DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case Nos: 12332

Hearing Date: September 17, 2025
Decision Issued: September 19, 2025

PROCEDURAL HISTORY

On June 13, 2025, Grievant was issued a Group II Written Notice.[1] On June 26, 2025, Grievant filed a grievance challenging the Agency's action.[2] The grievance was assigned to this Hearing Officer on August 12, 2025. A hearing was held on September 17, 2025.

APPEARANCES

Agency Advocate
Agency Representative
Grievant
Witnesses

ISSUES

Did Grievant violate DHRM Policies 2.35, 1.60 and Joint Instruction 8-23

AUTHORITY OF HEARING OFFICER

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.[3] Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the employee's alleged conduct, if otherwise properly before the Hearing Officer, justified termination. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs.*, 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

While the Hearing Officer is not a "super personnel officer" and shall give appropriate deference to actions in Agency management that are consistent with law and policy…the Hearing Officer reviews the facts *de novo*…as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify he disciplinary action. Thus, the Hearing Officer may decide as to the appropriate sanction, independent of the Agency's decision.

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 proof for establishing any affirmative defenses to discipline such as retaliation, discrimination, hostile work environment and others, and any evidence of mitigating circumstances related to discipline.[4] A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than

[1] A Ex. at 4
[2] A Ex. at 9
[3] See Va. Code § 2.2-3004(B)
[4] Grievance Procedure Manual § 5.8

not; evidence that is more convincing than the opposing evidence.[5] It is sometimes characterized as requiring that facts to be established that more probably than not occurred, or that they were more likely than not to have happened.[6] By definition, a preponderance of evidence requires only evidence, which shows that what is intended to be proved, is more likely than not, or evidence that is more convincing than the opposing evidence.[7] However, proof must go beyond conjecture.[8] In other words, there must be more than a possibility or a mere speculation.[9]

FINDINGS OF FACT

After reviewing the evidence and observing the demeanor of each witness, considering their motive, potential bias, and corroborating or contradictory evidence, I make the following findings of fact. The Agency submitted a notebook containing pages 1 through 96. With the exception of page 18, it was accepted as Agency Exhibit 1 (A Ex. 1). Grievant objected to page 18 and, after hearing testimony from the Agency witness through whom this page was offered, it was accepted in part and rejected in part. The Grievant offered no documentary evidence. The record closed at the conclusion of the hearing.

The following people testified at the hearing:
Chief Operating Officer = COO
Chief People Officer = HR
Facility Director = FD
Trades Technician 1 = TT1
Trades Technician 2 = TT2
Grievant

DHRM Policy 2.35, at **Policy Summary** states: **"**This policy is to ensure that agencies provide a welcoming, safe, and civil workplace for their employees, customers, clients, contract workers, volunteers, and other third parties and to increase awareness of all employees' responsibility to conduct themselves in a manner that cultivates mutual respect, inclusion, and a healthy work environment…"[10]

DHRM Policy 2.35 Policy Guide states **"Prohibited Conduct/Behaviors may include:**
• Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest;
• Behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others;
• Raising one's voice inappropriately or shouting at another person;"[11]

DHRM Policy 1.60, at **Expectations for Supervisors and Managers** states: "Supervisors and managers are expected to serve as role models through their compliance with policies, agency protocols and best practices in leading and communicating with their subordinate employees. Expectations for supervisors, and managers include but are not limited to: • Demonstrate interpersonal communications, leadership strategies and personal conduct that fosters a respectful workplace culture and models the expectations established for employees…"[12]

DHRM Policy 1.60 at **Disciplinary Actions** defines **Group I Offenses** as: Offenses in this category include acts of minor misconduct that require formal disciplinary action. This level is appropriate for

[5] Grievance Procedure Manual § 9
[6] *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991
[7] Administrative Review Ruling Number 2024-5660, March 8, 2024, at 5
[8] Southall, Adm'r v. Reams, Inc., 198 Va. 545, 95 S.E. 2d 145 (1956)
[9] *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)
[10] A Ex. at 24
[11] A Ex. 1 at 32,33
[12] A Ex. 1 at 44

repeated acts of minor misconduct or for first offenses that have a relatively **minor impact** on business operations but still require formal intervention.[13] (emphasis added)

