

Issue: Group III Written Notice with termination (actions which undermine the agency's effectiveness); Hearing Date: 03/16/05; Decision Issued: 03/18/05; Agency: DMV; AHO: David J. Latham, Esq.; Case No. 8013; **Addendum Decision address attorneys fees issued 03/28/05**



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 8013

Hearing Date:	March 16, 2005
Decision Issued:	March 18, 2005

APPEARANCES

Grievant
Attorney for Grievant
Two witnesses for Agency
Full Service Director
Representative for Agency
Five witnesses for Agency

ISSUES

Did the grievant's actions warrant disciplinary action under the Commonwealth of Virginia 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 grievance from a Group III Written Notice for action which undermines the effectiveness of the agency.¹ As part of the disciplinary action, grievant was removed from state employment effective October 14, 2004. Following failure of the parties to resolve the grievance at the third resolution step, the agency head qualified the grievance for hearing.² The Department of Motor Vehicles (Hereinafter referred to as "agency") had employed grievant for 19 years. She was a manager at the time of the disciplinary action.

Just before closing on Saturday, January 31, 2004, grievant assisted a new teller to speed up her closing process by tallying a dollar total on 18 checks the teller had received that day. The teller was working with a customer at the drive-thru window in the back of the office; customers do not have access to this area. Grievant attached a copy of the adding machine tape to the checks and placed them on the teller's counter next to her calculator within the teller's reach. Grievant told the teller that she had tallied the check total and was returning the checks to her. The total dollar amount of the 18 checks was \$1,397.66.³

About 20 minutes later when the office closed to the public and all office receipts were being reconciled with the transactions in the computer system, the amount of actual receipts (cash, checks, and credit cards) was \$1,397.66 less than the computer system stated had been received that day. Grievant immediately recognized that the shortage was the same amount as the stack of checks she had earlier tallied for the drive-thru teller. Grievant, the drive-thru teller, and one other employee conducted a thorough search of the office including the shred box, wastebaskets, and any other area where the checks might have inadvertently been placed or fallen. The teller became upset, started crying, and told grievant that she was going to be blamed for the shortage and fired. Because the teller was so upset and vocal, grievant calmed her down by assuring her that she would not blame the teller. Even though normal procedure would require that the teller record the shortage on the teller's account, grievant volunteered to record the shortage under her own account.

Grievant recorded the shortage in two places. First, the District Manager had required grievant to keep a computer log of overages and shortages and to give him a copy of that log each month.⁴ For the date of January 31, 2004, grievant recorded on the log the correct amount of the shortage, under her own name, with the note that "Teller #25's checks disappeared and could not be found – all customers contacted and will replace checks."⁵ Second, grievant also recorded the shortage on a computer report that is available to agency

¹ Agency Exhibit 2. Group III *Written Notice*, issued October 14, 2004.

² Agency Exhibit 1. *Grievance Form A*, filed November 9, 2004.

³ Agency Exhibit 16. Copies of 18 checks and adding machine tape, January 31, 2004.

⁴ The District Manager had retired in December 2003 but grievant continued to maintain the log, presumably because a replacement district manager would want the same monthly report.

⁵ Grievant Exhibit 2. January Overages and Shortages log, February 12, 2004.

management through the Customer Service Center Network. She recorded the correct amount, listed it as a shortage and noted the same explanation quoted above.⁶

When such a shortage occurs, agency policy requires that the teller record the shortage on the customer's account. The agency's system is set up to automatically generate a bill from the central office to the customer. If the customer does not pay the bill within a specified time, their vehicle registration will be cancelled until the customer pays. Grievant knew of this policy, and knew that it should have been used in this case. However, grievant felt that because the error was the agency's fault and not the customer's fault, she would utilize a more personal approach.

During the next several days following the check disappearance, grievant and another employee utilized the vehicle registration receipts associated with the missing checks to contact the customers involved.⁷ They were able to contact several customers by telephone, explain that the customer's check had disappeared, ask the customer to write a replacement check, and assure the customer that if the missing checks were found, they would not be cashed. For the customers who could not be contacted by telephone, grievant directed her assistant manager to send a letter requesting a replacement check.⁸ Many of the customers contacted did bring in replacement checks; however, some did not respond. At the present time, approximately \$700 in checks has not been replaced by customers.

