Issue: Group III Written Notice with Termination (unauthorized use of State records); Hearing Date: 04/18/18; Decision Issued: 05/11/18; Agency: VSU; AHO: William S. Davidson, Esq.; Case No. 11166; Outcome: Full Relief; **Administrative Review: Ruling Request received 05/25/18; EEDR Ruling No. 2018-4734 issued 06/28/18; Outcome: Remanded to AHO; Remand Decision issued 07/16/18; Outcome: Original decision affirmed; Administrative Review: Ruling Request on Remand Decision received 07/31/18; EEDR Ruling No. 2019-4765 issued 08/22/18; Outcome: AHO's decision affirmed; Attorney's Fee Addendum issued 08/31/18 awarding $4,264.05.**

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case No: 11166

Hearing Date: April 18, 2018
Decision Issued: May 11, 2018

PROCEDURAL HISTORY

On December 13, 2017, the Grievant was issued a Group III Written Notice for a violation of DHRM Policy 1.60, for misuse or unauthorized use of State records. [1]

On January 12, 2018, the Grievant timely filed a grievance challenging the Agency's actions. [2] On January 30, 2018, the grievance was assigned to a Hearing Officer. Due to calendar conflicts with the Agency counsel's calendar, the Grievant's counsel's calendar and the Hearing Officer's calendar, the hearing was held on April 18, 2018. The hearing was held at the Agency's location.

APPEARANCES

Counsel for Agency
Counsel for Grievant
Grievant
Witnesses

ISSUES

Did the Grievant violate DHRM Policy 1.60, by misuse or unauthorized use of State records?

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. 3 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:

[1] Agency Exhibit 1, Tab 9, Pages 5&6
[2] Agency Exhibit 1, Tab 9, Pages 7-9
[3] *See* Va. Code § 2.2-3004(B)

> 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 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 more probably than not occurred, or that they were more likely than not to have happened. [4] However, proof must go beyond conjecture. [5] In other words, there must be more than a possibility or a mere speculation. [6]

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of the witness, I make the following findings of fact:

The Agency provided me with a notebook containing eleven numbered tabs and a CD-R disc. During the course of the hearing, additional documentation was provided as a supplement to Tab 9, and a disc. That notebook, additional documentation and disc were accepted in their entirety as Agency Exhibit 1, without objection.

The Grievant provided me with a notebook containing seven tabs. That notebook was accepted in its entirety as Grievant Exhibit 1, without objection.

The Grievant did not testify before me.

The primary issue before me is whether or not the Grievant committed an act that rose to the level of misuse or unauthorized use of State records. [7] The Agency's notebook contained many policies and significant historical data regarding the Grievant, none of which appeared to be relevant based on the testimony elicited by the Agency through its witnesses. This matter commenced when the Grievant was issued a Group I Written Notice on June 23, 2017

[4] *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991
[5] *Southall, Adm'r v. Reams, Inc.*, 198 Va. 545, 95 S.E. 2d 145 (1956)
[6] *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)
[7] Agency Exhibit 1, Tab 6, Page 41

[Grievance I]. 8 As an aside, it would appear, based on this Written Notice, that the Grievant issued himself the Written Notice. I suspicion that is in error.

During the course of Grievance I working its way through the grievance process, the Grievant came into possession of a portion of another employee's personnel file [Officer W] 9 That document was relevant in the first grievance in that Officer W, for perhaps similar circumstances, received a substantially lesser punishment than the Grievant. As it turned out, Grievance I was settled, but the Agency moved forward against the Grievant for a violation of DHRM Policy 1.60, in abusing State records policy, because of his possession of a portion of Officer W's personnel file.

An Internal Affairs investigation was ordered as to how the Grievant came into possession of Officer W's documents. The investigator [Officer A] was Grievant's superior. Officer A testified before me. 10 His testimony was that the relevant records were maintained in the office of the Administrative Assistant to the Chief of Police for this Agency [AB]. He testified that AB was the "records keeper." It appears that personnel records were in a filing cabinet in AB's office. AB testified before me that the filing cabinet was unlocked and that her office was unlocked during business hours. Officer A found that, after interviewing both the Grievant and AB, the following:

> [Grievant's] version of the event was found to be more believable than [AB's] account. 11

The Grievant, in his interview with Officer A, stated that, subsequent to the issuance of a letter of intent for disciplinary action for Grievance I, that he contacted AB asking about Officer W's file. He told Officer A that he asked AB to confirm that there was a Letter of Counseling in Officer W's file, for a similar offense. Once the Group I Written Notice was issued to the Grievant, he again contacted AB and requested a copy of Officer W's Letter of Counseling. AB apparently granted the request and provided a copy of the requested letter to the Grievant. 12

After witnessing the demeanor of AB and listening to her testimony and the manner in which she answered questions, and the manner in which she avoided questions, I find that Officer A was correct, as I give her testimony little credence.

