

Issue: Group III Written Notice with Termination (failure to follow policy, and providing false information); Hearing Date: 08/27/18; Decision Issued: 09/17/18; Agency: DOC; AHO: Carl Wilson Schmidt, Esq.; Case No. 11222; Outcome: No Relief – Agency Upheld; **Administrative Review Requests received 10/02/18; EDR Ruling Nos. 2019-4791 2019-4792 issued 11/09/18; Outcome: AHO's decision affirmed.**



# **COMMONWEALTH of VIRGINIA**

## ***Department of Human Resource Management***

### **OFFICE OF EQUAL EMPLOYMENT AND DISPUTE RESOLUTION**

#### **DECISION OF HEARING OFFICER**

In re:

**Case Number: 11222**

Hearing Date: August 27, 2018  
Decision Issued: September 17, 2018

#### **PROCEDURAL HISTORY**

On May 3, 2018, Grievant was issued a Group III Written Notice of disciplinary action with removal for:

A violation of Operating Procedure (OP) 030.4, Special investigations Unit, and OP 135.1, Standards of Conduct, for falsifying statements in order to gain access to information from an employee's confidential personnel file and again during the course of an SIU Investigation, a violation of OP 057.1, Personnel Records, for attempting to obtain confidential employee records, a violation of OP 145.3 and DHRM Policy 2.05, Equal Employment Opportunity, for retaliation against an employee who filed a complaint with the Department EEO Unit, and a violation of OP 135.3, Standards of Ethics and Conflicts of Interest, for conduct unbecoming an employee of the Commonwealth.<sup>1</sup>

On May 3, 2018, Grievant timely filed a grievance to challenge the Agency's action. The matter proceeded to hearing. On June 12, 2018, the Office of Equal Employment and Dispute Resolution assigned this appeal to the Hearing Officer. On August 27, 2018, a hearing was held at the Agency's office.

---

<sup>1</sup> Agency Exhibit 1.

## **APPEARANCES**

Grievant  
Grievant's Counsel  
Agency Party Designee  
Agency's Counsel  
Witnesses

## **ISSUES**

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

## **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

## **FINDINGS OF FACT**

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

The Department of Corrections employed Grievant as a Superintendent at one of its facilities. She had been employed by the Agency for approximately 25 years. No evidence of prior active disciplinary action was introduced during the hearing.

Human resource services for employees at Unit 1 were performed by one human resource employee at Unit 1 and other employees at Facility V. The Human Resource

Officer, Ms. L, worked at Facility V where many Unit 1 employee personnel files were kept. The Warden worked at Facility V and did not have Unit 1 employees reporting to him although he could access personnel records contained at Facility V.

Grievant was working at Unit 1 until July 2017 when she was moved to Unit 2. Once she moved to Unit 2, she no longer supervised any employees at Unit 1.

Ms. M began working for the Agency as a corrections officer in training. She became pregnant and was unable to complete her training to work as a corrections officer at Facility D. She asked for an accommodation from the Agency. She began working in the human resource department for a short period of time at Facility D or Facility P.

Facility D or Facility P required employees working on a temporary basis in human resources to sign a confidentiality form acknowledging that they understood their obligation to keep personnel records confidential. Ms. M was not required to sign a confidentiality form.<sup>2</sup>

On April 17, 2017, the Benefits Manager informed Ms. M that she was being assigned to work at Unit 1 effective April 25, 2017. Grievant supervised Ms. M. Ms. M performed poorly. Grievant had to correct Ms. M's poor performance on several occasions.

Ms. M worked in Office 1. Across the hall from her was Office 2. No one was assigned to work in Office 2. Office 2 was sometimes used one or two days per week to hold interviews of prospective employees. Ms. M had a key to Office 2. Some other employees also had keys to Office 2. When Ms. M began working in Office 1, approximately 10 boxes of records were in the office. The boxes were taped and sealed. In order to make more room for herself, Ms. M had an offender move several boxes of employee records from Office 1 to Office 2. Ms. M did not open the boxes to look inside to see what items she was moving to Office 2. Ms. M did not ask anyone's permission to move the boxes. She intended to move the boxes to a tractor shed at Unit 1 to be stored. Ms. M was instructed to return the boxes.