During the remainder of February, the missing checks and recouping of funds faded from grievant's mind due to the press of other office business. Grievant's office was understaffed and a new District Manager had not yet been selected. The assistant manager who was following up on the customer contacts suddenly and unexpectedly went on short-term disability; she was absent from February 4 to July 3, 2004. Grievant did not follow up and the matter sat unattended on the assistant manager's desk during this period. When the assistant manager returned to work in July, she brought the matter to grievant's attention. Grievant recognized that something would have to be done, but postponed making a decision, and then again forgot about it.

A new District Manager was selected in May 2004. During the next three months, the District Manager began to have some concerns about grievant's office management skills. On September 10, 2004, she transferred grievant to a different office in the same metropolitan area, and moved the manager of that office to grievant's old office.

⁶ Agency Exhibit 19. Exception Activity and Over/Short computer report, January 31, 2004.

⁷ Agency Exhibit 17. Vehicle Registration forms.

⁸ Agency Exhibit 18. Letters sent to affected customers, February 3, 2004.

In the morning of September 15, 2004, the new manager of grievant's old office met with the District Manager to bring to her attention a number of problems she had discovered. In particular, she pointed out the \$1,397.66 shortage of January 31st. Grievant did not know that this matter had been brought to the District Manager's attention that day. Late in the afternoon of the same day, a customer came to grievant's old office bringing with her the entire batch of missing checks. The customer related that on January 31, 2004, she had conducted a transaction at the drive-thru window. At the end of the transaction, the teller handed out an envelope containing her transaction documentation. The customer did not look into the envelope until later that day after she got home. Inside the envelope in addition to her own transaction documentation, she found the stack of 18 checks. The next business day (the following Monday), she called the agency's central office in Richmond and was told to hold the checks until someone contacted her. Over the next few months, when no one contacted her, the customer called the central office on two more occasions only to be told the same thing. Finally, in September, the customer decided to personally take the checks to the office. Grievant does not know or have any relationship with the customer.

The employee in charge of the office at that time had participated in the search on January 31st and recognized that these were the missing checks. She called grievant who advised the employee to mail the checks to her at her new office. Grievant said she would handle it because she thought it would be easier than trying to explain it all to the new manager. This phone conversation was overheard by the drive-thru teller, who told the new manager when she returned to the office late in the afternoon. The new manager called the District Manager who notified an Internal Affairs agent. On grievant's next workday, September 17, 2004, grievant sent an e-mail message to the District Manager explaining the entire history of the missing checks.⁹ In her message, she noted that so much time had passed that she saw no option but to turn all the documentation over to the Internal Affairs agent for advice on how to resolve the matter.

On October 4, 2004, grievant's supervisor notified her that there had been allegations of unsatisfactory job performance and unacceptable conduct.¹⁰ The memorandum placed grievant on administrative leave and gave her an unspecified period of time within which to provide a written response to four allegations. She was told that she might be subject to disciplinary action. Grievant prepared a detailed written response the following day and gave it to the District Manager on October 7th.¹¹ The agency had no further contact with grievant until, on October 14, 2004, her supervisor telephoned her and discharged her.

⁹ Agency Exhibit 8A. Email from grievant to District Manager, September 17, 2004.

¹⁰ Grievant Exhibit 3. Memorandum from supervisor to grievant, October 4, 2004.

¹¹ Grievant Exhibit 5. Memorandum from grievant to supervisor, October 5, 2004.

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 the grievant must present her evidence first and prove her claim by a preponderance of the evidence.¹²

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 (DHRM) 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. Section V.B.3 of the Commonwealth of Virginia's Department of Personnel and Training Manual *Standards of Conduct* Policy No. 1.60 provides that Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant removal from

¹² § 5.8, Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective August 30, 2004.

employment.¹³ Falsifying any records including reports, time records, or other official state documents is one example of a Group III offense. The offenses listed in the Standards of Conduct are intended to be illustrative, not all-inclusive. Accordingly, an offense that in the judgment of the agency head undermines the effectiveness of the agency's activities or the employee's performance should be treated consistent with the provisions of the Standards of Conduct.¹⁴

The agency disciplined grievant for her handling (or mishandling) of the situation which had its genesis in the disappearance of 18 checks on January 31, 2004. However, in the written notice that documents the disciplinary action taken, the agency alleges that grievant committed multiple offenses which are discussed below. Most of the facts in this case are relatively undisputed.