In his testimony before me, Officer A indicated that the Grievant, at all times regarding Grievance I, indicated to him that he simply wanted to be certain that he was being treated in an equal manner with other employees who had committed similar offenses, in this case, sleeping while on duty. Officer A went on to testify that, during the time frame that the original Group I Written Notice was issued, there was simply no policy or procedure regarding access to the files in AB's office. Officer A testified that he found it more credible that the Grievant asked AB for the document in hand. He also testified that there was no evidence that document was used, or that there was any intent by the Grievant to use it, in any manner other than in the Group I Written Notice grievance matter. Officer A further testified that, prior to the grievance before me, there was no policy or protocol regarding personnel records. All one had to do was ask AB.

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[8] Agency Exhibit 1, Tab 4, Page 9
[9] Grievant Exhibit 1, Tab 3(B), Pages 26&27
[10] Agency Exhibit 1, Tab 1, Pages 8-10
[11] Agency Exhibit 1, Tab 1, Page 10
[12] Agency Exhibit 1, Tab 1, Page 8

When AB testified before me, she indicated there was no policy regarding the personnel files that were in the cabinet in her office. She testified that if a supervisor wanted a subordinate's file, he simply would go to the cabinet and take the file. She testified that she received a Group I Written Notice for not having a policy in place for this records-management issue. AB was and is a long-time employee of this Agency.

Finally, I heard from the Deputy Chief of Police. He made several clear and distinct statements. He testified that he would not have had a problem giving Officer W's Letter of Counseling to the Grievant, had it been properly requested. He stated that the problem was not that Grievant had the document, it was how he got the document. Finally, he stated that, in terminating the Grievant, he relied solely on DHRM 1.60, and did not rely on any other State policies. He stated that AB was the "custodian of the records." He confirmed that there were no policies or procedures in place at the time of this alleged offense regarding who or when or how personnel records could be accessed. To the extent that there may have been policies, they were negated in that they had never been complied with or enforced. He also confirmed that the document obtained by the Grievant, was used for no purpose other than for Grievance I.

The *Grievance Procedure Manual* at Section 8.2, states in part as follows:

> Absent just cause, all documents relating to the management actions or omissions grieved shall be made available, upon request from a party to the grievance, by the opposing party. 13

There was some dispute in the evidence as to when the Grievant came into possession of the document for which he has been charged with a violation of DHRM Policy 1.60. While the testimony before me was equivocal, the findings of Officer A were very clear. In his report, he stated as follows:

> ...[Grievant] utilized his position as lieutenant to obtain access to [Officer W's] personnel file after receiving a Written Notice Group I for sleeping on duty.
>
> [Grievant] stated the reason for him accessing the file was to see if he was being treated equally...14

Accordingly, based on the Agency's own investigation, the document from Officer W's file was requested after the issuance of the Group I Written Notice. Pursuant to the *Grievance Procedure Manual*, this is a document for which the Grievant had a right to see and use and the request was made to AB, the custodian of the records. Inasmuch as the Agency's own witnesses stated that the entirety of their own case rose and fell on a violation of DHRM Policy 1.60, and inasmuch as the Agency's own evidence indicated that this document was obtained after the issuance of a Group I Written Notice, and inasmuch as the language in the *Grievance Procedure Manual* makes this document available, and inasmuch as I find that the document was provided to the Grievant by AB, I find that there has been no abuse of DHRM Policy 1.60.

Further, it is clear in this matter that the Grievant and AB were treated in a disparate fashion. Both of them are long-term employees of this Agency. Both of them have signed such

[13] Agency Exhibit 1, Tab 10, Page 26
[14] Agency Exhibit 1, Tab 1, Page 9

policies as the Agency had, although, as testimony indicated there appeared to be no policy, rule or regulation as to how to treat the personnel files. Further, if there was such a policy, rule or regulation, it had been ignored for years. AB received a Group I Written Notice; the Grievant was terminated.

