

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

**DECISION OF HEARING OFFICER**

In re: George Mason University

**Case Number: 11469**

Hearing Date: January 31, 2020

Decision Issued: February 23, 2020

**PROCEDURAL HISTORY**

**Grievant is a police officer in a leadership position at George Mason University (GMU). On September 12, 2019, the Chief of Police issued a Written Counseling to Grievant, the Internal Affairs investigator for failure to maintain the confidentiality of an Internal Affairs investigation as specified in the memo. The memo also noted that because of Grievant's profound breach of trust and two prior counselings he was revoking Grievant's working job title and access to body camera video. Grievant's official job title and compensation were not changed. (Agency Ex. 5)**

On or around October 11, 2019 Grievant timely filed a grievance. (Grievance Form A) (Agency Ex. 1) Effective January 7, 2020, the Department of Human Resource Management (DHRM) assigned the matter to the undersigned Hearing Officer. On January 31, 2020, a hearing was held at GMU.

**APPEARANCES**

Grievant with legal counsel  
Agency legal counsel  
Four witnesses for the Agency  
One witness for the Grievant

## **ISSUES**

1. Whether Grievant engaged in the behavior described in the written counselling?
2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g. free of unlawful discrimination) and policy?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, aggravating circumstances existed that would overcome the mitigating circumstances?

## **EXHIBITS**

The Agency submitted a three-ring binder containing 13 exhibits numerically tabbed. Grievant submitted a three-ring binder containing 12 exhibits numerically tabbed. Objections to exhibits from both parties were resolved during the prehearing process.<sup>1</sup>

## **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. 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. Grievant has the burden of raising and establishing any affirmative defenses to the discipline and any evidence of mitigating circumstances related to the discipline. (GPM § 5.9)

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<sup>1</sup> Grievance exhibit 4 was disallowed by the Hearing Officer. It is an unauthorized cell phone copy of a police officer body camera of an arrest. See. Hearing Officer's Rulings on Objections that are a part of the record.

## **FINDINGS OF FACT**

After carefully reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact.

GMU is a distributed university with regional campuses in Fairfax, Arlington and Prince William counties, and instructional sites in Loudon County, Herndon, Lorton, Woodbridge, Front Royal and Songdo, South Korea.

The GMU Police Department maintains a police presence on all its campuses. The actual number of police officers deployed to a campus varies depending on the size and call volumes. Each campus is managed by a Deputy Chief of Police.

The Chief of Police is highly educated and has an impressive record of serving in leadership law enforcement positions. He holds a law degree from Georgetown University Law School and is a member of the D.C. Bar. He has been the GMU Police Chief for approximately 4 years. He worked in the U.S. Marshall Office and the Federal Bureau of Investigation.

As of September 12, 2019, when Grievant received the formal Counseling Letter, that is the subject of this grievance, he held a leadership position in the command structure of the GMU police department at two regional campuses. He had 12 years of service in law enforcement.

At the time Grievant received the September 12, 2019 counseling letter he had recently received one verbal counseling from his immediate supervisor, and two work performance counseling letters, the first on July 29, 2019 from his immediate supervisor (Agency Ex. 3) and the second on August 2, 2019 from the Chief of Police. (Agency Ex. 4)

The September 12, Counseling Letter revoked Grievant's access to body camera video and changed Grievant's working title. His pay band, pay, and official job title and code remained unchanged. (Agency Exs. 9 & 10). Grievant's work site and authority was limited to one regional campus with a smaller police force. His immediate supervisor remained the same.