Misappropriation of state funds

Misappropriation is defined as, "The unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended."¹⁵ For example, in the context of attorney-client relationships, misappropriation can include not only stealing but also unauthorized temporary use for one's own purposes whether or not one derives personal gain or benefit.¹⁶ In grievant's case, she did not use state funds for her own purposes. In fact, she never *used* state funds at all because she did not have control over state funds. The checks at issue were missing for seven and a half months; during that time grievant had no control over the checks, let alone the funds which the checks represented. When replacement checks were obtained, the funds were promptly credited to the agency, with one exception which appears to have occurred through simple negligence.¹⁷

The agency may not, after disciplining grievant, substitute for the actual definition of misappropriation its own definition and then conclude that grievant is guilty of such an offense.¹⁸ The fact is that grievant did not use any state funds for any purpose. She did not appropriate funds for an incorrect use. The funds remained in the hands of the customers until such time as their replacement checks were later negotiated by the agency. Accordingly, the agency has not proven that grievant misappropriated any state funds.

Misuse of state funds

¹³ Agency Exhibit 3. Section V.B.3, DHRM Policy No. 1.60, Standards of Conduct, September 16, 1993.

¹⁴ Agency Exhibit 3. Section V.A. *Ibid.*

¹⁵ *Black's Law Dictionary, Sixth Edition.*

¹⁶ *In re Harrison*, D.C. App., 461 A.2d 1034, 1036.

¹⁷ One check (Agency Exhibit 11) in the amount of \$64.50 was received in an envelope addressed to the assistant manager during her absence and was placed on her desk. Even after she returned in July, no action was taken other than to store the check in the security closet.

¹⁸ Agency Exhibit 1. Third resolution step response.

For the same reasons stated above, grievant did not misuse state funds. It follows that if grievant did not have control of the funds in question, and did not use the funds, she could not have *misused* those funds. An agency witness conceded during the hearing that there was no misuse of funds.

Failure to follow policy and procedures

The agency has shown, and grievant has admitted, that she failed to follow standard policy and procedures. The shortage should have been recorded as teller #25's shortage – not as grievant's. The shortages should have been charged to each customer's account so that the agency's automated billing system would be able to assure collection of the funds from customers. Grievant should have reported this problem to the acting district manager but failed to do so. Grievant's failure to follow proper procedures resulted in failure to properly collect funds from customers, unjust enrichment to customers, and a shortfall in agency revenue to which it was entitled.

Grievant had a rational explanation for bypassing standard procedure, viz., she felt that it was fairer to the customers to call them personally and explain the situation than for the customers to receive a cold, computer-generated billing letter.¹⁹ However, while grievant's desire to improve customer relations is commendable, the fact remains that her failure to follow proper policy and procedures has now resulted in the problems mentioned above. Accordingly, the agency has proven that grievant failed to follow established procedures – a Group II offense.

Falsification of state documents/records

Falsify is defined as, "To counterfeit or forge; to make something false; to give a false appearance to anything."²⁰ The word "falsify" means being intentionally or knowingly untrue. Grievant initialed teller #25's Receipts Verification form verifying that funds were there, when in fact the funds were not there. She also made entries in the computer records that were false because the records reflect shortages under her own teller log when, in fact, they should have been recorded under teller #25's log. Grievant has explained that she had a good motive for making such false entries. However, her good intention does not alter the fact that she made entries in state documents and records that were knowingly untrue. Accordingly, the agency has shown that grievant did falsify records – a Group III offense.

Action which undermines the effectiveness of the agency

¹⁹ Agency Exhibit 8A. E-mail from grievant to district manager, September 17, 2004.

²⁰ *Black's Law Dictionary*, Sixth Edition.

This umbrella charge, which the agency used to preface its description of grievant's offenses in the written notice, is a catch-all phrase found in Section V.A. of the *Standards of Conduct*. In this case, the agency concluded that grievant's involvement of at least three other employees (teller #25, assistant manager, and the employee who notified grievant of the checks being returned) undermined effectiveness. In addition to the time spent by these employees on attempting to obtain replacement checks, these subordinates were led to believe that circumventing agency policy was acceptable. As a manager, grievant is expected to lead by example and show employees how to follow established applicable written policies and practices. In this case, grievant's actions did undermine agency effectiveness by setting an improper example for subordinates, using unnecessary amounts of employees' time, and causing the agency to sustain a monetary loss.

Poor judgement

Based on the fact that grievant failed to follow procedures, falsified records, and undermined agency effectiveness, it is concluded that she did indeed use poor judgement in her attempt to resolve the missing checks problem.

