



COMMONWEALTH of VIRGINIA
Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 12348

Hearing Date: September 17, 2025
Decision Issued: September 26, 2025

PROCEDURAL HISTORY

On July 10, 2025, Grievant was issued a Group III Written Notice of disciplinary action with removal for leaving work without permission, failure to follow instructions or policy, lack of civility in the workplace, and unauthorized use of State property.

On August 8, 2025, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On September 2, 2025, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On September 17, 2025, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Agency Party Designee
Agency Representative
Witnesses

ISSUES

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

2. Whether the behavior constituted misconduct?
3. Whether the Agency'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 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 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 Department of Behavioral Health and Developmental Services employed Grievant as a Trades Tech IV at one of its locations. He had been employed by the Agency for approximately 12 years. His duties included, "transportation services for patients, staff, goods, and equipment as directed."¹ Grievant was assigned a Dodge Van to operate while on the Agency's Facility Campus. No evidence of prior active disciplinary action was introduced.

Mr. 1 was not affiliated with the Agency. He was in possession of a toolbox. He had a video camera inside his vehicle. The Agency obtained the video after it was published on a social media website.

On May 18, 2025, Grievant reported to work wearing his Facility Uniform which showed the Facility's initials. He was assigned to trash pickup duties. Grievant received a call about Mr. 1 trying to keep his toolbox. During his shift, Grievant entered the Facility's Dodge Van and drove out the Facility's property onto a public road and then on to the property of a private business.

¹ Agency Exhibit p. 29.

Grievant encountered Mr. 1 and several other people as shown on the camera recording. Mr. 1 had his back against the trunk of a vehicle with the truck lid ajar. Inside the trunk was a large toolbox that Grievant believed belonged to him. Mr. 1 had his right elbow raised and behind him and on top of the truck lid as if to ensure the lid was not opened. One or two people were inside the vehicle looking in Grievant's direction. Grievant approached Mr. 1 in order to obtain the toolbox. Grievant was facing Mr. 1 and to Mr. 1's right. Grievant was frustrated that he had not been given the toolbox. To his left was a woman who was not visible initially in the camera. The woman asked Grievant, "Do you know if there is a hammer in there?" Grievant replied, "I know there is a hammer in there, G-d D-mn you. There's tools in there too." The woman said, "he is just trying to make sure it gets to the right person, that's all."

Grievant's Father approached Mr. 1 on Mr. 1's left side. Father grabbed the lid and pulled the lid open to access the toolbox while Mr. 1 was attempting to secure the lid. Mr. 1 turned around. Grievant approached the lid and attempted to raise the lid. Grievant touched Mr. 1. Mr. 1 moved towards Grievant.² Mr. 1 fell to the side and to the ground. Grievant remained standing. He bent over and used his right arm to punch Mr. 1. The individuals inside the vehicle screamed as a result of the conflict. Another man approached the trunk, removed the toolbox and placed it in a pickup truck. Someone else closed the trunk lid.

On May 19, 2025, Grievant was arrested and charged with Unlawful Wounding, a Class 6 Felony under Va. Code §18.2-51.

On May 19, 2025, Grievant was placed on "administrative leave with pay for up to fifteen (15) days beginning today, May 19, 2025, until the review of this situation is complete. *** Should we consider your actions inappropriate, you will be disciplined in accordance with the Standards of Conduct."³

On May 27, 2025, the Chief People Officer sent Grievant a letter stating he was, "being placed on suspension with pay effective May 19, 2025 for up to 90 calendar days. Regretfully, I must inform you that if you are convicted of this charge, your employment with [Facility] will be terminated."⁴

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

² Grievant later claimed Mr. 1 punched him. The vehicle trunk lid blocked the view of Mr. 1's action towards Grievant.

³ Agency Exhibit p. 17.

⁴ Agency Exhibit p. 18.

but still require intervention.”⁵ 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.”

“[L]eaving work without permission” is a Group II offense.⁶ On May 18, 2025, Grievant was working at the Facility. He left the Facility without permission from a supervisor and entered private property. The Agency has established that Grievant left the workplace without permission.

Grievant argued he did not leave work because he was authorized to travel on the road surrounding the Facility to perform his duties. The evidence showed, however, that Grievant travelled from the road surrounding the Facility and onto private property not related to his work duties.