In both positions, Grievant was required to follow General Orders, Standard Operating Procedures, and other department, university, and state policies, and maintain a professional police appearance. Prior to the change in his duties, Grievant was required to "manage the operational side of police body worn and in-car camera program ensuring proper usage and controlling access to video evidence." Additionally, Grievant was specially trained in Internal Affairs procedures and prior to the counseling was "responsible for providing information directly to the Chief of Police in a timely, thorough, and efficient manner regarding Internal Affairs matters and complaints." (Agency Exs. 9 & 10)

On July 15, 2019 Grievant sent an email to a police captain in the county in which a regional campus is located regarding an impending reduction in police coverage for that campus. The email stated that "the Chief has decided to pull resources from the [regional] campus and allocate them to the main campus where most calls take place. This will leave some days/ nights out here with no police presence." (Agency Ex. 2) (Grievant Ex. 2)

The email, on its face omitted significant details of the change, including the fact that the change was temporary and would have no significant impact on the county's police department because of the low volume of police calls on that regional campus. County officials feared that the change would result in their police officers having to respond to calls from that campus. It therefore raised significant alarm bells for the authorities of the affected county, and they requested a meeting to address their concerns. (Agency Ex. 2)(Testimony of Grievant's supervisor)

### **Counseling Letter 1**

On July 29, 2019, Grievant was issued a written performance counseling (Counseling letter 1) by his immediate supervisor because of his poor handling of the temporary change in police coverage. (Agency Ex. 3) Grievant did not file a grievance appeal of this counseling.

The Hearing Officer discerned no reticence or animosity towards the Grievant by his immediate supervisor. Rather the supervisor's testimony was professional and forthright and consistent with official documents.

The Hearing Officer rejects the suggestion posited by Grievant's counsel that the Chief of Police instructed Grievant's supervisor to issue the counseling letter.

### **Counseling Letter 2**

On August 1, the Chief had a conference call with Grievant to discuss performance issues including the email he sent to County police regarding patrol coverage on the campus in their county. On the call were Grievant's supervisor and another police officer in a leadership position like the Grievant's. The phone call was prematurely ended by the Chief after Grievant blew up and verbally attacked the chief and the policy. The other officer on the call described it as tense. According to the Chief Grievant's comments were intemperate, unprofessional and shocking.

On August 2, 2019, the Chief of Police issued a written work performance counseling letter to Grievant (Counseling letter 2) for, among other things, failing to take responsibility for the poorly drafted email to County police about the new staffing plan. (Agency Ex. 4) Grievant did not file a grievance appeal of that counseling letter.

The Counseling letter reminded Grievant that he was not promoted in August 2019 to his current position at the other regional campus, but that his working title was changed within his pay band. (Id.)

The Hearing Officer finds that Grievant did not receive a promotion in August 2019. Although the Working Title and some of his duties changed, the Role Title & Code and Pay Band remained the same. (Agency's Exs. 10 & 11). Moreover, the position was not advertised and competitively bid as required by policy.

### **The Arrest**

In January 2019, GMU police officers arrested an individual for drunk in public. An authorized video of that arrest was captured on an officer's body camera and automatically uploaded to the official WatchGuard video system. In August 2019, approximately 8 months after the arrest, the officer that was wearing the body camera accessed the WatchGuard video system and made an unauthorized copy on his cell phone that he shared with others. The cell phone video violated General Order GO-T003. (Agency Ex. 3)(Agency Ex. 8 and General Order GO-52)

Grievant was provided a copy of the WatchGuard video by his subordinate who got it from the only officer at the arrest wearing a body camera. That officer viewed the video multiple times in August 2019. Grievant accessed the WatchGuard video system multiple times in August 2019 and exported and copied the video. (Agency Ex. 3)(Grievant Ex. 5. Page 2) By so doing, Grievant violated GO – 52.

When the two videos surfaced and disrupted the GMU workplace in August 2019, Grievant was the Internal Affairs Investigator. In that role he had a duty to keep a potential excessive force complaint confidential and report it to the Chief of Police immediately. (Agency Ex. 12) Instead, he and his subordinate (who testified at the hearing) viewed and discussed the videos and concluded that the GMU police officer in the video used excessive force during the arrest. The Grievant and his witness also reviewed the incident report, prepared by a rookie

officer in field training and concluded that the report was false in order to cover up the alleged use of excessive force.

