

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT  
DIVISION OF HEARINGS  
DECISION OF HEARING OFFICER  
In Re: Case No: 12018

Hearing Date: December 7, 2023  
Decision Issued: December 14, 2023

**PROCEDURAL HISTORY**

On August 22, 2023, Grievant was issued a Group III Written Notice and was terminated on August 22, 2023.<sup>1</sup> On September 18, 2023, Grievant filed a grievance challenging the Agency's actions.<sup>2</sup> The grievance was assigned to this Hearing Officer on October 2, 2023. A hearing was held on December 7, 2023.

**APPEARANCES**

Agency Advocate  
Agency Representative  
Grievant Counsel  
Grievant  
Witnesses

**ISSUES**

Did Grievant fail to follow Agency policy, was his behavior disruptive, did he violate Policy 2.35, Civility in the Workplace, and/or did he violate the Agency's Code of Ethics?

**AUTHORITY OF HEARING OFFICER**

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>3</sup> Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the employee's alleged conduct, if otherwise properly before the Hearing Officer, justified termination. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs.*, 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

While the Hearing Officer is not a "super personnel officer" and shall give appropriate deference to actions in Agency management that are consistent with law and policy...the Hearing Officer reviews the facts

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<sup>1</sup> Agency Exhibit 1, Page 1

<sup>2</sup> Agency Exhibit 1, Page 25

<sup>3</sup> See Va. Code § 2.2-3004(B)

de novo...as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify the disciplinary action. Thus, the Hearing Officer may make a decision as to the appropriate sanction, independent of the Agency's decision.

### **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 proof for establishing any affirmative defenses to discipline such as retaliation, discrimination, hostile work environment and others, and any evidence of mitigating circumstances related to discipline. A preponderance of the evidence is sometimes characterized as requiring that facts to be established that more probably than not occurred, or that they were more likely than not to have happened.<sup>4</sup> However, proof must go beyond conjecture.<sup>5</sup> In other words, there must be more than a possibility or a mere speculation.<sup>6</sup>

### **FINDINGS OF FACT**

After reviewing the evidence and observing the demeanor of each witness, I make the following findings of fact: the Agency submitted a notebook containing pages 1 through 99. The Grievant had no objection to the contents of this notebook and it was accepted in its entirety as Agency Exhibit 1. Grievant did not submit any documentary evidence. Two witnesses testified on behalf of the Agency, the District Engineer (DE) and a Human Resource Manager (HR). The Grievant did not call any witnesses.

Several Department of Human Resource Management (DHRM) policies are relevant to this matter.

Policy 1.60, Standards of Conduct (SOC) defines Violence or Threat of Violence as follows: *Workplace violence is any physical action, verbal or written threat of physical violence, harassment, intimidation, or other threatening disruptive behavior directed towards colleagues, supervisors/managers, contractors/vendors, customers/public, or other Agency stakeholders **either at or outside of the workplace**. It ranges from threats and verbal aggression to physical assaults and even homicide. Destruction of or acts of violence towards state property and equipment and verbal or written threats of violence (direct or indirect) are also acts of violence.*<sup>7</sup> **(Emphasis added)**

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<sup>4</sup> *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991

<sup>5</sup> *Southall, Adm'r v. Reams, Inc.*, 198 Va. 545, 95 S.E. 2d 145 (1956)

<sup>6</sup> *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)

<sup>7</sup> Agency Exhibit 1, Page 52

Policy 1.60, at Removal from the Workplace for Criminal Charges, states in part as follows: *Any employee who is formally charged with a criminal offence that impacts their ability to do their job or represents a risk to the Agency and to the Agency's mission shall be immediately suspended without pay for a period not to exceed 90 calendar days or temporarily reassigned to a position that is not impacted by the criminal charges... If the criminal investigation is concluded without a formal indictment or if the charge is resolved without the employee being convicted, the employer shall return the employee to active status.*<sup>8</sup>

Policy 2.35, Civility in the Workplace states as its Purpose: *It is the policy of the Commonwealth to foster a culture that demonstrates the principles of civility, diversity, equity, and inclusion. In keeping with this commitment, **workplace** harassment (including sexual harassment), bullying (including cyber bullying), and **workplace** violence of any kind are prohibited in state government agencies.*<sup>9</sup> **(Emphasis added)**

Policy 2.35, at Prohibited Conduct Application states: *The Commonwealth strictly forbids harassment (including sexual harassment), bullying behaviors, and threatening or violent behaviors of employees, applicants for employment, customers, clients, contract workers, volunteers, and other third parties **in the workplace.***<sup>10</sup> **(Emphasis added)**