Ms. M moved the boxes back to Office 1 on the following day. She looked inside the boxes and saw some of the document including timesheets, cycle sheets, employee names and numbers. The boxes also contained confidential employee medical records and doctor's notes. Ms. M did not consider any of the papers she viewed to contain confidential information even though several documents contained confidential medical records.

---

<sup>2</sup> The Agency did not have a policy or practice requiring new human resource employees to sign confidentiality forms. It appears that some facilities required employees who were temporarily assigned to human resources to sign a memorandum of understanding containing a confidentiality clause. Since Ms. M was not temporarily assigned to human resources, she was not required to sign a confidentiality form.

Once Grievant learned that Ms. M had moved the boxes to Office 2 without first determining the contents of the boxes, Grievant became concerned regarding Ms. M's judgment. Grievant became concerned that Ms. M did not understand the importance of keeping employee records confidential. It was a "red flag" for Grievant. Grievant wanted to "secure her office" and knew that Ms. F could accomplish this objective. Grievant knew that Ms. F had more experience in human resources than did Ms. M. Grievant decided to cross-train Ms. F and Ms. M to ensure that the Institution would have adequate and competent human resource services. Grievant knew that Major M would be leaving the Institution soon and that the Institution would need someone to perform HR duties while Ms. M was on maternity leave.

On June 8, 2017, Ms. M filed a complaint with the Agency falsely alleging harassment and hostile work environment by Grievant. The Agency began an investigation.

On June 22, 2017, Grievant sent the Regional Administrator an email:

I need clarification regarding the temporary reassignment of [Ms. M]. [Ms. L, Facility V HRO] has informed [Ms. K] ([Ms. M's supervisor [ ]]) that she is her new supervisor and all of [Unit 1's] HR services are now at [Facility V]. That is all well and fine, except that [Unit 1 employees] are at [Unit 1] and need someone in our Office. I was in the process of getting [Ms. F] trained to take over the [Unit 1] HR Office and cross train both her and [Ms. M]. Is that no longer to take place? If so, this leaves [Unit 1] without anyone in that Office on site.

In addition, [Ms. M] was pending getting a Notice of Needs Improvement for mishandling confidential employee records. She needs to receive her EWP. [Ms. L], informed [Ms. K] that she will do her EWP. [Ms. L] is acting as if this is a permanent transfer for this employee. We just need clarification.<sup>3</sup>

The Regional Administrator ignored Grievant's email as well as a follow up email from Grievant.

On August 17, 2017, the EEO Manager sent Grievant a letter describing her findings in response to Ms. M's June 8, 2017 complaint of harassment and hostile work environment. The EEO Manager wrote, in part:

The investigation revealed that shortly after being placed at [Institution] (less than two months) due to an ADA accommodation (protected activity), you:

---

<sup>3</sup> Agency Exhibit 9.

- 1) Reprimanded [Ms. M] by issuing a NOI and instructed her temporary supervisor to issue a 2<sup>nd</sup> NOI;
- 2) Transferred [Ms. M] to another position, including changing her office, for what was described as “cross training”;
- 3) Stated to two members of your Executive Team that you wanted to fire [Ms. M].
- 4) Increased your scrutiny over [Ms. M] by initiating a review of her computer usage based upon the allegation that [Ms. M] was accessing Facebook and the [denied] report by [Fiscal Tech] that [Ms. M] “spends a lot of time on her computer”; and
- 5) Plan to increase [Ms. M’s] workload by adding training in the Records function before she had a reasonable opportunity to fully acclimate to her HR duties. \*\*\*

### Conclusion

Based on the evidence obtained through the investigation, this complaint is concluded as founded for retaliation and interference as defined by the EEOC and VA DOC Operating Procedure 145.3 resulting in a hostile work environment for [Ms. M] due to her placement as the OSS at [Facility] as an accommodation under the Americans with disabilities act (ADA).<sup>4</sup>

