

COMMONWEALTH OF VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 12329

Hearing Officer Appointment: August 11, 2025
Hearing Date: September 17, 2025
Decision Issued: September 21, 2025

PROCEDURAL HISTORY AND ISSUES

The Grievant was until recently a Healthcare Compliance Specialist I at a facility (the “Facility”) of the Virginia Department for Aging and Rehabilitative Services (“DARS” or the “Department” or the “Agency”). On June 23, 2025, DARS issued to the Grievant a Group II Written Notice for violation of Written Notice Offense Codes 11 and 13 (unsatisfactory performance and failure to follow instructions or policy, respectively). The Grievant has an active Group I written notice from September 2024 and an active Group II written notice from May 2025. Grievant’s employment was ended by management of the DARS effective June 23, 2025, due to cumulation of the written notices. The Grievant challenged the discipline, as described in the Grievance Form A dated July 23, 2025. The issues for hearing are those delineated by the Grievant in her Form A.

Numerous attempts to contact the Grievant by phone and email were unsuccessful so the hearing officer scheduled and held an initial prehearing conference call via Zoom on August 21, 2025, at 10:30 am. The Agency’s advocate and the hearing officer participated in the call. Finally, the Grievant sent the following email at 9:39 am On August 21, 2025:

“Good morning,

I am unable to attend the pre conference meeting this morning. I apologize for the last minute notice. I will follow up after the meeting for any updates.

Thank you,

[REDACTED]

Pursuant to the Scheduling Order, incorporated herein by this reference, e-mail was acceptable as a sole means of written communication.

Throughout the Grievant has not been invested in or responsive to her grievance. Ultimately on September 15, 2025, the Grievant sent an email to the Director of EDR (not copying anyone on the case Distribution List) requesting a continuance of the hearing scheduled for September 17, 2025.

The Director responded:

“Good morning,

You need to communicate your request for a continuance to the hearing officer assigned to your case for consideration. I would recommend that you provide the hearing officer some more details about the situation that prevents you from being available for the hearing scheduled this week and why the request is being made just a few days before the hearing. I have copied the hearing officer and representatives for DARS on this message for their awareness.”

When the Grievant did not communicate with the hearing officer, the hearing officer sent to the parties and e-mail on September 26, 2025, confirming that the hearing would be held at 10 AM on September 17, 2025. The Grievant did not appear at the hearing.

In this proceeding the Agency bears the burden of proof and must show by a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. Of course, the Grievant bears the burden of proof concerning any affirmative defenses.

At the hearing, the hearing officer received various documentary exhibits into evidence, namely Agency exhibits numbered 1-46 (there is no page 14).¹

The hearing officer recorded the hearing.

APPEARANCES

Representative for Agency
Grievant did not appear
Advocate for Agency
Witness

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as a Health Care Compliance Specialist 1. AE 42.
2. The Grievant's essential job duties include:

"..."

% of time Duties / Responsibilities

30 Title: Adjudicates Disability Claims

Summary: Determines whether or not an individual qualifies, or continues to qualify, for disability benefits, applying appropriate policies and procedures.

Duties/Responsibilities:

¹ References to the Agency's exhibits will be designated AE followed by the page number.

- Effectively applies the disability adjudicative process to Title II/Title XVI initial and reconsideration adult claims – making a positive contribution to the office and agency goals of PPWY and budgeted workload.

Measures:

- Promptly requests, obtains, and analyzes functional, medical, and vocational information related to disability claims from medical and non-medical sources.
- Accurately prepares medical assessment drafts for review/approval by agency medical/psychological consultants.
- Effectively adjudicates approximately the same number of claims as assigned. See the VA DDS Evaluation Guide for expectations and additional criteria. Learns to adjudicate other types of claims as agency needs dictate...

20 Title: Provides Excellent Customer Service

Summary: Demonstrates a strong commitment to the DDS mission and spirit of teamwork through positive interactions within the workplace and emphasizing quality service for external customers.

Duties/Responsibilities:

- Performs timely actions while processing claims with no significant delays.
- Maintains sensitivity and professionalism during interactions with internal and external customers.

