Issue: Group III Written Notice with termination (unauthorized removal of state records, state property, property of other persons, and breaches of confidentiality); Hearing Date: 12/10/03; Decision Issued: 12/15/03; Agency: VCU; AHO: David J. Latham, Esq; Case No. 453; **Administrative Review: HO Reconsideration Request received 12/29/04; Reconsideration Decision issued 12/29/03; Outcome: No basis to reopen the hearing or change original decision. Judicial Review: Appealed to the Circuit Court in the City of Richmond on 01/28/04; Outcome: HO's decision affirmed [CH04-1774] (03/05/04)**

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 453

Hearing Date: December 10, 2003
Decision Issued: December 15, 2003

APPEARANCES

Grievant
Attorney for Grievant
Vice President for External Affairs
Attorney for Agency
Two witnesses for Agency

ISSUES

Did grievant's conduct warrant disciplinary action under the Standards of Conduct? If so, what was the appropriate level of disciplinary action for the conduct at issue?

FINDINGS OF FACT

The grievant filed a timely appeal from a Group III Written Notice with removal issued for unauthorized removal of state records, state property, and the

property of other persons and breaches of confidentiality.[1] Following failure of the parties to resolve the grievance at the third resolution step, the agency head qualified the grievance for a hearing.[2] Virginia Commonwealth University (Hereinafter referred to as "agency") had employed grievant for two and a half years at the time of her removal from employment. She was a secretary/receptionist in the president's office.

Grievant, and all employees were advised in May 2003 of the procedure for reporting compliance concerns.[3] Grievant received this email instruction and it was still in her computer in-box when she was removed from employment. Grievant was trained at the time of hire that communications in the president's office are frequently sensitive and must be treated confidentially. This policy was reinforced from time to time during staff meetings. The training stressed that communications and other information in the president's office should be distributed only as instructed and only on a need-to-know basis. Grievant's job description requires her to maintain confidentiality on all University-related matters.[4]

In May 2002, the president created a formal chief of staff position in his office and named a person to fill the position. Reporting to the chief of staff are an assistant for finance and business operations, and an assistant for the Board of Visitors. The assistant for finance supervises grievant, and a scheduling secretary. During 2003, four people who had been working in the president's office left their positions. The former scheduling secretary resigned in February 2003, the former correspondence coordinator transferred to another division in May 2003, and a former special events coordinator retired in June 2003. The former head of staff retired in October 2003; she had been working on special projects from May 2002 until her retirement.

For reasons not elicited by either party in the hearing, it appears that the former special events coordinator is very disenchanted with the university's president. During the summer of 2003, four anonymous letters were received in the president's office – two addressed to the president and two addressed to the assistant for finance.[5] The first two letters were received in the last part of August; the president determined that no action was necessary at that time. The second two letters were received in the first week of September; the president then directed that an investigation be conducted. The second two letters were stamped confidential on the outside; nonetheless, grievant, without permission, opened the letters. The university investigated and concluded that, more likely

[1] Exhibit 23. Written Notice, issued October 14, 2003.
[2] Exhibits 2 & 3. Grievance Form A, filed October 16, 2003.
[3] Exhibit 33. Email from senior vice-president to all employees, May 12, 2003.
[4] Exhibit 53. Grievant's job description, April 30, 2001.
[5] Exhibit 51. The anonymous letters included a newspaper clipping detailing the president's resignation from another university before coming to VCU, a handwritten note characterizing the president as self-serving and arrogant, and two typewritten notes warning the assistant for finance that the president was seeking to remove her from his office staff.

than not, the former special events coordinator sent the letters.[6] After his retirement in June, the former special events coordinator maintained a continuing friendly relationship with the former correspondence coordinator, who in turn, had a good relationship with grievant.

In order to perform her work, grievant had been given access to the president's computer "in-box" when she was hired. Generally she did not have a need to access his email but on occasion, the assistant for finance would ask her to locate an email on a particular subject. In addition, when the scheduler was absent, grievant was expected to perform some of her functions and occasionally had to access the president's email. The assistant for finance reviewed all of the president's incoming email. If she determined that action was needed, she printed a copy and hand wrote instructions in the upper right corner.[7] The printed copies were then given to grievant for distribution.