On August 12, 2019, Grievant sent an email to his supervisor (not the Chief) stating “a watchguard video was passed along to me regarding one of our officers from January. The report written regarding the incident does not follow the events that occurred on the video”. He suggested that the Virginia State Police investigate the incident. He also asked to relinquish his duties as the IA Investigator. (Grievant Ex. 5 p.2)

Grievant’s supervisor viewed the video on WatchGuard and concluded that the arresting officer’s conduct did not demonstrate excessive force. (Testimony of Grievant’s supervisor)<sup>2</sup>. After some delay, he brought the video to the attention of his supervisor, the Police Chief and asked him whether he believed that the officer in the video used excessive force. He did not however tell the Chief of Grievant’s excessive force complaint and his suggestion to involve the State Police.

The Chief testified that he was of the impression that the video was flagged by Grievant as he performed Internal Affairs quality control by reviewing WatchGuard videos for problems.

The Chief viewed the video and concluded that excessive force was not used in making the arrest and therefore no further investigation was warranted. The Chief notified the Grievant and Grievant’s supervisor of his decision. (Grievant Ex. 6) Grievant informed his subordinate of the Chief’s decision. The subordinate was not a person authorized to receive or discuss confidential internal affairs matters.

Grievant’s subordinate testified at the Hearing that he provided an unauthorized copy of the cell phone video to GMU’s Human Resources Department. On or around August 21, 2019, the Chief of Police first became aware of Grievant’s accusations when he was asked to review the matter by the Director of Employee Relations. As a result, on August 22, 2019, the Chief

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<sup>2</sup> To be clear, the Hearing Officer has not viewed any video of the arrest and makes no finding as to excessive force.

immediately assigned the matter to the current Internal Affairs investigator, an experienced, 20-year veteran of the Police Force to pursue a comprehensive independent IA investigation. This investigator had replaced Grievant in the IA position. (Grievant Ex. 7)

The Chief identified three avenues of investigation as well as “any other issues of concern that may arise during your investigation, to their logical conclusion and let the chips fall where they may. You may also draw upon any departmental resources that you need to properly conduct the investigation(s). Since I am a potential witness in this case, you should not update or brief me on your progress until you conclude your investigation and prepare your findings. Take whatever time you need but please make this a priority.” (Grievant’s Ex. 7)

The investigator conducted an extensive investigation regarding the alleged use of excessive force and the alleged false incident report. He interviewed the Grievant and all the officers who participated and/or assisted in the arrest and who viewed and shared the videos. On September 12, 2019, he sent a written report to the Chief with his recommendations to discipline the Grievant and other officers at the Chief’s discretion. (Agency Ex. 6) (Grievant’s Ex. 8) The Chief followed the investigator’s recommendations as set forth in counselling letter 3 below.

### **Counseling Letter 3**

The Chief issued counseling letter 3 on September 12, 2019. The letter stated:

- You had improper and unauthorized conversations with [Officer G] regarding the facts of the excessive force inquiry.
- You shared with [Officer G] the content of my private communications to you about the case and discussed my decision making (sic) process with [Officer G]
- You displayed a lack of candor by falsely advising [the internal affairs investigator] that you came up with the idea of bringing in the Virginia State



Police was entirely your idea. [Officer G] contradicted your statement and stated that the two of you discussed the VSP option.

- You displayed a lack of candor by falsely advising [the internal affairs investigator] that you only showed video of the alleged excessive force to [Officer G] (which itself was improper) but [Officer G] testified that you also showed the video to him.

The letter stressed that “One of the most basic tenets of Internal Affairs investigations is the necessity of maintaining the confidentiality of information that is received. To have [Grievant] the IA investigator engaged in common gossip while also disclosing the communications of the Chief of Police to a party who is not a part of the investigation is a serious breach of confidentiality and integrity. Add to that the apparent inability to provide testimony that is complete and truthful is simply unacceptable.

The letter continued “because of your profound breach of trust and integrity involved in your conduct in this matter and your two prior counseling, I am revoking your title change ... effective immediately. You will continue to report to [the same supervisor] but he would be responsible for the ultimate management of the Mason Police program at [another campus]. Your compensation will remain the same. Finally, your access to body camera video is revoked effective immediately.”

The Hearing Officer finds that the reasons given by the Chief for counseling letter 3 were based entirely on the Internal Affairs investigative report.