Measures:

- Telephone usage demonstrates proactive case development. Missed customer calls are returned within one business day.

- Gathers only the information required to make a determination, minimizing inconvenience to customers.
- Maintains aged claim averages as noted in the Job Description Evaluation Guide.
- Achieves an average cost per case on all types of claims within 10% of the office cost per case average. Based on in line reviews, achieves a CE rate of 25% or less on initial claims.”

AE 43.

3. On May 29, 2025, Grievant’s Supervisor sent Grievant an email requiring Grievant to address delays within her caseload, noting with supervisory case review notes. AE 3.
4. As of June 16, 2025, the Grievant did not address all claims, as instructed by the Supervisor. *Id.*
5. Further, Grievant’s caseload demonstrated significant delays and customer service concerns. *Id.*
6. For example, at the time, Grievant’s caseload had 151 pieces of unread medical evidence (oldest dated 4/4/2025), 8 claims undeveloped since assignment 7 days ago, 11 claims without action in 31-45 days, 51 unread case notes (oldest dated 5/20/2025), and 54 immediate actions. *Id.*
7. Since 4/4/2025, Grievant had been assigned 115 claims and only closed one.
8. Developmental SOP timeframes indicate development is to be completed within 48 hours of assignment and second stage development is done within 48 hours, etc. *Id.*
9. Grievant has an active Group II Written Notice issued on 5/12/25. AE 11.

10. Grievant has an active Group I Written Notice issued on 9/11/24. AE 15.
11. On June 23, 2025, management of DARS issued to the Grievant a Group II Written Notice for violation of Written Notice Offense Codes 11 and 13 (unsatisfactory performance and failure to follow instructions or policy, respectively), with termination due to accumulation, effective June 23, 2025. AE 1.
12. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.
13. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
14. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
15. The testimony of the witness called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witness at the hearing was candid and forthright.

APPLICABLE LAW, ANALYSIS AND DECISION

The General Assembly enacted the *Virginia Personnel Act*, *Va. Code § 2.2-2900 et seq.*, establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the

preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the Agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (the "SOC"). AE 51. The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

The Grievant did not follow state and agency policies concerning her work duties.

Specifically, the SOC state, amongst other things, that Group II level offences include acts of misconduct, violations of policy, or performance of a more serious nature that significantly impact the agency's services and operations.

Under the SOC, employees are expected to follow supervisor's instructions and comply with written policy or agency procedures.

Concerning the subject Written Notice, Grievant failed to follow the Supervisor's instructions to complete the tasks. Her behavior was disruptive to Agency operations.

Concerning the subject Written Notice, the Grievant's disciplinary infractions were reasonably classified by management as a Group II offense, and a second Group II normally results in discharge. AE 29.

The Grievant argues in her Form A that the Agency has misapplied policy and acted unjustly in issuing the discipline. However, the hearing officer agrees with the Agency's advocate that the various offenses are appropriately classified at the Group II level with the Agency appropriately exercising the discipline and ending the Grievant's employment due to accumulation of two Group II Written Notices and a Group I Written Notice.

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated numerous policies, including Policy No. 1.60 and that the violations rose to the level of a Group II offense concerning the Written Notice.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings, § VI; DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past service to the Agency.

DHRM's *Rules for Conducting Grievance Hearings* provide in part:

DHRM's *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." *Rules* § VI(B).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant.

The Grievant has asserted that the discipline was unwarranted. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below, the hearing officer considered a number of factors including those specifically referenced in the Written Notice, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the demands of the Grievant's work environment;
2. the Grievant's tenure at the Agency;
3. the effect of the COVID-19 pandemic; and
4. the Grievant's past service to the Agency.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. The weight of an employee's

length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the policies are important to the proper functioning, appearance and reputation of the Agency, and the Grievant held an important position where management of necessity relied on her to complete her job duties promptly. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management.

Id.

In this proceeding, the Agency's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer.

The hearing officer decides for the offenses specified in the written notice (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct;

(iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the written notice and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

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 and 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]

ENTER 9/21/ 2025

John Robinson

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

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