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ADMINISTRATIVE REVIEW

In the matter of the Department of State Police
Ruling Number 2025-5904
July 15, 2025

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer's decision in Case Number 12220. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Number 12220, as found by the hearing officer, are as follows:¹

Virginia State Police employ Grievant as a Senior Trooper at one of its locations. He began working for the Agency in 2016. The purpose of his position was, "Responsible for patrolling the highways and enforcing the traffic and criminal laws of the Commonwealth." Grievant's duties included, "[r]espond to crashes. Conduct thorough investigations and initiate appropriate action consistent with law and Department rules and regulations."² Grievant reported to Sergeant.

Grievant received an overall rating of Major Contributor on his August 1, 2024 annual performance evaluation. Grievant did not have any prior active written notices. Grievant got along well with his co-workers and had a good reputation among his peers.

Grievant received training regarding investigating felony hit and run motor vehicle crashes.

The Written Notice briefly described the offense as:

¹ Decision of Hearing Officer, Case No. 12220 ("Hearing Decision"), May 30, 2025, at 2-5 (internal footnotes renumbered).

² Agency Exhibit pp. 70, 71.

The employee while on duty failed to initially investigate a reportable motor vehicle accident and only did so after being instructed by a supervisor. The employee failed to notify dispatch when he stopped out with a vehicle that was occupied and stopped on the roadway after being involved in a motor vehicle accident. The employee failed to offer emergency medical assistance after an individual advised him that he struck his head during a motor vehicle accident. These actions are in violation of Department policy which states, "Employees will exercise sound discretion in carrying out duties and responsibilities. Such discretion should be based on Department policies and procedures, Department training, and supervisory recommendations."

The Agency merged the three allegations into one written notice.

On August 6, 2024, the Governor entered Executive Order 34, Declaration of a State of Emergency Due to Hurricane / Tropical Storm Debby. The Order stated, "a tropical storm / hurricane is likely to cause significant rainfall and flooding across the entire Commonwealth that could cause transportation difficulties and power outages." The Order was effective for 30 days unless amended or rescinded by further Executive Order.

"Mark out" occurs when a Trooper notifies the Dispatcher over the radio or on MDT of the Trooper's status. MDT is a mobile data terminal located in a State Police Vehicle. Marking out ensures that the Dispatcher knows a trooper's location and what the trooper is doing.

Driver was 81 years old. On August 8, 2024, Driver was operating his pickup truck when it became disabled. He parked his vehicle on the side of a Route with the hood open. The Route was near the Interstate and had a steady flow of traffic.

Grievant decided to approach Driver and his pickup truck. Grievant forgot to "mark out." Grievant normally marked out using the MDT in the State Police vehicle, but he forgot to do so.

Grievant approached Driver and recognized Driver. Grievant had encountered Driver one or two times before. Grievant remembered Driver as someone who seemed confused and may have had some type of mental health or psychological issue. Grievant asked Driver for his license and registration.

During the conversation, Grievant pointed to his head and asked, "Did you hit your head?" Driver told Grievant that Driver bumped his head on the window due to a truck pulling out in front of him. Grievant did not observe any red spot or anything on Driver's forehead. Grievant did not believe Driver's confusion resulted

from bumping his head. Driver did not complain of pain. Driver had no injury apparent to Grievant.

Driver said his truck would not start. Grievant asked Driver if there was anything wrong with his truck. Driver said it was fine and needed a few minutes to get it started.

Grievant asked Driver if he wanted to try starting the vehicle. Grievant offered assistance to Driver. Grievant asked if Driver wanted a tow-truck, but Driver declined. Grievant said, "Ok, I'll leave you here to see if you can get it running. If you need assistance, you can always call us back. If you want us to make arrangements to get you a tow-truck, just let us know." Grievant added, "Maybe that will give you enough time to gather your wits a little bit better." Grievant told Driver to dial #77 if he needed further assistance.