Policy 2.35, in dealing with Violations Outside of the Workplace states: *Violations **occurring outside of the workplace** may be grounds for disciplinary action, 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.*<sup>11</sup> **(Emphasis added)**

Policy 2.35, in its Glossary, defines Workplace as: *Any location, either permanent or temporary, where an employee **performs any work-related duty** or is **representing the Agency** in this capacity.*<sup>12</sup> **(Emphasis added)**

The Grievant was an employee of the Agency. DE testified that Grievant was a Transportation Operator Leader III. *His primary duty was to plan, schedule, oversee and perform the installation, maintenance, repair and removal of roadway signs and traffic control devices...*<sup>13</sup> He had no supervisory duties.

Grievant also had a part time job for a local package delivery company (PD) that was not affiliated with the Agency in any manner. The Agency was aware of this part time job.

On January 14, 2023, while working for PD and **not** for the Agency, Grievant had an altercation with OE, an employee of PD. OE was **not** an employee of the Agency. A package needed to be taken from Grievant's vehicle and added to OE's vehicle. Both vehicles were parked, one behind the other on a neighborhood street that is maintained by the Agency.

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<sup>8</sup> Agency Exhibit 1, Pages 37,38

<sup>9</sup> Agency Exhibit 1, Page 53

<sup>10</sup> Agency Exhibit 1, Page 55

<sup>11</sup> Agency Exhibit 1, Page 57

<sup>12</sup> Agency Exhibit 1, Page 60

<sup>13</sup> Agency Exhibit 1, Page 87

A video, made by a residents' Ring camera, recorded the altercation. The video<sup>14</sup> showed OE walking quickly towards Grievant and they came face to face. A lamp post blocked a clear view of them. While face to face, 2 shots were fired, OE chased Grievant down the street for a short distance, and then returned to his vehicle and left. The entire exchange took less than 8 seconds. Grievant called the police.

Grievant was charged with various criminal offenses. Pursuant to the charges, the Agency invoked the SOC and, on February 1, 2023, notified Grievant that: *Any employee who is formally charged with a criminal offence that is related to the nature of his/her job or to the Agency's mission by outside authorities shall be immediately suspended without pay for a period not to exceed 90 calendar days (4/24/23). Therefore, please be advised that effective immediately and until further notice you are being placed on suspension without pay. While suspended, you may not visit [Agency] premises without an appointment to conduct official business.*<sup>15</sup>

On April 25, 2023, the Agency sent Grievant a letter stating in part: *the [Agency]) is placing you on paid Pre-disciplinary leave (PDL) with pay, pending the outcome of the court's decision and/or until the charge has been resolved... During this period, you may only visit [Agency] premises if you have an appointment to conduct official state business.*<sup>16</sup>

On July 11, 2023, the Agency sent Grievant a letter stating that the Commonwealth Attorney for Chesterfield, *elected to nolle prosequi the criminal charges... Considering this disposition, [Agency] is undertaking an administrative investigation into the facts and circumstances of the alleged conduct that prompted those charges.*<sup>17</sup>

On August 22, 2023, Grievant was terminated.

The Agency makes 2 arguments. The first is that the Grievant violated the Civility Code while in his workplace and the second is that he violated the Civility Code while outside the workplace.

Policy 2.35, in its Glossary, defines Workplace as: *Any location, either permanent or temporary, where an employee performs any work-related duty or is representing the Agency in this capacity.* DE testified that the altercation took place on streets maintained by the Agency and therefore Grievant was in his workplace. The evidence before me is that Grievant was working for PD, was not performing any work-related duty for the Agency, and was not representing the Agency in any capacity. DE believes that anything that happens on a roadway maintained by the Agency puts Grievant within the definition of workplace. Indeed, he further stated that anything that took place on public or private property was captured by Policy 2.35 definition of workplace. This is an incorrect understanding of the meaning of workplace.

The Agency's second argument is that Grievant violated the Civility Code by actions that took place outside of the workplace. Policy 2.35, in dealing with Violations Outside of the Workplace states: *Violations **occurring outside of the workplace** may be grounds for disciplinary action, 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.* Grievant's job with the

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<sup>14</sup> Agency Exhibit 1, Page 70 and transmitted electronically

<sup>15</sup> Agency Exhibit 1, Page 74

<sup>16</sup> Agency Exhibit 1, Page 75

<sup>17</sup> Agency Exhibit 1, Page 77

Agency was generally to install and fix roadway signage. With PD, it was to deliver packages. Delivering packages for PD has no connection to the Agency's workplace, operations, or services. No part of what Grievant did while working for PD was linked to, enhanced, or diminished the operations or services of the Agency.

