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

DIVISION OF HEARINGS

In the matter of: Case No. 11605

Hearing Officer Appointment: October 8, 2020
Hearing Date: November 20, 2020
Decision Issued: December 9, 2020

PROCEDURAL HISTORY AND ISSUES

The Grievant was until recently a Watch Commander at the Virginia Museum of Fine Arts (the "VMFA" or the "Agency"). The Grievant requested an administrative due process hearing to challenge the issuance of a Group III Written Notice issued on September 10, 2020 (with termination effective September 11, 2020) by management of the VMFA, as described in the Grievance Form A dated September 22, 2020.

In his Grievance Form A, the Grievant challenges the discipline seeking reinstatement, restoration of back pay and benefits. In the alternative, the Grievant asks for mitigation of the discipline.

The hearing officer's appointment is effective October 8, 2020.

In this proceeding the Agency bears the burden of proof and must show by a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. Of course, the Grievant bears the burden of proof concerning any affirmative defenses.

At the hearing, the Grievant and the Agency were represented by their respective attorneys. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely exhibits 1-17 in the Agency's exhibit binder and exhibits 1-22 from the Grievant.[1] The Grievant did not testify at the hearing and no witnesses were called by the Grievant in his case- in- chief.

During the second prehearing conference call on October 20, 2020, the parties confirmed that they wanted to hold the hearing in person. Subsequently, the VMFA, by counsel, stated that certain Agency witnesses would need to appear remotely via ZOOM because of an outbreak of COVID-19 at the museum.

Accordingly, on November 20, 2020, the witnesses not suffering from COVID-19, the parties, their legal counsel and the hearing officer appeared in the hearing room at the museum.

As early as September 21, 2020, the Hearings Program Director at the Commonwealth's Department of Human Resource Management, Office of Employment Dispute Resolution ("EDR") sent hearing officers an email which stated, amongst other things, as follows:

> DHRM's top priority is ensuring the health, safety, and well-being of the Commonwealth's employees and stakeholders, including each of you. As a result, hearings that take place in person must comply with the agency's health safety rules or practices that have been adopted based on guidance from public health authorities, in addition to any other safety precautions you may deem appropriate under the circumstances.

Further, the Governor's Executive Order 63, as amended on November 13, 2020 and effective on November 16, 2020, provides in part as follows:

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[1] References to the agency's exhibits will be designated AE followed by the exhibit number. References to the Grievant's exhibits are designated GE followed by the exhibit number.

REQUIREMENT TO WEAR FACE COVERING WHILE INSIDE BUILDINGS

Importance of the Issue

The Commonwealth of Virginia continues to respond to the novel coronavirus (COVID- 19) pandemic. We must remain vigilant. Science shows us that face coverings can help stop the spread of the virus. That is why the Centers for Disease Control and Prevention (CDC) recommends wearing cloth face coverings, even those made from household items or common materials in public settings. I strongly urge all Virginians to wear face coverings when leaving their homes. But as to indoor settings to which the public has access, mere encouragement is not enough to protect the health and safety of Virginians. **Therefore, Executive Order 63, issued in May, required face coverings to be worn in certain indoor public spaces. Now, as we continue to prioritize the health and safety of our students, educators, and school staff, additional requirements to wear face coverings are necessary.**

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, by any other applicable law, and in furtherance of Amended Executive Order 51, and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the *Code of Virginia*, the following is ordered:

Directive

A. Face Coverings Required-Patrons and Visitors

All individuals in the Commonwealth aged **five** and over shall, when entering, exiting, traveling through, and spending time inside the settings listed below, cover their mouth and nose with a face covering, as described and recommended by the CDC:

...

4. Entertainment or recreation businesses, including but not limited to, racetracks, historic horse racing facilities, theaters, performing arts centers, concert venues, **museums,** and other indoor entertainment centers, bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, public and private social clubs, and all other places of indoor public amusement. Face coverings shall also be required when patrons are outdoors at these businesses if a distance of six feet from every other person cannot be maintained.

Shortly after the hearing began, counsel for the Grievant objected to the wearing of masks as required by the VMFA and applicable law. Accordingly, the hearing

officer required the Grievant and his counsel to adjourn to a remote location to participate via ZOOM.

APPEARANCES

Representative for Agency
Grievant
Legal Counsel
Witnesses

FINDINGS OF FACT

1. During the time relevant to this proceeding (the "Period"), the Grievant was employed by the Agency as one of four Watch Commanders. The Grievant has worked with MG, another Watch Commander, for approximately 9 years. AE 1.
2. The Grievant is white and MG is black.
3. The position of each of the Grievant and MG as a Special Conservator of the Peace ("SCOP") is a sworn law enforcement position, the SCOPs have powers of arrest and carry guns.
4. The Grievant, in the important Watch Commander role, supervises numerous other law enforcement officers and security personnel. AE 8.
5. According to his Employee Work Profile ("EWP"), the Grievant coordinates and supports the museum's public safety and property protection programs by

providing leadership and supervision to SCOP Officers, Console Operators and Museum Associates who patrol galleries and other designated posts. AE 8.