Other factors

The agency points out the unusual coincidence of the checks being returned by a customer on the same day that the district manager first learned about the missing checks. At first blush, such a coincidence appears strange and raises the question of whether there was some connection between the two events. The agency's inference is that grievant had been holding the checks and then had an agent produce the checks when the District Manager found out there was a problem. However, the agency presented no evidence to prove such an inference. Upon examination, it appears highly unlikely that there would have been any point in grievant holding the checks. By mid-September, the checks had gone "stale" (could not be cashed because of time limits) and were worthless. In any case, the agency has not shown that there was any benefit to grievant for holding the checks for several months. Moreover, the agency has not shown that grievant knew that the District Manager had been told about the problem before the customer brought them to the office. Accordingly, while speculation about the coincidence is worth exploring, it appears to have been no more than just that – an unusual coincidence.

The agency made much of the fact that when grievant was preparing to transfer to her new office in September 2004, she told the assistant manager to put the vehicle registration forms in the shred box. The agency infers that grievant was attempting to cover up the situation by destroying evidence. In fact, grievant concluded that by that late date, the new manager would be unable to resolve the situation and there was no point in saving the forms. Grievant had

the original documentation in her office. If grievant had wanted to destroy evidence she could have immediately taken it away from the building and destroyed it rather than placing in a box that was not going to be shredded until some future date.²¹

The agency interpreted grievant's instruction to the employee who received the missing checks on September 15th to send them to grievant, as an attempt to "... keep secret the return of the checks..."²² Grievant explained that she saw no point in involving the new manager as grievant was most familiar with the situation. Other than allegation, the agency has not rebutted grievant's explanation for acting as she did. While grievant used poor judgement in this situation, it does not appear that she was attempting to keep anything secret, but just saw no point in unnecessarily involving others. As in the instances described in the two preceding paragraphs, the district manager appears to conclude that grievant led a conspiracy among employees for some unknown reason. In fact, the evidence does not support any such conclusion. While it is apparent that grievant did not follow procedure, and that her neglect of the matter caused it to spiral out of control, there is no evidence of any scheme or conspiracy to do anything illegal.

The agency asserted that its decision to discharge the grievant was consistent with agency practice. However, the agency acknowledged during the hearing that there have been no other cases similar to grievant's case.

Summary

The agency has shown, by a preponderance of evidence, that grievant did not follow proper policy and procedures in attempting to resolve the disappearance of 18 checks. Although she may have had good intentions in deciding to deviate from procedures, she knowingly entered into agency records false information which could be misleading to others who were unfamiliar with what occurred. Grievant's circumvention of procedures set a poor example for subordinates and is inconsistent with the leadership expected of a manager. Considering the totality of the circumstances, grievant's actions warrant a Group III Written Notice.

However, there are at least three circumstances in this case that mitigate against terminating grievant's employment. First, grievant has been employed for 19 years with the agency. Such long service without any prior disciplinary action is commendable. Second, grievant's performance has always been rated at least satisfactory or better. In recent years her performance rating has been "Extraordinary Contributor." Third, the decision to discharge grievant appears to have been largely, and improperly, motivated by two factors: 1) a conclusion that

²¹ In fact, after the return of the checks, the forms were retrieved from the shred box.

²² Agency Exhibit 1. First Resolution Step response, November 19, 2004.

grievant had misappropriated and misused state funds²³ and, 2) agency suspicion that grievant had deliberately and secretly conspired with others to conceal her activities. Since the agency has not proven either of these two factors, there are no aggravating circumstances. While grievant's actions warrant discipline, the mitigating circumstances are sufficient to lessen the severity of the disciplinary action. Accordingly, it is concluded that the appropriate level of discipline is a Group III Written Notice with 30 work day's suspension.

DECISION

The disciplinary action of the agency is modified.

The Group III Written Notice is UPHeld. However, grievant's removal from employment is hereby RESCINDED. In lieu of removal, grievant is suspended without pay for a period of 30 work days. Grievant is reinstated to her former position or, if occupied, to an objectively similar position. Grievant is awarded back pay from the point at which suspension ends, and benefits and seniority are restored. The award of back pay must be offset by any interim earnings, including earnings from grievant's current employment with another state agency and, by any unemployment compensation received.

She is further entitled to recover a reasonable attorney's fee, which cost shall be borne by the agency.²⁴ Grievant's attorney is herewith informed of her obligation to timely submit a fee petition to the Hearing Officer for review.²⁵

APPEAL RIGHTS

You may file an administrative review request within **15 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.