“[U]nauthorized use or misuse of state property” is a Group II offense. This “[i]nvolves using state equipment or property to satisfy a personal need.”⁷ On May 18, 2025, Grievant was assigned an Agency Dodge Van to perform work duties. He used the vehicle to leave the Facility and perform a personal errand. The Agency has established that Grievant used State property without authorization.

DHRM Policy 2.35 governs Civility in the Workplace. Under this policy, “[t]he Commonwealth strictly forbids … bullying behaviors, and threatening or violent behaviors of … other third parties in the workplace. Violations occurring outside the workplace may be grounds for disciplinary actions, up to and including termination. In these situations, the agency must demonstrate that the conduct committed has a sufficient nexus to the workplace or the agency’s operations, services, or reputation to be addressed by this policy. The Policy Guide for DHRM Policy 2.35 identifies prohibited conduct to include:

- Injuring another person physically.
- Engaging in behavior that creates a reasonable fear of injury to another person.
- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest.
- Raising one’s voice inappropriately or shouting at another person.
- Swearing or using obscene language or gestures toward another person.

Any employee who engages in conduct prohibited under DHRM Policy 2.35 shall be subject to corrective action, up to and including termination, under Policy 1.60, Standards of Conduct.

⁵ See, Attachment A, DHRM Policy 1.60.

⁶ See, Attachment A, DHRM Policy 1.60.

⁷ See, Attachment A, DHRM Policy 1.60.

On May 18, 2025, Grievant confronted Mr. 1 and several other people. He raised his voice and cursed at a woman. Grievant opened the trunk lid while Mr. 1 was attempting to secure the lid. Grievant punched Mr. 1 while Mr. 1 was on the ground. The Agency has presented sufficient evidence to show that Grievant violated DHRM Policy 2.35. Grievant's lack of civility rose to the level of a Group III offense.

When the facts of this case and the policies violated are considered as a whole, the Agency has presented sufficient evidence to support the issuance of a Group III Written Notice. Upon the issuance of a Group III Written Notice, an agency may remove an employee. Accordingly, the Agency's decision to remove Grievant must be upheld.

Grievant argued that he had not been convicted of a crime and that he acted in self-defense. He argued that the Agency should not take disciplinary action until the criminal proceeding is resolved. He believes the charges will be resolved in his favor. The Agency presented testimony indicating that the Agency's discipline did not depend on whether Grievant was convicted of a crime. The evidence presented is sufficient to support the Agency's disciplinary action regardless of whether Grievant is convicted.

Grievant argued that the Agency asserted it would not remove Grievant until the criminal proceeding was resolved. For example, in her May 27, 2025 letter, the Chief People Officer wrote that Grievant would be terminated if convicted. Grievant construed this to mean he would not be removed unless there was a conviction. Although Grievant's interpretation is understandable, there is no policy that would prohibit the Agency from disciplining Grievant only if he is convicted of a crime.

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.

⁸ Va. Code § 2.2-3005.

Grievant contends the disciplinary action should be mitigated.⁹ Grievant wrote, “I respectfully ask that my 12 years of dedicated service to the Department, with no prior disciplinary actions, be weighed as a mitigating factor. I have consistently upheld professional standards, been dependable, and performed my duties with care and commitment.”¹⁰ Grievant presented letters of recommendation confirming his prior good work performance. One supervisor wrote, Grievant “was known to be a dependable and hardworking staff member that was dedicated to getting his work done on time and ensuring safety not only for himself but for all members of his team.”¹¹ A Unit Manager wrote, “[h]e consistently demonstrates a strong work ethic. He shows up on time, works diligently, and ensures that each project is completed to a high standard.”¹² Grievant received an Acknowledgement of Extraordinary Contribution on February 6, 2025.

The Agency considered Grievant’s length of service, work performance, and letter of recommendations prior to issuing the disciplinary action. The Hearing Officer can only mitigate the disciplinary action if it exceeds the limits of reasonableness. Grievant’s length of service and prior good work performance do not render the Agency’s disciplinary action unreasonable. In light of the standard set forth in the Rules, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency’s issuance to the Grievant of a Group III Written Notice of disciplinary action with removal 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

⁹ Grievant argued that other employees had engaged in worse behavior yet were permitted to remain employees. Grievant did not present sufficient evidence of these examples. The Hearing Officer cannot conclude that the Agency inconsistently disciplined its employees.

¹⁰ Agency Exhibit p. 8.

¹¹ Agency Exhibit p. 10.

¹² Agency Exhibit p. 14.

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

Carl Wilson Schmidt, Esq.
Hearing Officer

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