6. Job requirements include "[e]xtensive knowledge of applicable laws, rules and regulations pertaining to the responsibilities and professional conduct of sworn, armed Special Conservators of the Peace and the methods used in accident and claims investigations. A demonstrated ability to exercise mature, independent judgment, prepare complete and effective reports, and communicate clearly and concisely both orally and in writing. Strong customer service skills. Supervisory experience. Exceptional communication and interpersonal skills. Knowledge and experience with business computer user applications." AE 8.

7. Concerning his job responsibilities of supervision and leadership to security staff, amongst other things, the EWP provides, "In the absence of the Manager of Security Services and/or Assistant Manager of Security Services, act as the primary Security Manager for the Museum and Security Staff." AE 8.

8. Concerning the Qualitative Performance Measures, the EWP provides, in part, "**Managing People/Managing Diversity:** Provides strong leadership skills, effective training, ongoing feedback and clear direction to employees. Delegates responsibility appropriately. Encourages teamwork. Appropriately manages conflict. Thoughtfully completes performance reviews on subordinates in a timely manner. Actively participates in efforts to diversify the work force and audiences." AE 8.

9. The Agency's strategic plan over the past 5 years has focused on building racial equity in the workplace. *See,* AE 5. The VMFA has striven to engender a communal appreciation of art for all people no matter the race or background. It has tried hard to embrace and reflect the community it serves.

10. This noble effort has been undertaken amidst a lot of racial tension and strife both within the City and the confines of the museum. For example, the museum has been beset by both protesters and counter-protesters regarding Confederate monuments and memorabilia on its grounds. Accordingly, it is extremely important that law enforcement be seen as unbiased and a reflection of the highest ideals of the people it serves, to whom the public can look with confidence for protection and leadership in difficult and stressful frontline situations.

11. MG found himself in such a testing predicament on the night of Thursday, August 20,2020, when around 3 am during his 12 hour shift as Watch Commander, from 7:30 pm to 7:30 am, between 100 – 300 agitated protesters had him and his security staff "out of our comfort zone" and "on our heels", as he characterized it, ready to take action to protect museum property.

12. At approximately 7:15 am on August 21, 2020, MG was in the control room with one of the console operators, AC, who is a woman and black. The Grievant came

into the room and greeted MG calling him a "brown cow", in the presence of AC, an employee they both supervised.

13. MG was shocked and asked the Grievant, "did you just call me a Black Cow? He then said 'no'. He then said 'no a brown cow'". AE 9.

14. MG told the Grievant, as Agency policy dictates (AE 6, page 9), that the Grievant should address MG by his name or his rank and MG said that he would, as he always had, address the Grievant in the same manner. The Grievant and MG had a working relationship but did not kid around or have any kind of friendship or familiarity outside of work.

15. MG, who has been with the Agency 18 years, serving 10 years as a Watch Commander, interpreted the Grievant's name-calling as a racial slur which deeply angered, offended and hurt him. The Deputy Director of Security Services, who is also black, was particularly troubled that this happened to MG, whom the Deputy Director says focuses on his work and bothers no one. The Deputy Director also interprets the comment as a racial slur, as did all 6 Agency witnesses who testified credibly at the hearing. The Grievant did not testify and the Grievant called no witnesses for his case-in -chief.

16. MG is adamant that the Grievant was "clear and precise", stating to MG when he entered the console operators' room, "Good morning Brown Cow." Throughout

the Period and these proceedings, the Grievant has been consistent in this position, which is substantially corroborated by AK. *See*, e.g. AE 10.

13. The operational needs of the security and law enforcement component of this facility depend on the cooperation and trust of all members functioning as a cohesive unit without any rascist tendencies or animus on the part of any member. Further, tolerance of such proclivities in the current law enforcement environment would present significant risk management challenges to the Agency.

14. This behavior also adversely affects the morale of other employees.

15. Recognizing the severity of the Grievant's disciplinary infractions, on September 10, 2020, Management issued to the Grievant a Group III Written Notice with termination effective the same date, for violation of Policy 2.35, Civility in the Workplace. AE 2.

25. The Grievant's disciplinary infractions concerning this case did negatively impact the Agency's operations.

26. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant. This finding is discussed in greater detail below.

27. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.