On October 17, 2017, Grievant was issued a Group I Written Notice of disciplinary action for:

A violation of DOP 150.3, Reasonable Accommodations; DOP 145.3, Equal Employment Opportunity, DHRM Policy 2.05, Equal Employment Opportunity, DHRM Policy 2.30, Workplace Harassment, and the Americans with Disabilities Act (ADA) for retaliation and interference as defined by EEOC and DOP 145.3 resulting in a hostile work environment for a subordinate employee due to her placement at [the Facility] as an accommodation under the ADA.

On November 3, 2017, Grievant filed a grievance to challenge the Group I Written Notice.

On December 4, 2017 at 9:33 a.m., Grievant sent Ms. B an email stating:

I have an issue and I need your assistance on regarding an employee who started working at [Unit 1] last April. She was transferred from [Facility D or Facility P] due to having an ADA accommodation to [Unit 1]. Her name is [Ms. M]. My question is do you recall if she worked in the HR Office pending a placement and if so how long?

On December 4, 2017 at 10:15 a.m., Ms. B replied to Grievant:

---

<sup>4</sup> Grievant Exhibit 1.

[Ms. M] was with [Facility P] from January 20, 2017 to April 25, 2017. Due to ADA accommodations, [Ms. M] was placed in Human Resource office at [Facility D] for a time period of less than two months, during this time [Ms. M] helped with filing and shredding documents for Human Resources. [Ms. M] did not perform any official HR duties that would require Human Resource System access, such as timekeeping, personnel transactions or payroll. I hope this information helps. Thank you.

On December 4, 2017 at 10:25 a.m., Grievant responded to Ms. B:

What you have provided is excellent. Did anyone train her about the confidentiality of the HR documents that she was filing?

On December 4, 2017 at 10:49 a.m., Ms. B wrote Grievant:

Yes, when we have OITs work in Human Resources we go over with the confidentiality of personnel information, in addition she should have signed a disclosure agreeing to this condition, it would be in per personnel file at [Facility V]. Thank you.<sup>5</sup>

On December 4, 2017 at 3:33 p.m., Grievant sent an email to the Warden with the subject "Information" and stating:

Would you check in [Ms. M's] personnel file for a confidentiality statement as noted below and have it sent to me or scanned? I am working on refuting one of her complaints that she filed at [Unit 1]. Please keep this confidential and I need you to personally look into this if you will? The only reason I know it is there is that [Ms. B] provided the information below.<sup>6</sup> Thank you.

Grievant was vague in her explanation of why she wanted the document because she did not want the Warden to know more than necessary about the reason for her request.

On December 4, 2017 at 5:52 p.m., Grievant sent an email to the Warden with the subject "Information" and stating:

[Major H] will be at the Major's meeting tomorrow. If you can, give him the document in a sealed envelope. If anyone asked me where I got it, I got it from her file at [Unit 1]. Thanks

---

<sup>5</sup> Grievant Exhibit 4. Although Ms. B believed Ms. M should have signed a confidentiality form, Ms. M had not signed one.

<sup>6</sup> Grievant attached a copy of the email Ms. B sent Grievant on December 4, 2017 at 10:49 a.m.

The Warden received the emails from Grievant. He contacted Ms. L about the request. Ms. L told the Warden no such document existed because Ms. M was administratively transferred due to an ADA accommodation and that it was a permanent transfer.

On December 6, 2017, the Warden informed the Regional Administrator who referred the matter to the Agency's Special Investigations Unit. The Warden told the Major to tell Grievant that he was not going to be able to retrieve the documents Grievant requested.

On December 7, 2017, the Agency's Special Investigations Unit received a request to investigate Grievant's request of the Warden.