The Hearing Officer also finds that the investigator’s conclusions and recommendations were supported by the evidence contained in his report.

The Hearing Officer discerned no animosity by the Chief towards the Grievant. His testimony was professional, coherent and believable.

Grievant was incensed with the Chief’s conclusion and made an anonymous complaint on the fraud and abuse hotline to the Commonwealth of Virginia,

Office of the State Inspector General (OIG) in Richmond, Va. That office investigated the complaint that “included a review of applicable policies and procedures, analysis of pertinent documents and video and interviews of witnesses. (Agency Ex. 8)

OIG concluded that the GMU Police Officer who assisted in the arrest did not use excessive force and there was insufficient evidence to refute the officer’s accounts of the events in his/her report.

The report also noted that Grievant admitted he made a copy of the body camera video.

### **ANALYSIS AND OPINION**

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 the orderly administration of state employees 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)

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 present its evidence first and show by a **preponderance of evidence** that the disciplinary action was warranted and appropriate under the circumstances. Grievance Procedure Manual. **The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline** (GPM) § 5.8.

The Department of Human Resource Management (DHRM) has issued its Policies and Procedures Manual setting forth Standards of Conduct for State employees. Policy 1.60. “The purpose of the policy is to set forth the Commonwealth’s Standards of Conduct and the disciplinary process that agencies must utilize to address unacceptable behavior, conduct, and related employment problems in the workplace, or outside the workplace when conduct impacts an employee’s ability to do his/her job and/or influences the agency’s overall effectiveness.” A legitimate goal of the policy is to “enable agencies to fairly and effectively discipline and/or terminate employees.... where the misconduct and/or unacceptable performance is of such a serious nature that a first offense warrants termination.” *Id.*

GMU Police Department implements the Commonwealth’s Standard of Conducts and the disciplinary process through General Orders (GMPD GO). For example, GMPD GO-T 003 George Mason Police Department, Officer Worn Cameras (OWC), August 28, 2018 GO-26 states “The purpose of this order is to establish the department code of conduct and the procedures concerning informal and formal disciplinary practices within the department, to include commendations and corrective actions. These procedures are governed by the Commonwealth of Virginia, Department of Human Resource Management (DHRM) policy number 1.60 – Standards of Conduct.

George Mason University Police Department GO-26 expressly prohibits false reports and statements.

- a. Employees shall not make or cause to be made any false report or statement written or not. This prohibition includes any report or statement, written or not. This prohibition includes any report,

statement, or testimony given in regard to an Internal Affairs Investigation.

- b. False reports and statements shall include but not limited to the spreading of unsubstantiated rumors or innuendoes...
- c. The making of false statements by an employee is considered gross misconduct and discipline may include termination

Agency Ex. 11, §6,p. 9).

GMUPDGO-26 establishes a progressive disciplinary system with penalties ranging from oral counseling to removals. (I at §V., page 15). The Chief of Police has the express authority to impose discipline ranging from oral reprimand to dismissal. (Id. at p. 16.) A copy of any disciplinary action that is equal to a written counseling memo ... will be placed in the employee's unofficial file maintained by the Department. (Id. at page 17)

GMUPDGO-52 explains the procedures involved in receiving, processing and investigating and investigating complaints against the department or its personnel. (Agency Ex. 12)(Grievant Ex. 11) Under the procedure, the Grievant, who at the time of the counseling, was responsible for the internal affairs function was required to keep such complaints and investigations confidential.

GMUPDGO-GO-T 003, Officer Worn Cameras (OWC), August 28, 2018. Officers shall not allow unauthorized persons...to view or otherwise access OWC recordings or obtain images or audio therefrom.

### **APPLICABLE POLICIES**

The GMU Police Department Agency took the disciplinary action in this case pursuant to GMUPD General Orders GO-26 Code of Conduct/Disciplinary Action (Agency Ex. 11) and GO-52 Internal Investigations (Agency Ex. 12) and GO-T 003.