MITIGATION

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the Agency disciplinary action." 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, (3) the disciplinary action was free of improper motive, (4) the length of time that the Grievant has been employed by the Agency, and (5) whether or not the Grievant has been a valued employee during the time of his/her employment at the Agency.

As stated, I do find reason to dismiss the Group III Written Notice. In the alternative, if the Agency disputes this finding and this matter is remanded to me, I then find it should be mitigated because of disparate treatment and be reduced to a Group I Written Notice with no further punishment.

DECISION

For reasons stated herein, I find that the Agency has not bourne its burden of proof in this matter and that the issuance of the Group III Written Notice to the Grievant was improper. I further order that the Agency reinstate the Grievant to the same position or an equivalent position. I award full back pay, from which interim earnings must be deducted, to the Grievant as well as a restoration of full benefits and seniority, and reasonable attorney's fees. Attorney for Grievant is directed to §VI(E) of the Rules for Conducting Grievant Hearing, regarding time lines of filing for attorney's fees.

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 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to 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.[1]

[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].

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William S. Davidson
Hearing Officer

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

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
RECONSIDERATION DECISION OF HEARING OFFICER
In Re: Case No: 11166

Hearing Date: April 18, 2018
Decision Issued: May 11, 2018
EEDR Request for Reconsideration Received: June 28, 2018
Response to Request: July 16, 2018

On June 28, 2018, I received an Administrative Review Ruling from the Director of the Office of Equal Employment and Dispute Resolution regarding this matter. That Ruling directed me to reconsider my Findings as set forth in my Decision of May 11, 2018.

OPINION

The Director stated:

> However, the fact that the administrative staff member in question was the actual custodian of the record being sought complicates the analysis in this case. [15]

Accordingly, the Director has acknowledged that the person [AB] who provided the record involved in this matter was the custodian of records for the Agency.

The Director further established a legal conclusion when he stated:

> With limited exception, neither the grievance procedure, nor the Standards of Conduct policy describe a failure to follow the requirements of the grievance procedure as something that subjects an employee to disciplinary action. [16]

The Director set forth another legal conclusion when he stated:

> ...the language means that if the party uses the documents obtained under the grievance procedure for a **non-grievance** purpose, then the party could potentially be subject to disciplinary actions under the Standards of Conduct. [17] (Emphasis added)

The Director made a Finding of Fact in his Ruling when he stated:

[15] DHRM Administrative Review Ruling No. 2018-4734, dated June 28, 2018, Page 2
[16] DHRM Administrative Review Ruling No. 2018-4734, dated June 28, 2018, Page 2
[17] DHRM Administrative Review Ruling No. 2018-4734, dated June 28, 2018, Page 3

> ...There is no evidence that [the documents] was used for any purpose other than a grievance. [18]

The Director correctly states that the Written Notice in this case contained no actual text describing the misconduct, the identification of the level of discipline, or the offense code. The Written Notice simply states "See attached," and references an unidentified document. EEDR again presumes that the referenced letter is the Due Process Notice as it appears to be the most likely document contained in Agency Exhibit 4. [19]

As I stated in my original Decision,

> In his testimony before me, Officer A indicated that the Grievant, at all times regarding Grievance I, indicated to him that he simply wanted to be certain that he was being treated in an equal manner with other employees who had committed similar offenses, in this case, sleeping while on duty. **Officer A went on to testify that**, during the time frame that the original Group I Written Notice was issued, **there was simply no policy or procedure regarding access to the files in AB's office.** Officer A testified that he found it more credible that the Grievant asked AB for the document in hand. **He also testified that there was no evidence that document was used, or that there was any intent by the Grievant to use it, in any manner other than in the Group I Written Notice grievance matter. Officer A further testified that, prior to the grievance before me, there was no policy or protocol regarding personnel records.** All one had to do was ask AB. [20] (Emphasis added)

It was clear from Officer A's testimony before me that there was no misuse or unauthorized use of the document in question. Indeed, it was in a shred-box and was then subsequently turned over to management at management's request. As the Director has found, there was no evidence that it was used for any purpose other than a grievance. Using a document in defense of a Written Notice is not abuse of authority for personal gain. The Grievant clearly was entitled to the document and, while the Director has indicated that the potential timeliness issue in Section 8.2 of the Standards of Conduct does not apply to this matter, the Grievant only had this document because of a potential use for a Written Notice event.