The Investigator met with Grievant on December 13, 2017. The Investigator asked questions of Grievant, but did not record the interview and did not ask written questions. Grievant wrote a statement as requested by the Investigator. Grievant described the document she sought as a training form. She admitted to sending the emails to the Warden. Grievant said, "[t]his form is needed to follow up on a pending corrective action that is needed or had been recommended where [Ms. M] had mishandled employee personnel files." She intended to "follow up to the pending action for appropriate corrective action." Grievant said she asked the Warden to keep the matter confidential. Grievant said she did not "want anyone to misunderstand that I was trying to cover up how I obtained the training form and I should have explained this in detail. I would have reviewed the training form at [Unit 1] when I was the Superintendent there if that had been included in her training file." Grievant said the document in question was not a personnel record.

On December 18, 2017, the Investigator sent Grievant an email asking for additional information. Grievant addressed all of the Investigator's questions contained in the email. Most of the questions regarded the basis for the corrective action against Ms. M. The Investigator also asked why it had taken so long to issue a notice of needs improvement counseling for something that occurred in June 2017. Grievant explained that Ms. M had filed a complaint alleging harassment by Grievant, the Agency's equal employment officer accused Grievant of removing Ms. M from her ADA placement and violating the ADA. Grievant wrote:

I informed [Regional Administrator] that the corrective action was needed to address the issue and I received no reply. I sent him a follow up email on [June 22, 2017] and received no reply. [Ms. M] was then transferred to [Facility V] pending outcome of the investigation. I was transferred to [Unit 2] and was not informed that the investigation had concluded until August. I realized by reviewing my pending file that I still had for [Unit 1] that the corrective action had not been taken and knew the employee, [Ms. M] had been out due to medical leave and had recently returned to the HR office. To close out the incident after the investigation and employee's return from medical leave and to address her mishandling [of] employee



personnel files by removing files from the HR Office without checking the contents, I wanted to follow up and resubmit a recommendation that [Ms. M] at least receive a Notice of Substandard Performance as documentation to her probationary performance review. It is important that this employee receive some corrective action because she is still working with employee personnel files and she needs to understand the importance of the sensitivity and security mandates surrounding employee personnel files. \*\*\* My concern was for the best interest of the employee's future job performance and for the Department's liability.<sup>7</sup>

On March 20, 2018, a grievance hearing was held before this Hearing Officer regarding the Group I Written Notice issued to Grievant. This Hearing Officer issued a decision reversing the disciplinary action. This Hearing Officer issued a remand decision confirming the reversal of the Group I Written Notice.

On May 3, 2018, Grievant was given a Group III Written Notice and notified she would be removed from employment.

### **CONCLUSIONS OF POLICY**

Unacceptable behavior is divided into three groups, according to the severity of the behavior. Group I offenses "include types of behavior less severe in nature, but [which] require correction in the interest of maintaining a productive and well-managed work force."<sup>8</sup> Group II offenses "include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally should warrant removal."<sup>9</sup> Group III offenses "include acts and behavior of such a serious nature that a first occurrence normally should warrant removal."<sup>10</sup>

The Agency took disciplinary action because it believed Grievant (1) violated Operating Procedure 030.4, Special Investigations Unit and its Standards of Conduct for falsifying statements in order to gain access to information from an employee's confidential personnel file and again during the course of an SIU investigation; (2) violated Operating Procedure 057.1 Personnel Records for attempting to obtain confidential employee records and (3) violated Operating Procedure 145.2 and DHRM Policy 12.30 Equal Employment Opportunity for retaliation against an employee who filed a complaint with the Department EEO Unit, and (4) violated Standards of Ethics and Conflict of Interest for conduct unbecoming an employee of the Commonwealth.

---

<sup>7</sup> Agency Exhibit 9.

<sup>8</sup> Virginia Department of Corrections Operating Procedure 135.1(VI)(B).

<sup>9</sup> Virginia Department of Corrections Operating Procedure 135.1(VI)(C).

<sup>10</sup> Virginia Department of Corrections Operating Procedure 135.1(VI)(D).

