

Hearing Officer

^[1] Agencies must request and receive prior approval from EDR before filing a notice of appeal.