Grievant drove his State Police vehicle away leaving Driver's truck still parked on the Route shoulder. Grievant had forgotten an earlier instruction for staff to not leave unattended vehicles abandoned on the roadways because of the pending storm. Grievant did not ask Driver if he wanted medical assistance and did not call for an ambulance. Grievant left the scene to go to lunch with his shift-partners.

Grievant was on-scene with Driver for six minutes and 37 seconds.

Sergeant passed by the pickup truck on the side of the road and stopped. Sergeant observed Driver standing outside of his pickup truck. Driver appeared confused, disoriented, and disheveled.³ Driver was looking in the sky, walking in a circle, and looking into his vehicle. Sergeant asked Driver if he had broken down. Driver replied, "yes." Driver added he had been run off the road, struck a guardrail, and bumped his head. Driver said a commercial vehicle had run him off the road, forcing him into the guardrail.⁴ Sergeant requested Driver's license. Driver said he had already provided it to the previous Trooper. Driver said a Trooper had stopped to check on him and he had given his driver's license to the Trooper.

Sergeant took Driver's license and returned to his patrol vehicle to inquire with dispatch about which Trooper had stopped to check on Driver. The Dispatcher indicated no incident had been created and they were unaware of any Trooper who had stopped with Driver.

Sergeant's cell phone rang. Grievant was calling. Grievant told Sergeant that Grievant was the Trooper who had checked on Driver. Sergeant instructed Grievant to return to the vehicle's location.

³ Sergeant later concluded Driver may have had a cognitive impairment related to his age.

⁴ Driver pointed to where his vehicle hit the guardrail. Sergeant noted that this did not make sense because the guardrail impact would have been lower on the vehicle than where Driver was pointing.

When Grievant returned to the vehicle's location, he met Sergeant and began to explain what had happened. Grievant said Driver told Grievant that a truck had pulled out in front of Driver causing Driver to swerve and bump his head on the window. Grievant said that when Driver brakes hard, the pickup truck shuts off, so Driver remained stationary for a moment to allow the vehicle to reset.

Sergeant asked Grievant if Grievant would consider this a "hit and run." Grievant replied, "with no damage?" Sergeant told Grievant a vehicle does not have to make physical contact for it to be classified as a hit and run. Grievant said he previously believed physical contact was required for a hit and run but agreed that if someone runs you off the road, causing a vehicle to crash, they are required to stop. Grievant said he did not observe any injury to Driver's head. Sergeant asked Grievant if Grievant had offered rescue assistance to Driver. Grievant said he had not done so. Sergeant told Grievant to investigate the accident.

Grievant walked to Driver and began asking for information to put in the investigative report. Grievant asked Driver for his license and vehicle registration. Driver described the vehicle that pulled out in front of Driver. Driver said he bumped his head, but he was not saying he needed rescue.

Grievant told Driver if he can get the truck started, to pull off the roadway to a parking lot. Grievant took pictures of Driver's truck.

Grievant explained the crash details to Driver.

Another vehicle pulled up and jump-started Driver's pickup truck. Driver drove his vehicle approximately 1000 feet to the Hotel parking lot. Driver resided at the Hotel.

Grievant remained at the scene for 57 minutes investigating the incident.

Grievant completed a Police Crash Report of the Virginia Department of Motor Vehicles. The Agency instructs Troopers to prepare Police Crash Reports in accordance with the Virginia Police Crash Report Reference Manual for DMV Form FR300P.

As part of a subsequent investigation, Sergeant interviewed Driver. Sergeant concluded Driver was difficult to keep focused on the topic at hand. Driver said he was a suspect in a double homicide from the 1960s and he was used to being interrogated by law enforcement. He said he worked for the FBI. Driver said Grievant did a fantastic job and that he had nothing bad to say about him. Driver said he was going to write a letter of appreciation for Grievant. The Agency attempted to locate Driver's letter of appreciation but was unable to find it.