### **Grievant Engaged in the conduct described in the Written Notice**

The Findings of Fact that are carefully articulated above demonstrate that the Grievant engaged in the conduct described in the written notice. That notice was based entirely on the GMU Police Internal Affairs Investigation that was conducted by an experienced 20-year veteran of the police force. (Agency Ex. 6) The investigator concluded:

- [Grievant] should have used better judgement when dealing with sensitive and confidential information and clearly violated (GO-52-G3) – Protecting the confidentiality of files while the role of Internal Affairs Investigator.
- [Grievant] should not have discussed Chief ..email and decision making with [his subordinate] as Grievant was the Internal Affairs Investigator.
- [Grievant] also had shown the video to [another officer] without reason.<sup>3</sup>
- It is recommended the Chief of Police take appropriate disciplinary action at his discretion.

Clearly, the Internal Affairs system is important to the proper functioning of any police department. It's files and deliberations are highly confidential as the General Orders and common-sense dictate. Moreover, Grievant admitted to downloading, copying and sharing the contents of the video to other officers that were not part of Internal Affairs. This behavior is inexplicable when consideration is given to the fact that Grievant is an experienced officer with 12 years in law enforcement and was trained in internal affairs investigations.

### **The behavior constituted misconduct in violation of cited policies**

The counseling letters Grievant received do not articulate the policies upon which they were issued or the policies that Grievant allegedly breached. Nevertheless, the documents provided to Grievant and are a part of the record in this case clarify that The GMU Police Department Agency took the disciplinary action in this case pursuant to GMUPD General Orders GO-26 Code of Conduct/Disciplinary Action (Agency Ex. 11) and GO-52 Internal Investigations (Agency Ex. 12) and GO-T 003.

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<sup>3</sup> It is noted that Grievant lied to the investigator regarding who he showed the video to. Another officer admitted that Grievant had shown him the video also.(Agency Ex. 6)

GMU Police Department implements the Commonwealth's Standard of Conducts and the disciplinary process through General Orders (GMPD GO). For example, GMPD GO-T 003 George Mason Police Department, Officer Worn Cameras (OWC), August 28, 2018GO-26 states "The purpose of this order is to establish the department code of conduct and the procedures concerning informal and formal disciplinary practices within the department, to include commendations and corrective actions. These procedures are governed by the Commonwealth of Virginia, Department of Human Resource Management (DHRM) policy number 1.60 – Standards of Conduct.

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GMUPDGO-52 explains the procedures involved in receiving, processing and investigating and investigating complaints against the department or its personnel. (Agency Ex. 12)(Grievant Ex. 11) Under the

procedure, the Grievant, who at the time of the counseling, was responsible for the internal affairs function was required to keep such complaints and investigations confidential.

GMUPDGO-GO-T 003, Officer Worn Cameras (OWC), August 28, 2018. Officers shall not allow unauthorized persons...to view or otherwise access OWC recordings or obtain images or audio therefrom.

The Statement of Facts above illustrate how these policies were implemented. The Chief of Police clearly had the authority to discipline Grievant for breaching the confidentiality of an Internal Affairs investigation. Grievant downloaded and made a copy of an official WatchGuard video. He discussed the video and the Chief's conclusions with other officers. He is a 12-year veteran that was trained in Internal Affairs investigations. Two independent investigations reached the same conclusions. The independent de novo review of the evidence, including the testimony of witnesses at the hearing, by the Hearing Officer compels the same conclusion.

It is undisputed that officers were only authorized to view their own body camera videos. Grievant, as the IA investigator was authorized to view all videos. And according to the Chief's testimony, an integral part of his job was to view WatchGuard videos on the system proactively looking for problems. The video was uploaded to WatchGuard in January 2019. It was never flagged by Grievant as he presumably performed quality control reviews. He only learned of its existence some 8 months after it was on the system. It is noted that a performance expectation for Grievant was to provide information directly to the Chief of Police in a timely, thorough, and efficient manner regarding Internal Affairs matters and complaints. (Agency Ex.9 at page 3.)

Grievant argues that the information in the counselling letters are false. Such a conclusion, however, would require the Hearing Officer to disregard the investigative findings. This Hearing Officer declines the invitation to do so. Indeed, the Internal Affairs Investigator was grilled on cross examination at the hearing and he persuasively refuted the suggestion that he manufactured the

report to achieve a desired response. The Hearing Officer discerned no animus by the investigator towards the Grievant.