HR testified that up to 20 employees of the Agency came to her and voiced their fear of working with Grievant. She also testified that the altercation was reported on the local news and that the Grievant was identified as an Agency employee. The Grievant was administratively removed from the workplace within 18 days of his altercation with OE. None of the fearful employees were witnesses before me, none were identified as Agency employees that worked with Grievant and there was no evidence of how the Agency's reputation was damaged by a local news report. The simple statement that "it was" by DE and HR, without some form of identifiable data, is merely an opinion of 2 Agency employees.

In the Written Notice, the Agency appended 4 pages titled "Brief Description of Offense."<sup>18</sup> The Agency put great weight in the Ring camera video. It said: *While the video shows your co-worker walking quickly towards you, there was **no visible** indication of an imminent physical threat to you, or others posed by your co-worker. Within a few seconds of coming face to face with your co-worker, you apparently pulled out a firearm and discharged it twice.*<sup>19</sup> **(Emphasis added)**

At the hearing, I viewed the relevant parts of the video multiple times. The Agency is correct in saying there was no visible threat because the face-to-face confrontation was blocked by a lamp post. Neither the hands of the Grievant or OE were visible, and the video had no verbal content.

The Agency next said: *...you stated that you had "no time to walk away." However, the video shows that several seconds elapsed from when your coworker began walking towards you in that you could have backed away or attempted to deescalate the situation.*<sup>20</sup> Again, the Agency reads into the video what it wants and not what I saw. The entire relevant sequence was approximately 8 seconds. Making an evaluation of what was going to take place and determining that one should back away in that time frame is unrealistic. One Agency witness testified that Grievant should have called his supervisor in this time frame. And we need to remember, while the Agency uses the word "co-worker", **OE is not an employee of the Agency**. Further, based on the Agency's position, I surmise that it expected Grievant to call his Agency supervisor. Again, Grievant was not working for, representing, or in any way associated with the Agency when the altercation took place.

The Agency next said: *While you did express some remorse for your actions on January 14, 2023, in your response of August 8, 2023, it was apparent during our earlier interview on July 25, 2023, that you did not appreciate the seriousness of your actions, nor did you demonstrate an understanding of the gravity of this situation and its impact on [the Agency].*<sup>21</sup> I have searched Policy 1.60 and 2.35 and can find no requirement for regret or remorse. The obvious reason is that these are completely subjective, and Agency Policy attempts to set forth an objective rubric that will not be based solely on the individual feeling of management.

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<sup>18</sup> Agency Exhibit 1, Pages 3-6

<sup>19</sup> Agency Exhibit 1, Page 3

<sup>20</sup> Agency Exhibit 1, Page 4

<sup>21</sup> Agency Exhibit 1, Page 4

The Agency next said: *Your actions on January 14, 2023, were of such a serious and disruptive nature that they have impacted Agency operations and irreparably undermined this trust, as well as your effectiveness as a leader in the department... Shooting a coworker with a firearm that, as is also the case with [the Agency], we understand you were not permitted to be carrying while at work for PD in a public environment on a [Agency] maintained roadway because of an apparent argument, with no visible evidence of an imminent threat present, represents a radical departure in judgment from the expectations of a public employee serving our community.*<sup>22</sup>

The Agency presented no evidence that operations were impacted, other than the possibility that the Agency choose to suspend Grievant and was consequently down one employee. I find that the loss of one employee did not seriously disrupt and impact the operations of the Agency. Further, while continuing to use the word co-worker, the Agency seems to want to use a violation of the rules of PD to justify its posture with Grievant. That is not permissible.

The Agency next said: *Your actions have also resulted in reputational damage to [Agency], thus further undermining the public's confidence in the Agency.*<sup>23</sup> Other than 2 [Agency] employees' testimony, there was no evidence regarding the public's feeling regarding [Agency]'s reputation or lack of confidence therein. Regarding reputational damage to the Agency, I do not find the testimony of DE or HR to be credible.