On October 9, 2024, the agency issued to the grievant a Group II Written Notice citing failure to follow instructions or policy.⁵ The grievant timely grieved this disciplinary action and during the resolution steps the Written Notice was reduced to a Group I.⁶ The grievance advanced through the rest of the process and a hearing occurred on March 10, 2025.⁷ In a decision dated May 30, 2025, the hearing officer upheld the agency's disciplinary action on grounds that the evidence showed the grievant failed to notify dispatch ("mark out") and offer emergency medical assistance.⁸ The grievant now seeks administrative review of the hearing decision by EDR.

DISCUSSION

By statute, EDR has the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions . . . on all matters related to . . . procedural compliance with the grievance procedure."⁹ If the hearing officer's exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in favor of a party; the sole remedy is that the hearing officer correct the noncompliance.¹⁰ The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.¹¹ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

On appeal, the grievant asserts various factual and policy-based arguments about the hearing officer's decision to uphold the Written Notice. At this stage it is important to note that this disciplinary action was upheld as a Group I. Pursuant to the agency's Standards of Conduct policy, a Group I can be sustained based on misconduct amounting to unsatisfactory performance.¹² Accordingly, the agency would not need to demonstrate that the grievant violated a particular policy provision, but rather that the grievant's performance was not satisfactory to management. As the hearing officer states in the decision, based on the agency's policy, satisfactory performance includes "exercis[ing] sound discretion in carrying out duties and responsibilities. Such discretion should be based on Department policies and procedures, Department training, and supervisory recommendations."¹³ The hearing officer upheld the Written Notice based on factual findings that the grievant's performance was not satisfactory.¹⁴ In addition, while there were two factual bases on which the hearing officer upheld the Written Notice (failure to offer medical assistance and failure to contact dispatch), either factual basis would be sufficient to support the Written Notice on its own at the Group I level.

⁵ Agency Exs. at 18; *see* Hearing Decision at 1.

⁶ Agency Exs. at 65, 67.

⁷ *See* Hearing Decision at 1.

⁸ *Id.* at 8-9.

⁹ Va. Code §§ 2.2-1202.1(2), (3), (5).

¹⁰ *See Grievance Procedure Manual* § 6.4(3).

¹¹ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

¹² *E.g.*, Agency Exs. at 149.

¹³ Hearing Decision at 9.

¹⁴ *Id.*

Failure to Offer Emergency Medical Assistance

The grievant argues that the hearing officer's determination that he failed to offer emergency medical assistance is inconsistent with evidence in the record and agency policy.¹⁵ The hearing officer determined that the grievant "did not inform Driver that Driver could receive medical assistance ... [and] ... did not inquire whether Driver needed medical assistance."¹⁶ The grievant argues that these determinations are inconsistent with evidence provided by the Driver during the agency's investigation that the grievant asked the Driver, "Do you need help?"¹⁷ The Driver reported that he considered this offer to include medical assistance.¹⁸

Hearing officers are authorized to make "findings of fact as to the material issues in the case"¹⁹ and to determine the grievance based "on the material issues and the grounds in the record for those findings."²⁰ Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted 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.²¹ Thus, in disciplinary actions, 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.²² Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based on evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

Upon a thorough review of the record, the hearing officer's findings are supported by evidence in the record. In his decision, the hearing officer credited evidence that on the day of the incident the grievant was asked by Sergeant whether the grievant had offered the Driver medical assistance and the grievant admitted he had not done so.²³ The available evidence from the grievant's in-car video also supports the hearing officer's determination that the Driver was not offered medical assistance.²⁴ Testimony from agency witnesses indicates that the grievant's failure to offer medical assistance in this circumstance was not consistent with his training and the agency's expectations.²⁵

While the grievant has pointed to evidence from the Driver, who did not testify at the hearing, he alleges supports his view of the case, conclusions as to the credibility of witnesses and

¹⁵ Request for Administrative Review at 3-4.

¹⁶ Hearing Decision at 8.

¹⁷ Request for Administrative Review at 3-4; Grievant Exs. at 3.

¹⁸ Grievant Exs. at 3.

¹⁹ Va. Code § 2.2-3005.1(C).

²⁰ *Grievance Procedure Manual* § 5.9.