There simply was no misuse and there was no unauthorized use of the document. Based on the Director's finding, there was a potential, and I emphasize **potential,** issue regarding the timeliness of obtaining this document but, the document was used in fact for no purpose at all because the original Written Notice, for which it was obtained, was mitigated by the Agency and apparently the Agency and the Grievant reached an agreed-upon result, thereby negating any need for this document. The Agency offered no evidence regarding the use of this document other than it being turned over to the management of this Agency by the Grievant.

If you assume that the words "for personal gain" are not relevant and that it simply was an abuse of authority to obtain the document, then we must look to see if there was any policy or

[18] DHRM Administrative Review Ruling No. 2018-4734, dated June 28, 2018, Page 3

[19] DHRM Administrative Review Ruling No. 2018-4734, dated June 28, 2018, Footnote 16, Page 3

[20] Original Decision, Case No. 1116, dated April 18, 2018, Page 4

procedure or rule in place at this Agency to determine that the Grievant abused his authority in obtaining the document. Again, as I stated in my original Decision:

> An Internal Affairs investigation was ordered as to how the Grievant came into possession of Officer W's documents. The investigator [Officer A] was Grievant's superior. Officer A testified before me. [21] His testimony was that the relevant records were maintained in the office of the Administrative Assistant to the Chief of Police for this Agency [AB]. He testified that AB was the "records keeper." It appears that personnel records were in a filing cabinet in AB's office. AB testified before me that the filing cabinet was unlocked and that her office was unlocked during business hours. Officer A found that, after interviewing both the Grievant and AB, the following:
>
> > [Grievant's] version of the event was found to be more believable than [AB's] account.
>
> The Grievant, in his interview with Officer A, stated that, subsequent to the issuance of a letter of intent for disciplinary action for Grievance I, that he contacted AB asking about Officer W's file. He told Officer A that he asked AB to confirm that there was a Letter of Counseling in Officer W's file, for a similar offense. Once the Group I Written Notice was issued to the Grievant, he again contacted AB and requested a copy of Officer W's Letter of Counseling. AB apparently granted the request and provided a copy of the requested letter to the Grievant.

Further, I also found:

> When AB testified before me, she indicated there was **no policy** regarding the personnel files that were in the cabinet in her office. She testified that if a supervisor wanted a subordinate's file, he simply would go to the cabinet and take the file. She testified that she received a Group I Written Notice for not having a policy in place for this records-management issue. AB was and is a long-time employee of this Agency.
>
> Finally, I heard from the Deputy Chief of Police. He made several clear and distinct statements. **He testified that he would not have had a problem giving Officer W's Letter of Counseling to the Grievant, had it been properly requested.** He stated that the problem was not that Grievant had the document, it was how he got the document. Finally, he stated that, in terminating the Grievant, he relied solely on DHRM 1.60, and did not rely on any other State policies. He stated that AB was the "custodian of the records." **He confirmed that there were no policies or procedures in place at the time of this alleged offense regarding who or when or how personnel records could be accessed.** To the extent that there may have been policies, they were negated in that they had never been complied with or enforced. **He also confirmed that the document**

[21] Agency Exhibit 1, Tab 1, Pages 8-10

obtained by the Grievant, was used for no purpose other than for Grievance I. (Emphasis added)

The Director has already found that failure to follow the requirements of this grievance procedure does not subject an employee to disciplinary action.

There clearly was no misuse of a State record. There clearly was no abuse of authority for personal gain unless personal gain is defined as using a document that you were entitled to in order to defend yourself against a claim by the Agency. Such an interpretation is patently absurd. This Agency had no policy regarding these documents. It is clear from the Investigator's findings that the custodian of the records either prevaricated or simply did not tell the truth when she answered his questions. Perhaps the closest thing to the truth was her testimony before me when she stated there was no policy regarding the personnel records in the cabinet her office. These were open to any supervisor at any time and apparently for any reason. It is of note, her office was in close proximity to the Chief of Police and one can only surmise he acquiesced in this policy by omission or commission.

While I disagree with the Director's conclusion that the timeliness of the obtaining of this document is an affirmative defense requiring proof from the Grievant, I specifically find, as regards to this Agency, that having the document was not a misuse or an unauthorized use of a State record and it surely was not an abuse of authority for personal gain. The Agency offered not one scintilla of evidence that the document was actually used and all of their evidence supports the finding of their Investigator that it was obtained for a purpose of use for the grievance. As it turns out, it did not get used.