DHRM Policy 1.60 at **Disciplinary Actions** defines **Group II Offenses** as: **"**Offenses in this category include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that **significantly impact** business operations and/or constitute neglect of duty involving **major** consequences, insubordinate behaviors and abuse of state resources, violations of policies, procedures, or laws."[14] (emphasis added)

Attachment A: Policy 1.60, defines **a Group I offense** as follows:

"Group I Level Offenses includes acts of misconduct, **violations of policy**, or unsatisfactory performance that have a **minor impact** on agency business operations but still require intervention. Examples may include but are not limited to: Tardiness; poor attendance; abuse of state time; **use of obscene or disrespectful language; disruptive behavior**; conviction of a minor moving traffic violation while operating a state-owned/leased or public use vehicle; (emphasis added)

First Offense: Typically, verbal or written counseling is appropriate although an agency has the discretion to issue a Group I

Repeated Violations of the Same or Similar Offense: An agency may issue a Group II Written Notice with suspension without pay for up to ten workdays if the employee has an active Group I for the same or similar offense in their personnel file."[15]

Attachment A: Policy 1.60, defines **a Group II offense** as follows:

"Group II Level Offenses includes acts of misconduct, **violations of policy**, or unsatisfactory performance of a more serious nature that has a **considerable impact** on the agency's ability to provide services and meet business needs. Examples may include but are not limited to: Failure to follow supervisor's instructions; comply with written policy or agency procedures; violation of safety/health rule(s) where no threat to bodily harm exists; leaving work without permission; failure to report to work without proper notice/approval; unauthorized use or misuse of state property; refusal to work overtime, etc.

First Offense: The agency has the option of suspending the employee without pay for up to ten workdays.

Second Offense: Discharge. In lieu of discharge, the agency may: • Suspend without pay for up to 30 workdays; and/or • Demote or transfer with disciplinary salary action of at least 5%."[16]

Joint Instruction 8-23b(III)(A) Prohibited Conduct states: "Harassment, bullying, and threatening or violent behaviors are strictly forbidden. Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable."[17]

HR prepared an Investigation Summary Report (ISR).[18] The content in this report, at page 18, 'Overview,' was disputed and I ruled 'Overview' would not be a part of Agency's evidence. It was not determinative of my decision in this matter. The ISR stated*:* "Findings: Following interviews with all parties, the investigation substantiated that both supervisors, [Grievant and Grievant's supervisor (GS)], violated the above-referenced policies [DHRM Policy 2.35, JI8-23, DHRM Policy 1.60] through their conduct during the meeting."[19]

The ISR concluded "The investigation has established clear violations of workplace civility policies by both [Grievant and GS]. As supervisors, they are expected to model professionalism, de-escalate conflict, and demonstrate respect in all workplace interactions. Instead, both engaged in a verbal altercation that included

[13] A Ex. 1 at 48
[14] A Ex. 1 at 49
[15] A Ex. 1 at 62
[16] A Ex. 1 at 63
[17] A Ex. 1 at 36
[18] A Ex. 1 at 18-23
[19] Id. at 18

profanity, aggressive behavior, and misrepresentation of facts, which not only disrupted the workplace but also set a poor example for their teams. Supervisors are held to a higher standard consist (sic) with the Standards of Conduct, and both individuals failed to uphold those expectations. Their conduct reflects a lack of judgment, civility, and professionalism, which undermines employee trust, workplace morale, and the credibility of leadership. Allowing this type of behavior from supervisory staff diminishes organizational standards and cannot be tolerated consistent with DHRM policy 2.35 Civility in the Workplace."[20]

As part of the IRS, HR interviewed TT1. During a regular bi-monthly meeting with Grievant, TT1, TT2, and GS, TT1 stated: "Both [GS] and [Grievant] got loud during meeting. [Grievant] told [GS] he doesn't know what he's doing (in his role). [GS] stood up (both had been sitting) and told [Grievant] it was bullshit what he was saying. Prior to this, [another employee] heard [GS] say that he was going to 'throw hands' with [Grievant]. TT1 thought he was going to have to get in the middle of it to prevent it from getting out of hand."[21]

TT1 testified he was not intimidated by the disagreement between Grievant and GS. He stated Grievant did not use foul or obscene language and that he has seen and heard far worse while at work. He testified Grievant did not approach GS as if to engage him physically. Both men simply stood up from a sitting position. TT1 concluded that the entire matter was unprofessional. TT1 was not asked if this matter significantly, or in any way, impacted business operations.