**The Agency's discipline was consistent with law and policy.**

Grievant argues that the statements in the Counseling Letters are false and speculates that they were malevolently orchestrated by the Chief of Police.<sup>4</sup> This wild speculation is not supported by the evidence. What it does disclose is that the Grievant (and his witness) harbor deep resentment and suspicion towards the Chief and Police Department policies. For example, Grievant testified that the change in police coverage of the other campus was made the campus unsafe. On the other hand, the Chief testified that the coverage plan mirrored the procedure in place at another campus and is working very well. This testimony was not challenged. He admitted that he was upset when he learned of the change in coverage because he did not participate in the planning. He testified that the Internal Affairs Investigator's report was false. He has offered no evidence to support that claim and the Hearing Officer discerned none. The investigator was factual and professional in his testimony and persuasively denied the suggestion that he falsified the factual predicate of his report to reach a desired outcome. Grievant's conjecture is also belied by the fact that the Inspector General reached the same conclusion as the IA investigator and the Chief of Police.

Grievant testified that the management style of the GMU Police Department is not healthy. Officers that questioned the Department's policies or filed complaints or otherwise bring negative attention to the Chief and the Assistant Chief are targeted for retaliation. Grievant conveniently ignores the fact that other officers were disciplined for their roles in viewing and disseminating the unauthorized cell phone video and other aspects of the arrest. Grievant claimed that he was caught in the middle of ongoing conflicts between the Chief and his witness. That conjecture was not supported by facts. What is clear to

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<sup>4</sup> This is an affirmative defense and Grievant bears the burden of proving the defense. Grievant has provided mere speculation in support of his defense. To the extent Grievant is asserting a retaliation case against the Chief for "demoting" him to a lower graded position it must fail in the absence of retaliatory conduct by the chief and the fact that he was never demoted. Rather his working title changed. His Role, Title & Code, pay band and compensation remained the same.



the Hearing Officer is that Grievant's obvious mistrust of management must change if the Police Department is to maintain a collegial, cohesive workplace.

Grievant also argues that his 2019 Performance Evaluation which he received after he grieved the September 12 counseling letter demonstrate improper motivation by the Chief to retaliate against him. He has offered his conjecture that he was graded on false information. The argument is not supported by facts. Moreover, Grievant has filed a separate grievance on his 2019 performance evaluation which he has agreed to put on hold until his Counseling Letter grievance is completed. (Agency Ex. 13)

**There were no mitigating circumstances justifying a reduction or removal of the disciplinary action**

In hearings contesting formal discipline, if the hearing officer finds that (1) the employee engaged in the behavior described in the Written Notice, (11) the behavior constituted misconduct, and (11) the agency's discipline was consistent with law and policy, the agency's discipline must be upheld and may not be mitigated unless under the record evidence, the agency's discipline exceeds the limits of reasonableness."(GPM at § 5.9).

The Standards of Conduct Policy provides for the reduction of discipline if there are mitigating circumstances such as (1) conditions that compel a reduction to promote the interests of fairness and objectivity, or based on an employee's otherwise satisfactory work performance; or (2) an employee's long service or otherwise satisfactory work performance.

Grievant had 12 years in police work when he\she was disciplined. Grievant had two prior counseling letters. Grievant holds a leadership position in the GMU Police Force. This is a position of trust. Grievant's supervisor and the Chief of Police both expressed a loss of confidence in Grievant's ability to properly represent the Department.

In addition, the Chief chose the very low end of his disciplinary authority to hold the Grievant accountable for his actions. There is therefore no basis to mitigate the penalty in this case.

## **DECISION**

The disciplinary action of the Agency is affirmed.

## APPEAL RIGHTS

You may request an administrative review by EEDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EEDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution (EDR)  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto: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.<sup>5</sup>

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<sup>5</sup> [See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EEDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EEDR Consultant].



2/23/2020

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Neil A.G. McPhie  
Hearing Officer