As part of the university's investigation it examined the computer email logs of grievant and three other former employees in the president's office. Grievant had deleted virtually all the emails at issue herein from her computer. However, the emails in evidence herein were found in the former correspondence coordinator's computer. By mid-September the initial investigation revealed that grievant had been forwarding presidential emails to former employees outside the president's office. The Executive Director of Audit Services interviewed grievant who initially denied sending emails outside the office. She also stated, "What would be wrong if I did forward emails?" Grievant was suspended from work on the same day.[8] By the end of September it was concluded that grievant had, without authorization, forwarded presidential emails to persons outside the president's office.[9]

When grievant filled out her application for the position in the president's office, she did not state that she had been discharged by a financial services company in December 1999 for credit card fraud.[10] On three other job applications for agency positions[11], grievant did not answer the yes-no question asking whether she had ever been convicted of a violation of law – even though at that time she was a convicted felon.[12] The chief of staff and the president were unaware of grievant's conviction until her probation officer contacted the university to verify grievant's employment.

---

[6] Exhibit 19. Series of emails including inquiry from special events coordinator asking "Did [grievant] note anything for - - - in today's mail?", August 31, 2003.

[7] Exhibits 40-43. Examples of printed emails containing distribution instructions from the assistant for finance.

[8] Exhibit 8. Letter from Chief of Staff to grievant, September 15, 2003.

[9] Exhibit 9. Letter from Chief of Staff to grievant, September 30, 2003.

[10] Exhibit 54. Application, December 7, 2000.

[11] Exhibits 45, 46 & 47. Applications, July 31, 2003.

[12] Exhibit 37. United States District Court Judgment in a Criminal Case finding grievant guilty of Conspiracy to defraud the United States, June 11, 2001. The agency had discovered this conviction in April 2002, but decided to give grievant a second chance. She was not removed from employment because of the conviction.

Grievant sent most of the emails at issue to the former correspondence coordinator, who sent them to the former special events coordinator. The former correspondence coordinator still works for the agency in a different division. She was also disciplined and received a Group III Written Notice and 30-day suspension. Her discipline was reduced from potential discharge because, a) she had 28 years of state service, and b) she wrote a letter of apology to the university president.[13] Grievant has failed to demonstrate any remorse or offer an apology but instead maintains that she committed no offense.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for 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).

Code § 2.2-3000 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. In all other actions, such as claims of retaliation, the employee must present her evidence first and must prove her claim by a preponderance of the evidence.[14]

---

[13] Exhibit 44. Letter from former correspondence coordinator to university president, November 20, 2003.

[14] § 5.8 Department of Employment Dispute Resolution (EDR), *Grievance Procedure Manual*, effective July 1, 2001.

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Va. Code § 2.2-1201, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 effective September 16, 1993. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards 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 Standards provide that Group III offenses include theft or unauthorized removal of state records, state property, or the property of other persons.[15] The policy further states that the offenses set forth therein are not all-inclusive, but are intended as examples of unacceptable behavior for which specific disciplinary actions may be warranted. However, any offense that in the judgment of an agency head undermines the effectiveness of agency activities may be considered unacceptable and treated in a manner consistent with the policy.[16]

The agency disciplined grievant for unauthorized removal of records, state property and the property of other persons, and breaches of confidentiality. Grievant takes issue with the charges because she did not remove any tangible records (e.g., paper documents). Grievant's argument is self-serving and without merit. As noted in the preceding paragraph, **any** offense that undermines agency activities may be subject to discipline. Moreover, the language in the Standards does not limit removal of "records" to records on paper; records in any form (paper, videotape, audiotape, or electronic message) are covered by the proscription. As Justice Louis D. Brandeis stated, "In the case at bar, also, the logic of words should yield to the logic of realities.[17]

Grievant correctly observes that none of the emails at issue were marked "Confidential." However, grievant knew, or reasonably should have known, that all documents in the office of the president of a major university should be kept confidential unless someone in a position of authority indicates otherwise. Many matters that the president's office deals with on a daily basis are confidential and private. As the receptionist/secretary, grievant had no authority to decide what communications should be disclosed outside the office. It is not necessary that every piece of paper or electronic mail bear the imprimatur "Confidential" in order to be treated confidentially. Common sense should dictate to anyone working in a position of trust such as grievant that all information in the president's office is confidential unless the president or chief of staff permitted disclosure. Moreover, grievant had received training when hired and thereafter regarding the need for confidentiality. In fact, grievant acknowledged in a meeting with the senior vice-