On May 28, TT2 sent HR an email stating his recollection of this matter: "...[Grievant] expressed concerns regarding [GS] tendency to oversee his work closely, indicating that [Grievant] preferred not to have [GS] watching him on every task. [GS] asserted that he was not doing so, but [Grievant] insisted that it was indeed the case. [GS] then vocally dismissed [Grievant's] claim, stating, 'that's bullshit.' [Grievant] reminded the group about the steam shut off scheduled for Wednesday, to which [GS] replied that he would arrive at 6 AM, emphasizing his role as a supervisor. [Grievant] pointed out that [XX] only required two plumbers to come in early, as [TT1 and TT2] were already scheduled, but [GS] insisted on maintaining his 6 AM arrival. The conversation between [GS] and [Grievant] became increasingly heated, with [Grievant] articulating his frustrations about recent developments, while [GS] reacted defensively and raised his voice. [GS] made a statement, 'I swear to God I didn't say that,' to which [Grievant] replied, 'I wouldn't do that.'[GS] then said 'you claim to be a godly man'. Although the details of the ensuing dialogue became unclear, [Grievant] asserted his integrity, stating he would not lie for [GS] regarding a job involving a radiator and whether [Grievant] had communicated with a nurse, myself have heard [GS] say 'I tried to call [Grievant]to tell him he needs to say he talked to a nurse to [XX], despite [Grievant] not having done so.' From my perspective, [Grievant] was striving to establish order within the pipe shop, as [GS's] behavior fluctuates daily; at times he is agreeable to work with, while on other occasions he disrupts operations and appears disoriented about ongoing matters. There is always tension inside the pipe shop on a daily basis except for when [GS] is off (sic) then it's a calm day."[22]

TT2 testified he was not intimidated by the disagreement between Grievant and GS. He stated the Grievant did not use foul or obscene language. He testified Grievant and GS were never in a physical position that was threatening. He testified GS had the shop in tension on a daily basis and it had been calm since GS left. TT2 was not asked if this matter significantly, or in any way, impacted business operations.

GS sent a written statement to HR on May 28. He stated therein: "...Grievant then said that I had told XX that Grievant had talked to a nurse...and further accused me of asking him to lie to XX and say he did if XX asked...I told [Grievant] no, that was not true and that I had told [XX] that I 'thought' [Grievant] had spoken to a nurse. [Grievant] became angry, repeatedly banged his fist on the table and called me a "fucking liar." It was a heated discussion but at no time did I yell or use foul language."[23]

GS was Grievant's supervisor and he did not testify. HR stated he had resigned in lieu of termination. Neither TT1 or TT2, the other parties present at this argument, commented on fist banging and both stated

[20] Id. at 18,19
[21] Id. at 21
[22] Id. at 22
[23] A Ex. 1 at 23

Grievant did not use foul or obscene language. Both stated GS used obscene language. TT2 contradicted GS's version of the 'speak to a nurse issue.' Accordingly, I find no credibility in the written statement from GS.

The first step respondent stated: "After careful review of all the pertinent facts of this case, I cannot approve this request. [Grievant], knowingly, and willingly committed this offense that was witnessed by his staff. After careful review of all the pertinent facts of this case, I cannot approve this request. [Grievant], knowingly, and willingly committed this offense that was witnessed by his staff."[24]

The first step respondent does not indicate what 'pertinent facts' he relied upon. The Group II notice stated: "… during a scheduled monthly team meeting…, [Grievant] engaged in a verbal altercation with [GS]. The exchange involved raised voices and confrontational body language. Employees present during the meeting expressed concern that the interaction could have escalated into a physical confrontation…Your behavior during the meeting was unprofessional, disruptive, and inconsistent with workplace expectations for respectful communication and conflict resolution. Such conduct impacts team moral, workplace safety, and the overall work environment…"[25]