The Agency next said: *While the shooting itself did not take place while on the clock at [Agency], your actions in this case reportedly injured a member of the public, resulted in damage to a private residence, and occurred on a road [Agency] maintains and in a community [Agency] serves. These facts, **coupled with the similarity of the work you were performing at the time of these events to the work you perform at [Agency]**, creates a clear Nexus between your conduct and this matter and your work at [Agency].*<sup>24</sup>  
**(Emphasis added)**

Here, [Agency] is in error. DE testified that Grievant was a Transportation Operator Leader III. *His primary duty was to plan, schedule, oversee and perform the installation, maintenance, repair and removal of roadway signs and traffic control devices.* I find there is no similarity between installing, maintaining, repairing, and removing roadways signs or signals and delivering packages. Policy 1.60 speaks to damage to state property or equipment. The remedy for damage to private property is a civil suit between Grievant and the homeowner.

Finally, the Agency said: *[Agency]'s Code of Ethics likewise requires our pledge not to make a false or fraudulent statement. As noted above, statements made during your July 25, 2023, interview, and/or in your August 8, 2023, response to the Due Process Notice, **appear** to misrepresent what occurred on January 14, 2023, as they are inconsistent with what is seen on the video. Your actions in this matter thus have not comported with the basic tenets of the Standards of Conduct and [Agency]'s Code of Ethics and therefore constitute Group III offenses under those provisions as well.*<sup>25</sup>**(Emphasis added)**

Because of what cannot be clearly seen in the video, I find that the Agency again relies too strongly on what it thinks it saw. I note that the Agency used the word "appear." This succinctly

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<sup>22</sup> Agency Exhibit 1, Page 4

<sup>23</sup> Agency Exhibit 1, Page 5

<sup>24</sup> Agency Exhibit 1, Page 5

<sup>25</sup> Agency Exhibit 1, Pages 3,4

states the problem with the video. It essentially shows the Grievant and OE come face to face accompanied by the sound of 2-gun shots. The why of the altercation is totally absent from the video.

There are only 2 people who know the why of what happened, as both Grievant and OE were not fully visible because of the lamppost. Neither of them testified. The Agency introduced as a part of its documentary evidence the Chesterfield County Police Full Incident Report.<sup>26</sup> The police recorded contemporaneous statements of both Grievant, OE, and 1 neighbor (N1) who heard or saw the altercation. N1 told the police: *I was not too sure where OE was during the altercation but after the shots is when N1 heard the threats of, I am going to kill you. N1 stated they were still arguing even after the shots were fired.*<sup>27</sup>

OE told the police: *... after he arrived at the scene to meet the [Grievant] the argument continued, and it turned into a fight when the [Grievant] struck him in the face. He stated that they fought for a moment then the other party pulled a gun and shot at him.*<sup>28</sup>

When questioned a second time, N1 told the police: *I heard the two arguing and a black male driving the other van say that he was going to kill [Grievant]. N1 said that he heard two gunshots and called police.*<sup>29</sup>

The video did not show a fight as described by OE. It did not contain the threats of “I am going to kill you.” If such words were used by OE towards Grievant, then self-defense become a serious concern. I find the video is of little value other than to show an altercation took place between the Grievant and OE.

In *Virginia Department of Transportation v. Jerry Steven*, 53 Va. App. 654, the Court referenced DHRM Policy Ruling 8752, at 3: *It is indisputable that the grievant used obscene and abusive language in the workplace. In addition, **even though his display of threatening behavior was not in the workplace, his behavior was an extension of a job-related incident.** Thus, it is the opinion of this Agency that [Agency] officials properly applied the provisions of the standards of conduct policy and the Hearing Officer properly interpreted that policy.* It is clear that the alleged violent behavior here was **not** an extension of an [Agency] job-related incident and was **not** with another employee of the Agency.

On February 17, 2017, a Hearing Officer rendered an opinion in DHRM Case Number 10913. He stated at page 6 therein: *Grievant argued that the conflict did not occur on Agency property and, thus, was not workplace violence. Grievant pushed Mr. M onto grass that was most likely part of the Agency's property because it was within a few feet of an Agency building. DHRM Policy 1.80 defines workplace to include buildings and surrounding perimeters. Even if the Hearing Officer assumes for the sake of argument that the conflict did not occur on Agency property, workplace violence occurred. Mr. M and Grievant were co-workers on their way to work. There is a sufficient connection between Grievant's behavior and the Agency to conclude that the workplace violence policy should be applied.*

Grievant and OE are not co-workers at [Agency], and they were not on their way to work together at [Agency].