[15] Exhibit 50. DHRM Policy 1.60 Section V.B.3.d, *Standards of Conduct*, September 16, 1993.
[16] Exhibit 50. Section V.A., *Ibid.*
[17] *DiSanto v. Pennsylvania*, 273 U.S. 34, 47 S. Ct. 267, 71 L. Ed.524 (1927).

president that her position required her to maintain confidences and involved a high level of trust.[18]

Grievant's rationale for disclosing presidential communications was that she had been granted access to the president's email account and that, *in her own judgement*, the emails did not violate confidentiality. Unfortunately, grievant failed to understand that, as a secretary/receptionist, her position description does not include the responsibility for making such judgements. Grievant also argues that the emails she sent out of the office would be releasable under the Freedom of Information Act (FOIA). Grievant's argument fails for two reasons. First, while many documents are available under FOIA, the Act provides for release of documents only when requested in writing, and only when the statutory procedure is followed in releasing such documents.[19] There were no FOIA requests for any of the communications disclosed by grievant. Second, FOIA contains an exclusion for the working papers and correspondence of the president of any public institution of higher learning in Virginia.[20] Thus, the president's communications (whether paper, telephonic or electronic) are not releasable under FOIA.

Grievant says she had concerns about misuse of state funds and other alleged abuses in the president's office. She avers that she did not report her concerns through channels established for this purpose because she was afraid she would be discharged. She could have anonymously reported her concerns through the Hotline for Fraud, Waste and Abuse but failed to do so. She acknowledges that the people to whom she sent emails did not have any ability or authority to resolve any of the concerns. When the agency received information suggesting misuse of resources, it promptly turned the matter over to the independent Auditor of Public Accounts for investigation.[21]

The email correspondence between grievant, the former correspondence coordinator and the former special events coordinator demonstrates convincingly that the three were working together. Grievant was forwarding presidential emails, and emails from others, to the former correspondence coordinator. Grievant was also reporting on the receipt of U.S. Mail to the other two. In one exchange, the former correspondence coordinator asks, "See anything?"; grievant responds two minutes later, "Nothing yet."[22] From the totality of the evidence it is obvious that this exchange refers to the anonymous letters that the former special events coordinator mailed to the president's office. Several days later, the former special events coordinator asked, "Any word from [grievant], on receipt of that thing in the mail?"; the former correspondence coordinator

[18] Exhibit 28. Letter to grievant from senior vice-president, November 4, 2003.
[19] Va. Code § 2.2-3704.
[20] Va. Code § 2.2-3705.A.6
[21] Exhibit 38. Auditor of Public Accounts *Special Report re: VCU Office of the President*, November 10, 2003.
[22] Exhibit 18. Emails, August 18, 2003.

responds, "Did not come!"[23] On August 25, 2003, the chief of staff sent an email to the president. Less than half an hour later, grievant entered the president's in-box and forwarded the message to the former correspondence coordinator, who immediately forwarded it to the former special events coordinator asking, "Perhaps this may help????"[24]

In other emails, grievant disclosed information that there was no business reason to disclose, to the former correspondence coordinator. In one email, grievant told her that the president had a meeting with a private industry executive the following week; she also disclosed actions taken by the chief of staff in connection with that meeting.[25] In another email, grievant reported that the president and his wife would be vacationing overseas in the future.[26] On one occasion, the chief of staff sent a message regarding an Audit review of the president's office to several employees including grievant. Within a few minutes, grievant forwarded the message to the former correspondence coordinator.[27] On August 7, 2003, a senior vice-president sent an email to the president; the following day grievant entered the president's in-box and, without authorization, forwarded the message to the former correspondence coordinator.[28] On August 18, 2003, the president sent an email to vice-presidents and members of the Board of Directors; grievant again entered the president's in-box and, without permission, sent the email to the former correspondence coordinator.[29] Grievant acknowledged during the hearing that she had not been authorized to disclose such information and that the former correspondence coordinator had no legitimate reason to receive such information.