The first step respondent did not testify. In his response to Grievant, he offered no examples of how Grievant's actions impacted team moral, workplace safety, and the overall work environment

COO, the second step respondent stated: "…Prohibitive behaviors include but are not limited to behavior that is rude, inappropriate, discourteous, unprofessional, behaving in a manner that displays a lack of regard for others, and significantly distresses, disturbs, and/or offends others, making disparaging remarks, raising one's voice inappropriately, or shouting at another person, and engaging in behavior that creates a reasonable fear of injury to another person…"[26]

COO did testify. She offered no evidence of any employee of the Agency being significantly distressed, disturbed, or reasonably being in fear of injury.

FD, the third step respondent, stated: "Supervisors and managers are expected to serve as role models through their compliance with policies, agency protocols, and best practices and leading and communicating with their subordinate employees. Expectations for supervisors, and managers include but are not limited to: Demonstrate interpersonal communications, leadership strategies and personal conduct that fosters a respectful workplace culture and models the expectations established for employees. The Standards of Conduct Policy also state that, counseling is not a required precursor to the issuance of Written Notices and when counseling has failed to correct misconduct, or performance problems, or when an employee commits a more serious offense, management should address the matter by issuing a Written Notice…"[27]

FD offered no evidence counseling had failed to correct misconduct. Apparently, there was no prior counseling regarding this matter. FD offered no evidence as to how this significantly impacted business operations of the Agency.

All 3 witnesses the Agency relied upon leaned heavily on the concept of supervisors are held to a higher standard. Grievant's Annual Performance Review Process was introduced by the Agency.[28] This document seemed to indicate that 20% of Grievant's job duties was to supervise others.[29]

The Agency offered no credible evidence Grievant shouted at another person. It offered no evidence those present were significantly distressed, disturbed or offended. It offered no evidence that Grievant's actions were unethical, dishonest, significantly distressed or offended others, had a considerable impact on the Agency's ability to provide services or meet business needs, violated safety/health rule(s), or failed to

[24] A Ex. 1 at 14
[25] A Ex. 1 at 4
[26] A Ex. 1 at 15
[27] A Ex. 1 at 16
[28] A Ex. 1 at 86-94
[29] Id. at 88

comply with a supervisor's instructions. It appears there were 4 persons present and 3 testified in this matter. GS did not testify, and the allegations made in his written statement were contradicted by TT1, TT2 and Grievant. As stated early, I find no credibility in the written statement of GS.

The evidence is that Grievant did not use obscene language and did not threaten GS. Indeed, the evidence is the polar opposite in that GS did use obscene language and stated he may 'lay hands' on Grievant. The Agency offered no evidence that team cohesion, staff morale, individual self-worth, productivity or safety was undermined.

The ISR states the altercation included profanity. The evidence before me is that is an accurate statement as regards GS and is not accurate regarding Grievant. The ISR alleged both acted aggressively. The only evidence before me is that the Grievant stood up. It alleges misrepresentation of facts and there was no evidence as to what facts Grievant misrepresented, particularly in the absence of credible evidence from GS. It alleged that the workplace was disrupted, and it set a poor example for their teams. Other than what took place during this scheduled meeting, there was no evidence as to how the workplace was disrupted. Indeed, the evidence before me is that the resignation of GS removed the tension that was in this workplace.

Finally, I am left with Grievant's written statement of June 9 wherein he stated: "I would like to express my deepest regrets for my actions… My behavior during the meeting was unacceptable… While I acknowledged that my behavior was not appropriate, I do not feel that the punishment that I am receiving is fair…"[30] In his testimony, Grievant acknowledged that he raised his voice. He denied using obscene language and he denied threatening GS.