28. The Department's actions concerning this grievance were reasonable and consistent with law and policy.

29. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

APPLICABLE LAW, ANALYSIS AND DECISION

The General Assembly enacted the *Virginia Personnel Act, Va. Code* § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the Agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (the "SOC"). AE 9. The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

The Grievant's disciplinary infractions were reasonably classified by management as a Group III offense. The Grievant argues that the Agency has not carried its burden of proof, has misapplied policy and acted unjustly in issuing the discipline. However, the hearing officer agrees with the Agency's attorney that the offenses are appropriately classified at the Group III level with the Agency appropriately exercising the discipline. Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."

This case involves the recently established DHRM Policy 2.35, *Civility in the Workplace* (Effective 1/1/19) which supersedes the former Policy 1.80, Workplace Violence, and former Policy 2.30, Workplace Harassment.

As stressed in the purpose of Policy 2.35, "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." AE 4.

Policy 2.35 further provides:

"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. Behaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable." AE 4.

Both *Discriminatory Workplace Harassment* and *Non-discriminatory Workplace Harassment* are prohibited by Policy 2.35. Policy 2.35 defines the term *Non- Discriminatory Workplace Harassment* [Harassment not based on protected classes] as:

"Any targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion to a person not predicated on the person's protected class." AE 4.

Policy 2.35 describes *Discriminatory Workplace Harassment* [Harassment Illegal under Equal Employment Laws] as follows:

"Discriminatory Harassment

Any unwelcome verbal, written or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of race; traits historically associated with race including hair texture, hair type, and protective hairstyles such as braids, locks, and twists; sex; color; national origin; genetic information; religion; sexual orientation; gender identity or expression; age; political affiliation; veteran status; pregnancy, childbirth or related medical conditions; or disabilities, that: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects an employee's employment opportunities or compensation.

Sexual Harassment

Any unwelcome sexual advance, request for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-workers or non-employee (third party).

Quid pro quo

A form of sexual harassment by a manager/supervisor or a person of authority in which an employee's receipt of a job benefit or the imposition of a tangible job detriment is conditioned on the employee's acceptance or rejection of the harassment.

Hostile work environment

A form of sexual harassment when a victim is subjected to unwelcome and severe or pervasive repeated sexual comments, innuendos, touching, or other conduct of a sexual nature that creates an intimidating or offensive place for the employees to work."

AE 4.

As argued by the Agency's attorney, the Grievant calling MG a "brown cow", constituted both Non-Discriminatory and Discriminatory Harassment, denigrating MG and MG's race, under Policy 2.35.

The Policy Guide to Policy 2.35 provides further support for the Agency's discipline:

"The Civility in the Workplace policy defines prohibited conduct in general terms. Because all potential behaviors cannot be anticipated or listed, this guide provides some examples of prohibited behaviors but is not intended to be all inclusive…

Disciplinary actions to address prohibited behaviors may be taken on a progressive basis **or actions may be taken upon the first occurrence, depending upon the nature and seriousness of the conduct**. The context of the behaviors, nature of the relationship between the parties, frequency of associated behaviors, and the specific circumstances must be considered in determining if the behavior is prohibited. A "reasonable person" standard is applied when assessing if behaviors should be considered offensive or inappropriate.

Prohibited Conduct/Behaviors may include, <u>but are not limited to:</u>

…

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest;
- Behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others;
- Making disparaging remarks, spreading tumors, or making innuendos about others in the workplace;

...

- Making culturally insensitive remarks; displaying culturally insensitive objects, images, or messages;
- Making demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted persons based on the group, class, or category to which they belong;"

AE 4.

The Grievant did submit his written statement dated August 21, 2020, emailed to the Deputy Director on the same day, giving his perspective of what transpired:

"On August 21, 2020, I entered the Control Room at about 0715 hours. I said hello to the room, which I believe [AC] and [Sister] and MG were in at the time. I directed my attention to Mr. Goode and said, "How now brown cow?"...

At no time was my intent to cause any offense or injury. I learned that phrase when I was in the first grade of school. That phrase, and others like it, was one taught to me as a way of learning how to pronounce words and vowels during my schooling when I was taught to read. I have used that phrase at times as a greeting, and to say 'hello' or 'what's up?'" GE 1; AE11.

The Grievant's account obviously differs markedly from that of MG and AC. However, concerning any differences in the various versions of what happened and precisely what was said, the hearing officer does not attach much weight to the Grievant's written statement because the Grievant chose not to testify at the hearing and, accordingly, was not subject to cross-examination. During the hearing, the Grievant's attorney correctly stressed on numerous occasions the importance of cross-examination in our adversarial system in ferreting out the truth. *See, also, Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009).

