

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

DIVISION OF HEARINGS

In the matter of: Case No. 12344

Hearing Officer Appointment: August 25, 2025
Hearing Date: September 23, 2025
Decision Issued: September 30, 2025

PROCEDURAL HISTORY AND ISSUES

The Grievant was until recently an Intake/Juvenile Probation Officer at one of the District Court Service Units (the “CSU”) of the Department of Juvenile Justice (“DJJ” or the “Department” or the “Agency”). The Grievant requested an administrative due process hearing to challenge the issuance on July 7, 2025, of a Group II Written Notice for offense code 11 (Unsatisfactory Performance) and offense code 13 (Failure to follow instructions or policy), by management of the DJJ, as described in the Grievance Form A. The Grievant’s employment was ended effective July 7, 2025, due to cumulation of Written Notices. The issues for hearing are those delineated by the Grievant in his Form A.

On August 28, 2025, at 10 am, the parties held a first prehearing conference call via Zoom. Grievant, the Agency’s advocate and the hearing officer participated in the call.

The parties all agreed that email is acceptable as a sole means of written communication.

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 1-5.¹

The hearing officer recorded the hearing.

APPEARANCES

Representative for Agency
Grievant
Grievant's advocate
Advocate for Agency
Witnesses

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as a Probation Officer 1. AE 1 at 13.
2. Grievant began employment with the Agency on 4/25/22.
3. On May 2, 2024, Grievant's supervisor issued Grievant a 90-Day Performance Improvement Plan designed to provide Grievant with the opportunity to address and substantially improve his performance in several key areas. AE 4 at 132.
4. Core Responsibilities of Grievant's job performance and duties per his EWP continued to be of concern to management, affecting the CSU and court process:
 - (a) Determine the best course of action or intake disposition, per Code of Virginia.
 - (b) Accurately document and gather information to prepare petitions in DJJ's Electronic Data System for civil matters, detention orders, and delinquent matters according to DJJ procedures and the Code of Virginia.

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

(c) Failure to comply with supervisor's instructions.

(d) Intake Screening and Processing of civil and juvenile criminal cases is 35% is a Core Responsibility as noted on your EWP. Due to the deficiencies, Grievant's overall rating in this area was below contributor.

5. Diversion practices and case management was another 35% Core Responsibility.

AE 2 at 14.

6. On 5/7/24, the supervisor and director of the CSU (the "Director") signed a Notice of Improvement Needed/Substandard Performance. The Grievant refused to sign.

AE 4 at 124-5.

7. On July 25, 2024, the Supervisor issued a Performance Improvement Plan End Review, recognizing that Grievant successfully completed his Performance Improvement Plan.

8. The supervisor reasonably expected that Grievant's performance would be sustained by:

- Maintaining weekly supervision meetings
- Continuing to review all criminal and civil intake complaints carefully and with detail.
- Processing all intake complaints in a timely fashion.
- Following all policy and procedure according to DJJ administration.
- Accessing BADGE information that is necessary to perform intake duties.
- Organizing and maintaining diversion and intake cases according to DJJ policy and procedures.
- Reading, reviewing, and examining all intake requests carefully prior to filing with the court.

AE 4 at 142.

9. On January 30, 2025, the supervisor issued a Counseling Memorandum for Unsatisfactory Performance to Grievant:

"The Department of Human Resource Management (**DHRM**) Policy 1.60, *Standards of Conduct* outlines the minimum performance expectations for state employees. Based on your recent performance, you have failed to meet the following expectations:

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Devote full effort to job responsibilities during work hours.
- Support efforts that ensure a safe and healthy work environment.
- Meet or exceed established job performance expectations.
- Make work-related decisions and/or take actions that are in the best interest of the agency.
- Work cooperatively to achieve work unit and agency goals and objectives; and
- Always conduct themselves in a manner that supports the mission of their agency and the performance of their duties.

Please be advised that immediate and sustained improvement is required in these areas. Failure to meet these expectations may result in further disciplinary action, in accordance with DHRM Policy 1.60, *Standards of Conduct*.” (Emphasis added).

AE 4 at 144.

10. Grievant’s performance failed to meet these standards and on July 7, 2025, the Director issued Grievant a Group II Written Notice for unsatisfactory performance and failure to follow instructions or policy, citing numerous policy infractions.
11. For example, between February 8, 2025 and May 27, 2025, Grievant processed intakes with significant mistakes and failed to follow policy and procedure for intakes and diversions:
 - Diversions in the month of February remained open over 120 days.
 - In February 2025, Grievant failed to obtain Regional Program Manager (RPM) approval to divert cases remanded back for diversion by the judge.
 - In March 2025, Grievant diverted two cases that were Ineligible for diversion.
 - In March 2025, one diversion case remained opened over 120 days.
 - In March 2025, several civil petitions were filed with the Juvenile and Domestic Relations District Court incorrectly, including the following:
 - Child support petition with the child listed as the mother
 - Civil petition with the father listed as the mother

- Civil petition missing Grievant's signature as the intake officer
- Civil petition with the father listed as the mother and the mother listed as the father
- Custody Affidavit missing Grievant's signature as the intake officer
- Custody Affidavit with addresses the judge could not interpret due to lack of clarity
- In March 2025, Grievant failed to enter detention visit notes within the required timeframe.
- In April 2025, the J&DR Clerk addressed continued concerns with Grievant regarding incorrect and incomplete petitions and filings. These concerns had been addressed with Grievant on an ongoing weekly and monthly basis.
- In April 2025, Grievant diverted a case that was ineligible for diversion.
- In April 2025, the Clerk directly notified the CSU Director of continued paperwork mistakes. Two protective orders were done incorrectly In which the juveniles were listed as residing together as romantic partners. The judge called Grievant into the courtroom to question Grievant regarding the inaccuracy. Grievant told the Judge that his supervisor instructed Grievant to list the two juveniles as residing together as romantic partners. This was not true.
- Failure to list other individual in the home; reported incorrectly to the judge
- As of May 27, 2025, Grievant had 24 open diversions missing bi-weekly reviews/contacts.

As of May 27, 2025, Grievant had 11 open diversion cases where probable cause was insufficient or completely missing.

AE 1 at 2.

12. DJJ invested significant resources in training Grievant and addressing his performance deficiencies.
13. Grievant has an active Group II Written Notice issued on 11/16/22. AE 5 at 146.
14. On July 7, 2025, management of DJJ terminated Grievant's employment due to accumulation of Written Notices.
15. 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.
16. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
17. The Department's actions concerning this grievance were reasonable and consistent with law and policy.
18. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses 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 his 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 policy and the Supervisor's instructions to complete the tasks. His behavior was disruptive to Agency operations. The Written Notice, incorporated herein by this reference, lays out in detail the numerous State and DJJ policies violated. AE 1 at 2-4.

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. Indeed, as argued by counsel for DJJ, the Grievant's infractions could have resulted in multiple Written Notices.

During the hearing, the Grievant presented no probative evidence of any affirmative defenses.

The Grievant argues 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.

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 him to complete his 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 9/30/ 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.