In Administrative Review Ruling 2025-5888, the Director of EDR states "…the agency does have the burden to demonstrate that a disciplinary action is consistent with policy. Therefore, the agency must present evidence demonstrating that a Written Notice is properly categorized at the appropriate level under state and agency policy…"[31]

As a basic principle, violations of policy can be categorized as a Group I or Group II offense under DHRM Policy 1.60, Standards of Conduct.[32] As an example of a Group I, Attachment A sets forth: **use of obscene or disrespectful language; disruptive behavior.** Elevating such a Group I offense to a Group II would require evidence of aggravating factors. Such aggravating factors would be repeated violations of the same offense and/or where there has been a considerable impact on the Agency's ability to provide services and meet business needs. Thus, the hearing officer's consideration of the severity of the offense and any impact on Agency operations would appear to be a relevant and important consideration to the resolution of this case. To find that such types of misconduct were Group II offenses would necessarily involve consideration of the particular circumstances of the misconduct and any impact on Agency operations. (emphasis added)

Grievant concedes that he raised his voice. There is no policy guidance on just what constitutes a raised voice. He denies shouting at GS. There is no evidence that Grievant was unethical or dishonest. There was no evidence that his actions significantly distressed or offended those present. Indeed, GS sent Grievant an email on June 6 stating "… I know I did a lot of things wrong. I hope we can be friends after all of this. Also, I did learn a lot from you and for that I want to say thank you… Sorry all this happened, and I wish you the best bro."[33]

A reasonable person standard is applied when assessing if behavior should be considered offensive or inappropriate. Whether an environment is hostile or abusive, can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; it's severity; whether it is

[30] A Ex. 1 at 8
[31] Administrative Review Ruling 2025-5888, May 29, 2025 at 4
[32] A Ex. 1 at 62,63
[33] A Ex. 1 at 12

physically threatening, or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.[34]

The evidence before me is GS used obscene language in referring to Grievant. When addressed in such a way, it is understandable why Grievant raised his voice. The context of the situation most be considered regarding the severity of punishment.[35]

Grievant testified he expected to receive some form of discipline for his part in this argument. While the Hearing Office is not a super personnel officer, the Hearing Officer must review the facts *de novo* and determine if the Agency has made a decision that is consistent with law and policy. I find that the Agency, based primarily on the written statement of GS, has determined that what took place is a Group II offense. The evidence does not support such a finding. A raised voice, for which there is no definition, may well be discourteous. And, in a perfect world, GS and the Grievant should have discussed this matter elsewhere. But, without more than that and TT1 saying the exchange was not professional, I can find no evidence to justify elevating this matter to a Group II offense. Grievant's actions, based on a reasonable person standard, typically would result in verbal or written counseling, but the Agency is allowed discretion to issue a Group 1 Written Notice.

MITIGATION

Va. Code § 2.2-3005(C)(6), authorizes and grants Hearing Officers the power and duty to receive and consider evidence in mitigation or aggravation of any offense charges by an Agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearings ("Rules"), provide that a Hearing Officer is not a super personnel officer. Therefore, in providing any remedy, the Hearing Officer should give the appropriate level of deference to actions by the Agency management that are found to be consistent with law and policy. Specifically, in disciplinary grievances, if the Hearing Officer finds that (1) the employee engaged in the behavior described in the Written Notice; (2) the behavior constituted misconduct; and (3) the Agency's discipline was consistent with law and policy, then the Agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.

Hearing Officers are authorized to make findings of fact as to the material issues of the Case and to determine the grievance based on the material issues and the grounds and the records for those findings. The Hearing Officer reviews the facts *de novo* to determine whether the cited actions constitute misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action. The Hearing Officer has the authority to determine whether the Agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.

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, (3) the disciplinary action was free of improper motive, (4) the length of time that Grievant has been employed by the Agency, and (5) whether or not Grievant has been a valued employee during the time of his/her employment at the Agency.

I find no reason to mitigate this matter.

DECISION

I find that the Agency has not borne its burden of proof in this matter regarding issuance of a Group II Written Notice for violation of DHRM policies 2.35 and 1.60 and Joint Instruction 8-23. I further find that the Agency has borne its burden of proof in that Grievant violated these policies in raising his voice in an unprofessional way and that such violation justifies the issuance of a Group 1 Written Notice.

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[34] Qualification Ruling 2021-5275, November 3, 2021, at footnote 12

[35] Second Administrative Review Ruling 2025-5772, 5775, November 20, 2024, at 7

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 that 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 where 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].

William S. Davidson
William S. Davidson, Hearing Officer

Date: September 19, 2025

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