²³ See Agency Exhibit 2. Written Notice, issued October 14, 2004, in which the agency decided not to reduce the severity of discipline, in part, because of its conclusion that grievant misused state funds.

²⁴ Va. Code § 2.2-3005.1.A & B.

²⁵ See Section VI.D, *Rules for Conducting Grievance Hearings*, effective August 30, 2004. Counsel for the grievant shall ensure that the hearing officer *receives*, within 15 calendar days of the issuance of the hearing decision, counsel's petition for reasonable attorneys' fees.

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 15 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 15-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.²⁶ 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.²⁷

[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

²⁶ 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).

²⁷ 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

ADDENDUM TO DECISION OF HEARING OFFICER

In re:

Case No: 8013

Hearing Date: March 16, 2005
Decision Issued: March 18, 2005
Addendum Issued: March 28, 2005

APPLICABLE LAW AND PROCEDURE

The grievance statute provides that for those issues qualified for a hearing, the hearing officer may order relief including reasonable attorneys' fees in grievances challenging discharge if the hearing officer finds that the employee "substantially prevailed" on the merits of the grievance, unless special circumstances would make an award unjust.²⁸ For an employee to "substantially prevail" in a discharge grievance, the hearing officer's decision must contain an order that the agency reinstate the employee to his or her former (or an objectively similar) position.²⁹

DISCUSSION

²⁸ Va. Code § 2.2-3005.1.A.

²⁹ § 7.2(e) Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective August 30, 2004. Section VI(D) *EDR Rules for Conducting Grievance Hearings*, effective August 30, 2004.

Following issuance of the hearing officer's decision ordering reinstatement of the grievant, grievant submitted a petition for attorney's fees and costs. Grievant's petition includes attorneys' fees for services rendered by her attorney prior to the February 1, 2005 qualification of her grievance for hearing. Not all grievances proceed to a hearing; only grievances that challenge certain actions qualify for a hearing.³⁰ The hearing officer may award relief only for those issues that qualify for hearing. Further, the statute provides that an agency is required to bear only the expense for the hearing officer and other associated *hearing* expenses including grievant's attorneys' fees.³¹ Attorney's fees incurred during the grievance procedure's Management Resolution Step stage are not expenses arising from the hearing. Accordingly, a hearing officer may award only those attorneys' fees incurred subsequent to qualification of the grievance for hearing and as a direct result of the hearing process. Therefore, grievant's attorney fees for services performed prior to February 1, 2005 are not included in the award.

Grievant's petition also includes costs for photocopying and mailing. The statute provides for the award of attorneys' fees, not costs. If the legislature had intended to include costs, it would have included that term in the statute. Accordingly, the hearing officer has no authority to award costs. The petition also requests attorney fees for attorney travel time. Time spent traveling to and from a hearing does not involve legal work, counsel, or attorney work product and is, therefore, not compensable. Accordingly, time billed as travel is not included in the award.³²

AWARD

The petition for fees for services rendered prior to February 1, 2005, costs, and travel time is denied. The grievant is awarded attorneys' fees incurred from February 1, 2005 through March 16, 2005 in the amount of \$2,556.00 (21.3 hours x \$120.00 per hour).³³

APPEAL RIGHTS

If neither party petitions the EDR Director for a ruling on the propriety of the fees addendum within 10 calendar days of its issuance, the hearing decision

³⁰ Va. Code § 2.2-3004.A. See also §4, Qualification for a Hearing, *Grievance Procedure Manual*, August 30, 2004.

³¹ Va. Code § 2.2-3005.1.B.

³² The hearing was seven hours.

³³ Section VI.D. *EDR Rules for Conducting Grievance Hearings*, effective August 30, 2004, limits attorney fee reimbursement to \$120.00 per hour.

and its fees addendum may be appealed to the Circuit Court as a final hearing decision. Once the EDR Director issues a ruling on the propriety of the fees addendum, and if ordered by EDR, the hearing officer has issued a revised fees addendum, the original hearing decision becomes “final” as described in §VII(B) of the *Rules* and may be appealed to the Circuit Court in accordance with §VII(C) of the *Rules* and §7.3(a) of the *Grievance Procedure Manual*. The fees addendum shall be considered part of the final decision. Final hearing decisions are not enforceable until the conclusion of any judicial appeals.

David J. Latham, Esq.
Hearing Officer