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ADMINISTRATIVE REVIEW

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2026-5952
September 25, 2025

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management (DHRM) administratively review the hearing officer's decision in Case Number 12304. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS AND PROCEDURAL HISTORY

The relevant facts in Case Number 12304, as found by the hearing officer, are incorporated here by reference.¹ On May 23, 2025, the grievant was issued a Group III Written Notice with termination as a result of her conduct in an incident on May 7, 2025 in the facility parking lot.² The grievant timely grieved the agency's action and a hearing was held on August 7, 2025.³ In a decision dated September 4, 2025, the hearing officer found that the agency had met its burden of proof to support the issuance of the Group III Written Notice, and upheld the grievant's termination.⁴ The hearing officer's determinations of the grievant's violations of policy include:

The Grievant physically assaulted and threatened a co-worker with a vehicle by doing the following:

- (1) Causing a vehicle, under her direction and control, in the workplace parking lot to move backward onto a co-worker.
- (2) Causing a vehicle, under her direction and control, in the workplace parking lot to accelerate onto her co-worker's person.
- (3) Causing a vehicle, under her direction and control, to speed from the workplace lot to a stop sign when she knew the co-worker was positioned on the car hood.

¹ Decision of Hearing Officer, Case No. 12304 ("Hearing Decision"), Sept. 4, 2025, at 4-11.

² Hearing Decision at 1; Agency Exs. at 3.

³ See Hearing Decision at 1.

⁴ *Id.* at 11, 14.

(4) Causing a vehicle, under her direction and control, to turn out of the workplace parking lot and cause the co-worker to leap or fall, landing on the pavement, then to leave without stopping to check on the co-worker's wellbeing.⁵

The hearing officer further found that no mitigating circumstances existed to reduce the disciplinary action.⁶ The grievant now appeals the decision to EDR.

DISCUSSION

By statute, EDR has been given 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”⁷ 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 either party; the sole remedy is that the hearing officer correct the noncompliance.⁸ The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.⁹ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

Factual/Evidentiary Issues

Hearing officers are authorized to make “findings of fact as to the material issues in the case”¹⁰ and to determine the grievance based “on the material issues and the grounds in the record for those findings.”¹¹ 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.¹² 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.¹³ 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 upon 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.

⁵ *Id.* at 14.

⁶ *Id.*

⁷ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁸ See *Grievance Procedure Manual* § 6.4(3).

⁹ Va. Code §§ 2.2-1201(13), 2.2-3006(A); see *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

¹⁰ Va. Code § 2.2-3005.1(C).

¹¹ *Grievance Procedure Manual* § 5.9.

¹² *Rules for Conducting Grievance Hearings* § VI(B).

¹³ *Grievance Procedure Manual* § 5.8.

In her request for administrative review, the grievant asserts that the agency's evidence did not meet its burden of proof, largely because she alleges that the agency withheld video evidence. The hearing officer engaged the parties in a lengthy discussion on the record about the available video evidence and addressed the matter in the decision.¹⁴ The hearing officer states that she is "satisfied also that the Facility's Security Staff made an exhaustive search for videos purporting to show the termination incident from existing camera angles which did not appear to have been altered or changed in any manner to prevent the Hearing Officer from optimally viewing the termination incident. ... The Facility personnel and Facility Security Staff who testified were convincing. They testified credibly that zoom-in facial views and closer photographic shots are simply not possible for the Facility's recordation cameras to permanently store."¹⁵ EDR has reviewed the record and concurs with the hearing officer's analysis. Further, the grievant has not presented any indication of what information would be contained in any further video evidence that is alleged to have been withheld, much less how any such information would have an impact on the outcome of this hearing. Accordingly, EDR finds no error with the hearing officer's handling of this issue.

The grievant also makes factual arguments about the testimony of witnesses, principally related to asserted witness testimony that she did not engage in the misconduct charged.¹⁶ Conclusions as to the credibility of witnesses and 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.¹⁷ EDR has thoroughly reviewed the record and finds that there is record evidence that supports the hearing officers findings and the outcome of the issued decision.¹⁸ Accordingly, EDR cannot substitute its own judgment for that reflected in the hearing decision; we perceive no reversible error in the hearing officer's analysis of the factual issues or how they were discussed in the decision. Therefore, we cannot find that the hearing officer's consideration of the evidence was unreasonable or otherwise in error with respect to the grievance procedure. EDR finds no error in the hearing officer's finding that the agency provided sufficient evidence to support the issuance of a Group III Written Notice.

Mitigation

By statute, hearing officers have the power and duty to "[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [EDR]."¹⁹ The *Rules for Conducting Grievance Hearings* ("Rules") provide that "a hearing

¹⁴ Hearing Decision at 12; *see also, e.g.*, Hearing Recording at 26:00 – 1:01:25.

¹⁵ Hearing Decision at 12.

¹⁶ The hearing officer's consideration of this evidence is discussed on page 11 of the decision.