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<sup>26</sup> Agency Exhibit 1, Pages 63-69

<sup>27</sup> Agency Exhibit 1, Page 65

<sup>28</sup> Agency Exhibit 1, Page 66

<sup>29</sup> Agency Exhibit 1, Page 68

On May 9, 2023, a Hearing Officer rendered an opinion in DHRM Case Number 11868. He stated at page 6 therein: *First, disciplining an employee who was acquitted of a criminal charge and also did not engage in the underlying offence would be an unfair application of policy. The essence of disciplinary action is fault by an employee based on the employee's behavior. Being indicted is not behavior by an employee. Second, DHRM policy 1.60 addresses removal from the workplace for alleged criminal conduct. Section C(2)(c) provides: If the criminal investigation is concluded without any formal charges being made, or **if the charge is resolved without the employee being convicted** of it, the employer shall return the employee to active status. This section shows DHRM favors reinstatement of employees acquitted of criminal charges. (Emphasis added)*

All charges were resolved without the Grievant being convicted. No evidence was presented by the Agency as to why the Commonwealth choose to not proceed regarding the criminal charges. It could have been because it felt there was insufficient evidence to win a conviction. It could have been because the Commonwealth thought self-defense would be a viable argument on behalf of the Grievant. What we know is that it did not proceed. The Agency cannot now step into the shoes of the Commonwealth Attorney and find guilt by way of a termination of Grievant's employment. That is the role of the criminal justice.

On November 3, 2021, the Director of EDR issued Qualification Ruling 2021-5275. This Ruling involved Policy 2.35 and dealt with an abusive or hostile workplace. The Director stated in part at page 2: *the Grievant must show that they perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile.*

Regarding the employees that stated that they were fearful of the Grievant, the making of the statement does not make it a fait accompli. There was no evidence as to prior issues between these employees and the Grievant. There was no evidence that the Grievant had in the past threatened any employee of the Agency. There was no evidence of prior disciplinary issues between the Agency and the Grievant. The Agency seemed to look back to a criminal conviction for possession of a concealed weapon in 2003.<sup>30</sup> Yet, the Agency with full knowledge of that conviction, employed the Grievant. Grievant has worked for the Agency for more than 15 years and there has been no indication that his is a threat to any other employees. Grievant has been a valued employee during the time of employment at the Agency.

### MITIGATION

*Va. Code § 2.2-3005(C)(6)*, authorizes and grants Hearing Officers the power and duty to receive and consider evidence in mitigation or aggravation of any offense charges by an Agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearings ("Rules"), provide that a Hearing 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 the Agency management that are found to be consistent with law and policy. 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.

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<sup>30</sup> Agency Exhibit 1, Page 94



Hearing Officers are authorized to make findings of fact as to the material issues of the Case and to determine the grievance based on the material issues and the grounds and the records for those findings. The Hearing Officer reviews the facts *de novo* to determine whether the cited actions constitute 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. 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.

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, (3) the disciplinary action was free of improper motive, (4) the length of time that Grievant has been employed by the Agency, and (5) whether or not Grievant has been a valued employee during the time of his/her employment at the Agency.

### **DECISION**

I find that the altercation resulting in Grievant's termination did not take place in the workplace and that there was no nexus between it and the Agency's operations, services, or reputation. I find that the video does not support the allegation that Grievant made false or fraudulent statements. I find that damage to private property is not covered by Policy 1.60.

For the reason stated herein, the Agency's issuance to the grievance of a Group III Written Notice of disciplinary action with removal is **rescinded**. The Agency is ordered to **reinstate** Grievant to Grievant's same position prior to removal, or if the position is filled, to an equivalent position. The Agency is directed to provide the Grievant with back pay less any interim earnings that the employee received during the period of removal. The Agency is directed to provide back benefits including health insurance and credit for leave and seniority that the employee did not otherwise accrue.

### **Attorney's Fees**

The Virginia General Assembly enacted Va. Code § 2.2-3005.1(A) providing, "In grievances challenging discharge, if the Hearing Officer finds that the employee has substantially prevailed on the merits of the grievance, the employee shall be entitled to recover reasonable attorneys' fees, unless special circumstances would make an award unjust." Grievant has substantially prevailed on the merits of the grievance because he is to be reinstated. There are no special circumstances making an award of attorneys' fees unjust. Accordingly, Grievant's attorney is advised to submit an attorneys' fee petition to the Hearing Officer within 15 days of this Decision. The petition should be in accordance with the EDR Director's Rules for Conducting Grievance Hearings.

### **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 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 that 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 where the grievance arose within **30 days** of the date when the decision becomes final.<sup>[1]</sup>

[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].

*William S. Davidson*  
William S. Davidson, Hearing Officer

Date: December 14, 2023

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<sup>[1]</sup> Agencies must request and receive prior approval from EDR before filing a notice of appeal.