²¹ *Rules for Conducting Grievance Hearings* § VI(B).

²² *Grievance Procedure Manual* § 5.8.

²³ Hearing Decision at 5; *see also* Agency Exs. at 27, 29.

²⁴ Agency Exs. at 26; *see also* Hearing Decision at 3-4.

²⁵ *E.g.*, Hearing Recording at 32:11-33:20.

the weight of their respective testimony on issues of disputed facts are precisely the kinds of determinations reserved solely to the hearing officer, who may observe the demeanor of the witnesses, take into account motive and potential bias, and consider potentially corroborating or contradictory evidence. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.²⁶ Accordingly, EDR declines to disturb the decision in this regard.²⁷

Failure to Notify Dispatch ("Mark Out")

The hearing officer determined that the grievant failed to notify dispatch as required by agency policy, which states that "[s]worn employees shall notify the dispatcher by radio or MDT when providing police services in self-initiated incidents."²⁸ The grievant essentially argues that the grievant offered to provide police services to the Driver, but since he provided no services, this provision of agency policy would not have required him to notify dispatch.²⁹ The hearing officer determined that the grievant began providing police services when he began interacting with the Driver.³⁰ We concur with the hearing officer's analysis as this also appears consistent with the agency's interpretation of its own policy.³¹ As such, the grievant does not present a basis for remand as to this argument.

Spoliation Inference

The grievant argues that the hearing officer failed to consider a spoliation inference regarding a letter from the Driver that was not produced by the agency.³² The hearing officer notes in his decision that the agency attempted to locate the letter but was unable to find it.³³ The *Rules for Conducting Grievance Hearings* provide that hearing officers "have the authority to and may draw adverse factual inferences against a party, if that party, without just cause, has failed to produce relevant documents ... as the hearing officer or EDR had ordered"³⁴ While the *Rules* do not require that an adverse inference be drawn, a hearing officer may do so when appropriate, for example, "with respect to any factual conflicts resolvable by the ordered documents"³⁵ Under the circumstances of this case, we do not find that the hearing officer's failure to draw an adverse inference was inconsistent with the *Rules* or the grievance procedure. The available

²⁶ See, e.g., EDR Ruling No. 2020-4976.

²⁷ The grievant's other arguments about this portion of the hearing officer's decision do not present a basis for remand but will not be discussed in detail here as they do not appear to be material to the hearing officer's ultimate determinations.

²⁸ Hearing Decision at 8 (citing General Order OPR 3.00).

²⁹ Request for Administrative Review at 4-5.

³⁰ Hearing Decision at 8.

³¹ E.g., Hearing Recording at 52:09-52:48 (indicating the requirement to contact dispatch for self-initiated "law enforcement activities").

³² Request for Administrative Review at 1-3.

³³ Hearing Decision at 5.

³⁴ *Rules for Conducting Grievance Hearings* § V(B).

³⁵ *Id.*

evidence indicates that this letter was the Driver's favorable opinion of the grievant and his handling of the incident.³⁶ It is not clear what issue this letter would help resolve. To the extent the Driver's letter would reflect the Driver's opinion that the grievant did a good job, such evidence already exists in the record and would be little more than repetitive information.³⁷ Consequently, it is EDR's determination that the hearing officer's decision not to draw an adverse inference was proper here as the letter would not appear to be able to resolve any material factual conflicts. Accordingly, EDR will not disturb the hearing decision on these grounds.³⁸

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing decision becomes a final hearing decision once all timely requests for administrative review have been decided.³⁹ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.⁴⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁴¹

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³⁶ Hearing Recording at 50:14-50:37.

³⁷ See Grievant Exs. at 3.

³⁸ To the extent the grievant's request for administrative review raises any arguments not explicitly addressed in this ruling, EDR has thoroughly reviewed the hearing record and concludes that no basis for remand is apparent.

³⁹ *Grievance Procedure Manual* § 7.2(d).

⁴⁰ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁴¹ *Id.*; see also *Va. Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).