#### Operating Procedure 030.4

The Agency alleged Grievant was untruthful to the Investigator. The Investigator did not record his conversation with Grievant on December 13, 2017. The Investigator did not prepare a list of written questions to ask Grievant. There is no way to measure whether Grievant was untruthful with the Investigator because the Agency did not establish with reasonable specificity the questions asked of Grievant. It appears that Grievant simply expressed her reasoning and justification for her actions. Whether the Agency believed her account, does not necessarily establish that she was untruthful.

The Investigator provided written questions in an email on December 18, 2017. Grievant's responses were truthful and complete.

#### Falsifying Statements

Virginia Department of Corrections Operating Procedure 135.1(IV)(C), *Standards of Conduct*, states, “[t]he list of offenses in this procedure is illustrative, not all-inclusive. An action or event occurring either during or outside of work hours that, in the judgment of the agency head, undermines the effectiveness of the employee or of the agency may be considered a violation of these *Standards of Conduct* and may result in disciplinary action consistent with the provisions of this procedure based on the severity of the offense.”

Deceit is a form of dishonesty and its display typically supports a basis for disciplinary action. Grievant knew that if she received the document, the source of the document was from Ms. M's personnel file at Facility V and the person providing her with the document was the Warden. Grievant told the Warden “if anyone asked me where I got it, I got it from her file at [Unit 1]. Grievant promised deception in order to induce the Warden to provide her with information from a confidential file at Facility V.

Grievant's behavior is consistent with falsifying records which is a Group III offense. The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice. Upon the issuance of a Group III Written Notice, an agency may remove an employee. Accordingly, the Agency's decision to remove Grievant must be upheld.

Grievant asserted that she did not “want anyone to misunderstand that I was trying to cover up how I obtained the training form and I should have explained this in detail. I would have reviewed the training form at [Unit 1] when I was the Superintendent there if that had been included in her training file.” The email, however, speaks for itself and clearly shows that Grievant was willing to falsely state where she obtained the document in order to induce the Warden to produce the document.

#### Operating Procedure 057.1 Personnel Records

“Failure to follow a supervisor’s instructions, perform assigned work, or otherwise comply with applicable established written policy” is a Group II offense.<sup>11</sup>

If Ms. M had signed a confidentiality form, that form would be best described as a training record. The form was intended to confirm that Ms. M was trained to keep personnel records confidential. Under DOC Operating Procedure 057.1(IV)(B), training records were Secured Records that were to be filed in secure files apart from the regular personnel files. A training record could be kept in a supervisor’s fact file.

Although the confidentiality form was not a personnel record, Grievant believed that it was located in Ms. M’s personnel file. She asked the Warden to obtain the document from Ms. M’s personnel file. Thus, the Agency’s policy governing personnel files apply to Grievant’s actions.

DOC Policy 057.1 (IV)(E) addresses Confidentiality and Disclosure. This section provides:

Personnel records are confidential and may be released only to authorized personnel. Employees responsible for preparation, maintenance, and custody of personnel records shall hold the content of such records in strict confidence, except as provided by law and DOC operating procedure. \*\*\*

Supervisors have the right to see the personal records of the employees they supervise. \*\*\*

Grievant no longer supervised Ms. M and was not entitled to access Ms. M’s personnel file. On December 4, 2017, Grievant asked the Warden to access Ms. M’s personnel file because the records were at his facility. Grievant’s attempt to access confidential records without having the authority to view them is sufficient to establish a violation of Operating Procedure 057.1. Violating policy is a Group II offense. Grievant’s behavior for attempting to access confidential records of another employee rises no higher than a Group II offense.

### Retaliation Against Ms. M.

Grievant had several objectives and motives for asking for Ms. M’s confidentiality form. None of them related to an objective of retaliating against Ms. M. Grievant’s behavior did not have the effect of interfering or retaliating for the Agency’s placement of Ms. M at Unit 1. Moreover, no evidence was presented showing Ms. M was aware of Grievant’s request.

### Standards of Ethics and Conflict of Interest

---

<sup>11</sup> Virginia Department of Corrections Operating Procedure 135.1(V)(C)(2)(a).