Retaliation

Retaliation is defined as actions taken by management or condoned by management because an employee exercised a right protected by law or reported a violation of law to a proper authority.[30] To prove a claim of retaliation, grievant must prove that: (i) she engaged in a protected activity; (ii) she suffered an adverse employment action; and (iii) a nexus or causal link exists between the protected activity and the adverse employment action. Based on grievant's testimony and evidence, her only basis to claim participation in a protected activity was the reporting of concerns to the Director of Operations.[31] In order to establish retaliation, grievant must show a nexus between her reporting of concerns and her disciplinary action. Grievant has not established any such connection between the two events. However, even if such a nexus could be

[23] Exhibit 19. Emails, August 26-27, 2003.
[24] Exhibit 15. Emails, August 25, 2003.
[25] Exhibit 10. Email from grievant, July 2, 2003.
[26] Exhibit 11. Email from grievant, July 8, 2003.
[27] Exhibit 12. Email from grievant, July 28, 2003
[28] Exhibit 13. Email from grievant, August 8, 2003.
[29] Exhibit 14. Email from grievant, August 19, 2003.
[30] EDR *Grievance Procedure Manual*, p.24
[31] Exhibit 4. Letter from grievant to senior vice-president, October 16, 2003.

found, the agency has established nonretaliatory reasons for disciplining grievant. For the reasons stated previously, grievant has not shown that the agency's reasons for disciplining her were pretextual in nature.

Summary

The agency has demonstrated, by a preponderance of evidence, that grievant violated the confidences of the president's office by transmitting emails to unauthorized recipients. Not only were her removals of these emails unauthorized but also they breached the confidentiality that the president has a right to expect from his immediate office staff. Grievant's actions clearly undermined the effectiveness of the agency's activities. Her actions and her unrepentant attitude also resulted in the agency being unable to trust her to maintain confidentiality in the future. Under these circumstances, the agency had no option but to remove grievant from employment. Grievant has failed to present any circumstances that would mitigate her misconduct. Grievant has also failed to show that the disciplinary action was retaliatory.

DECISION

The decision of the agency is hereby affirmed.

The Group III Written Notice issued on October 14, 2003 and grievant's removal from employment are UPHELD.

APPEAL RIGHTS

You may file an administrative review request within **10 calendar days** from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.

2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Address your request to:

Director
Department of Human Resource Management

101 N 14th St, 12th floor
Richmond, VA 23219

3. If you believe the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Address your request to:

Director
Department of Employment Dispute Resolution
830 E Main St, Suite 400
Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 10 calendar days of the date the decision was issued. You must give a copy of your appeal to the other party. The hearing officer's **decision becomes final** when the 10-calendar day period has expired, or when administrative requests for review have been decided.

You may request a judicial review if you believe the decision is contradictory to law.[32] 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.[33]

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

_____
David J. Latham, Esq.
Hearing Officer

[32] 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).

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

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 453

Hearing Date: December 10, 2003
Decision Issued: December 15, 2003
Reconsideration Received: December 29, 2003
Reconsideration Response: December 29, 2003

APPLICABLE LAW

A hearing officer's original decision is subject to administrative review. A request for review must be made in writing, and *received* by the administrative reviewer, within 10 calendar days of the date of the original hearing decision. A request to reconsider a decision is made to the hearing officer. A copy of all requests must be provided to the other party and to the EDR Director. The request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.[34]

PROCEDURAL ISSUE

Grievant's request for reconsideration was received by the reviewer 14 calendar days after the date of the original decision. In this case, the tenth and eleventh calendar days after the date of the original decision were official holidays for state employees; the twelfth and thirteenth days fell on a weekend. The fourteenth day after the date of the original decision was the first business day following the final date for appeal. In those instances where the final date of appeal falls on either a holiday or weekend, the practice of this department has been to consider the request timely filed if it is received

[34] § 7.2 Department of Employment Dispute Resolution *Grievance Procedure Manual*, effective July 1, 2001.

on the first business day thereafter. Therefore, the request in this case is deemed timely filed. Grievant's request for reconsideration did not reflect that a copy was sent to the EDR Director. In this case only, the hearing officer elects to waive that requirement in order to respond to grievant's concerns.

OPINION

Grievant's request enumerates five bases for reconsideration. The following responds to those concerns in the same order presented in grievant's request.

1. Grievant correctly recites the bases for the disciplinary action and notes that only the conduct cited in the Written Notice can be a basis for disciplinary action. Grievant complains that, although she was not charged with sending anonymous letters to the president's office, the agency disciplined her in part because of these letters. Grievant also suggests that it was inappropriate to discuss the anonymous letters in the decision.