¹⁷ *See, e.g.*, EDR Ruling No. 2020-4976.

¹⁸ *E.g.*, Agency Exs. at 9-19; Agency Ex. 7.

¹⁹ Va. Code § 2.2-3005(C)(6).

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 agency management that are found to be consistent with law and policy.”²⁰ More 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.²¹

Because reasonable persons may disagree over whether and to what extent discipline should be mitigated, a hearing officer may not simply substitute his or her judgment on that issue for that of agency management. Indeed, the “exceeds the limits of reasonableness” standard is high.²² Where the hearing officer does not sustain all of the agency’s charges and finds that mitigation is warranted, they “may reduce the penalty to the maximum reasonable level sustainable under law and policy so long as the agency head or designee has not indicated at any time during the grievance process . . . that it desires a lesser penalty [to] be imposed on fewer charges.”²³ EDR, in turn, will review a hearing officer’s mitigation determination for abuse of discretion²⁴ and will reverse the determination only for clear error.

Especially in cases involving a termination, mitigation should be utilized only in the exceptional circumstance. Arguably, when an agency presents sufficient evidence to support the issuance of a Group III Written Notice, termination is an inherently reasonable outcome.²⁵ Moreover, a hearing officer “will not freely substitute [his or her] judgment for that of the agency on the question of what is the best penalty, but will only ‘assure that managerial judgment has been

²⁰ *Rules for Conducting Grievance Hearings* § VI(A).

²¹ *Id.* at § VI(B)(1).

²² The federal Merit Systems Protection Board’s approach to mitigation, while not binding on EDR, can serve as a useful model for EDR hearing officers. *E.g.*, EDR Ruling No. 2012-3102; EDR Ruling No. 2012-3040; EDR Ruling No. 2011-2992 (and authorities cited therein). The Board’s similar standard prohibits interference with management’s judgment unless, under the particular facts, the discipline imposed is “so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion.” *Parker v. U.S. Postal Serv.*, 819 F.2d 1113, 1116 (Fed. Cir. 1987) (citations and internal quotation marks omitted). On the other hand, the Board may mitigate discipline where “the agency failed to weigh the relevant factors, or the agency’s judgment clearly exceeded the limits of reasonableness.” *Batten v. U.S. Postal Serv.*, 101 M.S.P.R. 222, 227 (M.S.P.B. 2006), *aff’d*, 208 Fed. App’x 868 (Fed. Cir. 2006).

²³ *Rules for Conducting Grievance Hearings* § VI(B)(1).

²⁴ “An abuse of discretion can occur in three principal ways: ‘when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment.’” *Graves v. Shoemaker*, 299 Va. 357, 361, 851 S.E.2d 65, 66-67 (2020) (quoting *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352, 717 S.E.2d 134, 137 (2011)). The “abuse-of-discretion standard includes review to determine that the [exercise of] discretion was not guided by erroneous legal conclusions, because a court also abuses its discretion if it inaccurately ascertains [the] outermost limits of the range of choice available to it.” *Lambert v. Sea Oats Condo. Ass’n*, 293 Va. 245, 253, 798 S.E.2d 177, 182 (2017) (internal quotation omitted) (alterations in original); *see also United States v. Jenkins*, 22 F.4th 162, 167 (4th Cir. 2021) (A tribunal abuses its discretion “when it acts arbitrarily or irrationally, fails to consider . . . recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law.”).

²⁵ *E.g.*, EDR Ruling No. 2023-5458.

properly exercised within tolerable limits of reasonableness.”²⁶ On appeal, the grievant asserts various mitigating factors, including the conduct of the Food Service Boyfriend in leaving his assigned post, the grievant’s description of being “ambushed and accosted” by the Food Service Boyfriend, the grievant’s three years of otherwise satisfactory service for the agency, her strong work record, and sincere apology. The hearing officer states in the decision that “the weight of the evidence does not call for mitigation.”²⁷ EDR interprets the hearing officer’s decision as essentially finding that the mitigating factors considered did not meet the grievant’s burden to show that the disciplinary action and termination exceeded the limits of reasonableness. Having reviewed the evidence in the record regarding the grievant’s arguments as to mitigating factors on appeal, EDR perceives no error in the hearing officer’s reasoning or conclusion that mitigation was not warranted. Thus, we cannot say that the hearing officer abused her discretion in finding that the Group III Written Notice with removal was within the bounds of reasonableness. Accordingly, we decline to disturb the decision on these grounds.

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.²⁸ 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.²⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.³⁰

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²⁶ *Rules for Conducting Grievance Hearings* § VI(B)(1) n.22; e.g. EDR Ruling No. 2014-3777.

²⁷ Hearing Decision at 11.

²⁸ *Grievance Procedure Manual* § 7.2(d).

²⁹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

³⁰ *Id.*; see also Va. Dep’t of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).