The purpose of Operating Procedure 135.3, Standards of Ethics and Conflict of Interest is to ensure “that all Department of Corrections staff and service providers understand and comply with requirements to act professionally and ethically, and to respect the privacy of fellow employees and individual offenders.”<sup>12</sup> The Agency relies on Section IV(B) to support its disciplinary action. This section provides:

1. Employees of the Department of Corrections shall conduct themselves by the highest standards of ethics so that their actions will not be construed as conflict of interest or conduct unbecoming an employee of the Commonwealth.
2. The DOC is an organization that conforms to high professional, ethical, and moral standards of conduct.<sup>13</sup>

The language in this portion of the policy is aspirational in nature. It does not form a separate Standards of Conduct or basis for discipline independent of the Standards of Conduct. Presumably any violation of the Standards of Conduct is conduct unbecoming an employee. Disciplining Grievant for conduct unbecoming a State employee (under this the above sections of the policy) is meaningless without a separate basis for disciplinary action under the Standards of Conduct.

### Mitigation

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resource Management ....”<sup>14</sup> Under the *Rules for Conducting Grievance Hearings*, “[a] hearing officer must give deference to the agency’s consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency’s discipline, the hearing officer shall state in the hearing decision the basis for mitigation.” A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive.

There is a difference between the decision to take some disciplinary action and the decision regarding what level of disciplinary action to take (level I, level II, and level III). The Agency’s decision to take some level of disciplinary action was appropriate. Grievant engaged in behavior giving rise to disciplinary action. There is no basis to mitigate the Agency’s decision to take some level of disciplinary action.

---

<sup>12</sup> Agency Exhibit 8.

<sup>13</sup> Agency Exhibit 8.

<sup>14</sup> Va. Code § 2.2-3005.

The mitigation standard available to the Agency differs dramatically from the mitigation standard available to the Hearing Officer. The Agency could have mitigated the disciplinary action from a Group III Written Notice with removal to a group offense that did not include removal. For example, the Agency could have accomplished severe corrective action against Grievant by giving her a Group III Written Notice with demotion, suspension, and/or transfer. Instead, the Agency chose to remove Grievant because her behavior created a “trust issue” according to the Regional Administrator.

The Hearing Officer does not believe the Agency trusted Grievant prior to issuing the Group III Written Notice and, thus, its stated reason for failing to mitigate the disciplinary action is merely a pretext to end its long standing conflict with Grievant.<sup>15</sup> Indeed, one of the Agency’s alleged violations is inconsistent with prior disciplinary action. The Agency issued Grievant a Group I Written Notice for what it alleged was actual interference and actual retaliation resulting in a hostile work environment for Ms. M. In this case, the Agency issued a Group III Written Notice, in part, for attempting to interfere and retaliate against Ms. M for filing a complaint with the Agency’s EEO unit. Surely, an unsuccessful attempt to interfere and retaliate would not justify disciplinary action higher than actual interference and retaliation. Moreover, the document Grievant sought was not a personnel record. If it had existed, it would not have contained any confidential information regarding Ms. M. It would have shown whether or not she had received training regarding confidentiality of human resource records. Grievant could have obtained the document without Ms. M’s consent through the grievance process while the Group I Written Notice was pending.

The question becomes whether the Agency’s level of discipline should be mitigated because it is not free of improper motive. The mitigation standard applicable to Hearing Officers is set by EEDR. The Hearing Officer does not believe that the facts of this case including the Agency’s decision which is not free of an improper motive forms a basis for mitigation under the EEDR standard as currently applied. Accordingly, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

## DECISION

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

---

<sup>15</sup> Grievant had to take legal action to implement a Hearing Officer’s order reinstating her to her former position. A Circuit Court imposed sanctions against the Agency for its failure to properly reinstate Grievant.

## 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 Equal Employment and 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 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>[1]</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].

*/s/ Carl Wilson Schmidt*

---

Carl Wilson Schmidt, Esq.  
Hearing Officer

---

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