That Grievant did not intend offense is besides the point. Each of the Agency witnesses were gravely offended by what the Grievant did, calling MG a brown cow, and the hearing officer finds that the nominal "reasonable person", were he to witness the episode, a white Watch Commander calling a black Watch Commander a "brown cow" in front of a subordinate, upon the facts found by the hearing officer, would be likewise offended.

Accordingly, the Grievant's heavy reliance in this case on the etymology of the phrase "How now brown cow" and the posting by John Wright (GE 20), who posits that saying "How now brown cow" "is so inoffensive, unexceptional and innocuous, etc.", is misplaced for a number of reasons. First, the hearing officer has found on the evidence presented that the Grievant did in fact call MG a "brown cow". Second, even on the Grievant's version of events, all 5 of the black witnesses testified that they knew nothing of the history of the phrase "How now brown cow', had never heard the expression before and are reasonably offended by it when used by a white man to address a Watch Commander in an off-hand, unexpected manner in a law enforcement work environment. Similarly, the Grievant's and MG's white supervisor, the Manager of Security Services, found this phrase offensive. Third, as the Agency's CHRO

astutely pointed out when asked about the John Wright article; to her, the article shows that people, in fact, are offended by "How now brown cow" – she surmises "with confidence" that the reason the article exists shows that people are pushing back against the terminology.

While the Grievant argues that the Agency's discipline was unwarranted under the circumstances, the hearing officer finds, to the contrary, that Management's expectations were clearly communicated to the Grievant on multiple occasions. *See, e.g.,* the training documents at AE 15.

Management held the Grievant to a higher standard as a law enforcement supervisor. EDR has consistently held supervisors such as Watch Commanders to a higher standard. As EDR stated in case No. 9872, in evaluating misconduct by a supervisor that to a non- supervisory employee would have been a Group I, the discipline was increased to a Group II, stating, "This is especially so because of the supervisor's role and the agency's expectations of the supervisor to serve as a role model to clients and to employees under his supervision." Pursuant to his EWP and policy, the Grievant was expected and required to present a positive role model for subordinates and the general public.

EDR also addressed this issue in its Ruling Number 2015-3953 (August 29, 2014):

"The issue of whether an agency can hold a supervisor to a higher standard is a policy issue as well as a procedural issue. As discussed above, the Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy. [Footnote omitted]. DHRM has previously determined that "agencies may hold supervisors and managers to a higher degree of responsibility and leadership than non-management employees." [Footnote omitted]. The Rules for Conducting Grievance Hearings require that a hearing officer

must show deference to how the agency weighs the supervisory status of an employee in determining the appropriate level of discipline. [Footnote omitted]. Here, the agency appears to have determined that the grievant's misconduct was more severe based, in part, on his position as a supervisor. [Footnote omitted]. Because policy permits an agency to hold supervisory employees to a higher standard than non-supervisory employees, the hearing officer did not err in deferring to the agency's weighing of that factor. We decline to disturb the decision on this basis."

The Agency has met its evidentiary burden of proving upon a preponderance of the evidence that the Grievant violated Policy No. 1.60 and that the violations rose to the level of a Group III offense. Violations of Policy 2.35 can constitute either a Group I. II or III offense, depending on the nature of the offense. SOC; AE3 at 23.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

The Grievant asserts that the discipline is too harsh. The Agency did consider mitigating factors, including the Grievant's past good service to the Agency.

DHRM's *Rules for Conducting Grievance Hearings* provide in part:

> DHRM's *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." *Rules* § VI(B).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant.

The Grievant has asserted that the discipline was unwarranted. While the Grievant might not have specified for the hearing officer's mitigation analysis all of the mitigating factors below, the hearing officer considered a number of factors including those specifically referenced in the Written Notice, the Form A, the hearing, those referenced herein and all of those listed below in this analysis:

1. the Grievant's years of service to the Agency;
2. the demands of the Grievant's work environment;
3. the Grievant's good job performance and evaluations;
4. MG's actions of "blocking out" the Grievant after the disciplinary incident;
5. the Grievant's lack of formal discipline in the past; and
6. the Grievant's asserted absence of intent to offend.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518; and EDR Ruling 2010-2368. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the policy is important to the proper functioning, appearance and reputation of the Agency, the Grievant held an important supervisory position as a Watch Commander and the

Agency issued to the Grievant significant prior training and notice in the past. The hearing officer would not be acting responsibly or appropriately if he were to reduce the discipline under the circumstances of this proceeding.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

In this proceeding, the Agency's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer.

The hearing officer decides for the offenses specified in the written notice (i) the Grievant engaged in the behavior described in the written notice; (ii) the behavior constituted misconduct;

(iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

DECISION

The Agency has sustained its burden of proof in this proceeding and the action of the Agency in issuing the written notice and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby upheld, having been shown by the Agency, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

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 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]

ENTER 12/ 9/ 2020

John V. Robinson

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

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