Finally, the Director states that I must consider whether the Grievant's conduct was Unsatisfactory Performance that might justify a Group III Written Notice. That issue was not before me, and consequently I did not seek any evidence in order to properly answer that question, nor was any evidence introduced before me regarding that issue. Based on what is before me, and no evidence being produced by the Agency regarding unsatisfactory performance regarding this issue before me, I find that there was no evidence of unsatisfactory performance. The sole matter before me was whether possession of the document in question was misuse or unauthorized use, or abuse of authority. My finding is that it was none of those. Consequently, even though there was no evidence before me of unsatisfactory performance, I obviously can come to no such conclusion, when I find that there was no misuse or unauthorized use or abuse of authority.

The Director has indicated that I may not, in one decision, deal with both the finding that I have just stated, and mitigation. Accordingly, while it is clear from the evidence that the treatment between this Grievant and the custodian of records was completely disparate, I will not deal with that issue.

DECISION

I conclude that there is no reason to set aside my original Decision in this matter.

APPEAL RIGHTS

Both parties will have the opportunity to request an administrative review of the hearing officer's reconsidered decision on any other new matter addressed in the remanded decision (i.e., any matters not previously part of the original decision). [22] Any such requests must be **received** by the administrative reviewer **within 15 calendar days** of the date of the issuance of the remand decision. [23]

Pursuant to Section 7.2(d) of the Grievance Procedure Manual, the Hearing Officer's original Decision becomes a final hearing Decision once all timely requests for administrative review have been decided, and if ordered by an administrative reviewer, the Hearing Officer has issued his remanded Decision.

JUDICIAL REVIEW OF FINAL HEARING DECISION

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. [24] Any such appeal must be based on the assertion that the final hearing Decision is contradictory to law. [25]

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William S. Davidson
Hearing Officer

[22] See, e.g., EDR Ruling Nos. 2008-2055, 2008-2056.

[23] See Grievance Procedure Manual Section 7.2.

[24] An appeal to circuit court may be made only on the basis that the decision was *contradictory to law*, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. Virginia Department of State Police v. Barton, 39 Va. App. 439, 573 S.E. 2d 319 (2002).

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

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
FEE ADDENDUM OF HEARING OFFICER
In Re: Case No: 11166

Issued: August 31, 2018

PROCEDURAL HISTORY

A hearing was held in this matter on April 18, 2018, and a Decision was issued by me on May 11, 2018. Grievant's counsel, filed a Petition for Attorney's Fees with me on May 24, 2018, and filed a Second Amended Petition for Attorney's Fees on August 24, 2018. Grievant's counsel certified that, on August 24, 2018, a copy of the Petition was emailed to , Counsel for the Agency.

GOVERNING LAW

Attorney's fees are dealt with at VI(E) of Rules for Conducting Grievance Hearings and at Section 7.2(e) of the Grievance Procedure Manual. Attorney's fees are only available where the Grievant has been represented by an attorney and has substantially prevailed on the merits of a Grievance challenging his discharge. For such an employee to substantially prevail, the Hearing Officer's Decision must contain an Order that the Agency reinstate the employee to his former (or an equivalent) position. My Decision ordered that the Grievant be reinstated to the same position or an equivalent position.

Section 7.2(e) of the Grievance Procedure Manual requires that counsel for the Grievant ensure that the Hearing Officer receives within fifteen (15) calendar days of the issuance of the original Decision, counsel's Petition for Reasonable Attorney's Fees. In this matter, that was done and as provided, the Petition included an Affidavit itemizing services rendered, time billed for each service, and the hourly rate charged in accordance with the Rules for Conducting Grievance Hearings. Further, a copy of this Fee Petition was provided to the Agency, as is required by the Rules.

OPINION

I have carefully considered the Second Amended Petition for Attorney's Fees and accordingly, will allow counsel for the Grievant to collect attorney's fees of $131.00 per hour for 32.55 hours, for a total award of $4,264.05.

APPEAL RIGHTS

Within ten (10) calendar days of the issuance of the Fee Addendum, either party may petition EEDR for a Decision solely addressing whether the Fee Addendum complies with the Grievance Procedure Manual and the Rules for Conducting Grievance Hearings. Once EEDR issues a ruling on the propriety of the Fee Addendum, and if ordered by EEDR, the Hearing Officer has issued a revised Fee Addendum, the original Decision becomes final and may be appealed to the Circuit Court in accordance with Section 7.3(a) of the Grievance Procedure Manual.

William S. Davidson
Hearing Officer