   In fact, the agency did not charge grievant with sending the anonymous letters and there is no evidence that the transmission of the four letters was a reason for grievant's dismissal. The agency offered evidence regarding the letters because the email exchanges demonstrated that grievant was disseminating to former employees of the president's office information that they were not entitled to receive. Thus, this evidence was corroborative of the breach of confidentiality charge against grievant. The inclusion of these facts in the decision was necessary not only for corroborative purposes, but also to give any further reviewer a complete picture of what occurred in this case.

2. Grievant expresses concern that the decision does not mention that email communication is no different from other methods of information transfer such as telephone, letter, facsimile, or verbal. The decision does not dwell on this proposition because there is no disagreement about it. The unauthorized disclosure of information – by any of the five aforementioned methods – is plainly a breach of confidentiality. When grievant transmitted presidential email communications to unauthorized recipients, she breached confidentiality.

3. Grievant objects that her various employment applications were allowed into evidence. The agency offered this evidence to demonstrate that it had previously given grievant a second chance. Grievant failed to disclose on her 2000 application that she had been discharged for credit card fraud. When the agency subsequently discovered this falsification, it could have dismissed her but instead gave her a second chance by allowing her to remain employed.

   Grievant's 2003 job applications not only failed to mention the reason for her discharge but also failed to state that grievant had a felony conviction. This evidence demonstrated grievant's ongoing failure to be honest and forthcoming with her employer. It supports the agency's conclusion that it could no longer trust grievant to work in such a sensitive position. Hearing officers are obligated to consider all circumstances – both mitigating and aggravating – in determining whether the discipline meted out by an agency is commensurate with the offense. In this case, the adjudicator must take into consideration grievant's

position as secretary/receptionist for the president of a major metropolitan university. Her position was so sensitive that even her job description contained a Confidentiality and Compliance Statement.

4. Grievant seeks exoneration from her offense by noting that presidential documents were not specifically marked "Confidential." This argument is not persuasive. Any correspondence – whether electronic or hard copy – addressed to an individual is intended to be confidential unless the recipient authorizes further dissemination. Grievant had been entrusted with the responsibility to have access to email for certain specified purposes. She had not been given *carte blanche* to disseminate the president's mail to anyone she saw fit. Grievant knew that the president had entrusted the responsibility for dissemination to only one person – the assistant for finance.

   Grievant's reliance on the statutory definition of "working papers" as an excuse for her actions is misplaced.[35] It is undisputed that the Freedom of Information Act (FOIA) excludes working papers from release. The hearing officer does not unconditionally agree with grievant that email communications are not working papers. An email prepared for the president's review could easily fall within the rather broad statutory definition of a "working paper." Nonetheless, even if one assumes arguendo that the emails at issue herein did not fall within the statutory definition, the fact remains that no one ever filed a FOIA request for the emails. Absent such a request, there was no basis for grievant to send the president's correspondence to anyone outside the president's office.

5. Finally, grievant expresses concern that the decision made no mention of two memoranda (Exhibits 26 & 27). The hearing officer did not discuss these memoranda because they were not probative or even relevant. The April 2002 memorandum appears to be only a written documentation of a meeting in which grievant's job responsibilities were clarified. The August 2003 memorandum is similar and includes discussion of grievant's performance evaluation. Neither memorandum appears to be a "counseling" as that term is generally used since there is no correction of inappropriate behavior. Moreover, neither memorandum is related to the issues for which grievant was dismissed, i.e., unauthorized removal of state records and breaches of confidentiality. Since neither memorandum appears to have been a counseling, or to have any relevance to the grievant's removal from employment, the memoranda were not given any evidentiary weight in making the decision.

Grievant has not identified any constitutional provision, statute, regulation, or judicial decision as a basis to challenge the hearing officer's conclusions of law. Grievant takes issue with certain Findings of Fact, and with the hearing officer's Opinion. The grievant's disagreements, when examined, simply contest the weight and credibility that the hearing officer accorded to the testimony of the various witnesses at the hearing, the resulting inferences that he drew, the characterizations that he made, or the facts he chose to include in his decision. Such determinations are entirely within the hearing officer's authority.

[35] Va. Code § 2.2-3705.6 defines "working papers" as "those records prepared by or for an above-named public official for his personal or deliberative use."

DECISION

The hearing officer has carefully considered grievant's arguments and concludes that there is no basis to change the Decision issued on December 15, 2003.

APPEAL RIGHTS

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 10 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or HRM, the hearing officer has issued a revised 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.[36]

David J. Latham, Esq.
Hearing Officer

[36] 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, 455, 573 S.E.2d 319, 322 (2002).