Issue: Group III Written Notice with termination (food stamp fraud); Hearing Date: 04/12/05; Decision Issued: 04/13/05; Agency: DSS; AHO: David J. Latham, Esq.; Case No. 8031; **Administrative Review: HO Reconsideration Request received 04/27/05; HO Reconsideration Decision issued: 05/06/05; Outcome: No basis to reopen the hearing.**

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 8031

Hearing Date: April 12, 2005
Decision Issued: April 13, 2005

APPEARANCES

Grievant
Representative for Grievant
Co-representative for Grievant
Fraud Program Manager
Advocate for Agency
Two 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 intentional fraud in obtaining disaster food stamp benefits.[1] As part of the disciplinary action, grievant was removed from state employment effective December 29, 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 Social Services (DSS) (Hereinafter referred to as "agency") had employed grievant for four years as a program support technician in the child support division of the agency.

On September 18, 2003, Hurricane Isabel caused widespread power outages and property destruction throughout much of the Commonwealth. The agency administered a Disaster Food Stamp Program that provided food stamps to persons who met specified income requirements, resource availability, and damage estimates. The disaster period was established as September 18 through October 17, 2003.

On October 1, 2003, grievant filed an application for emergency food stamps.[3] Grievant was given a form and completed Parts I through VI. It was the practice of interviewers not to request verification of the information but to accept whatever applicants said. Applicants were allowed to list their net income rather than gross income. Grievant reviewed the application and certified by signing it that the information she gave was correct and complete.[4] Based on the information grievant provided, the local DSS office calculated that grievant was entitled to $465 in benefits. Grievant subsequently received $465 in benefits.

The federal Department of Agriculture has oversight responsibility for the food stamp program. It routinely requires that the DSS audit one hundred percent of the applications filed by DSS employees. The DSS Quality Performance (QP) Manager who reviewed grievant's application referred the case for a fraud investigation.

Grievant claimed a household of four people (grievant and three sons, aged 20, 17, & 16). The Fraud Investigator determined that grievant's actual net pay from two places of employment for the disaster period was $1,565;[5] grievant declared only $650.[6] Grievant's husband had income of $896;[7] grievant did not

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[1] Agency Exhibit 1. Group III Written Notice, issued December 28, 2004.
[2] Agency Exhibit 1. *Grievance Form A*, filed January 26, 2005.
[3] An applicant for food stamps must file her application in her county of residence.
[4] Agency Exhibit 2. Application for Emergency Food Stamps, October 1, 2003.
[5] Agency Exhibit 7. Grievant's pay records for the periods ending September 24, 2003 and October 9, 2003 from the agency and, her pay records for the pay dates of September 26, 2003 and October 10, 2003 from her part-time employer.
[6] The eligibility worker who interviewed grievant recognized that grievant's declared income was abnormally low for a month. The worker learned from grievant that she had declared her earnings for only two weeks. The worker multiplied $650 x 2.15 (to get a full-month's income) and entered the figure of $1,397.50 on the application form.
[7] Agency Exhibit 7. Questionnaire completed by husband's employer, March 31, 2004.

declare her husband as a household member and did not report his income.[8] The investigator also determined that grievant's 20-year-old son had net wages of $1,176 during the disaster period;[9] grievant declared that he had no income. Grievant received child support for her two youngest sons in the amount of $411 but did not declare this income.[10]

Grievant declared medical expenses from the disaster in the amount of $60 for an inhaler. However, as proof she provided only a $30 receipt for a nebulizer and has provided no explanation as to why she would not have needed this device in the absence of the disaster.[11] Grievant reported moving expenses of $80 but was not evacuated from her home and did not incur any moving expense. Grievant declared that she had no money in the joint checking account and only $5 in the joint savings account. In fact, grievant had a total of $800 in the two accounts on the day she filed her application.[12] Moreover, grievant admitted during this hearing that she maintains another separate saving account into which she deposits the child support payments each month. Grievant does not know how much money was in that account on October 1, 2003.

Listed below are the disaster allotment calculations based on grievant's declared income, resources, and expenses and, the correct calculation based on actual income, resources, and expenses.

	Grievant's declaration	Actual amounts
1. Anticipated Income	$1,397	$4,048
2. Accessible Resources	$ 30	$ 800+[13]
3. Total (1 + 2)	$1,427	$4,848
4. Disaster Expenses	$1,390	$1,310
5. Disaster Income (3 – 4)	$ 37	$3,538

[8] Based on available evidence, grievant's husband did not live in the household during the disaster period. However, his income from state employment was deposited to the joint savings account, some of which was transferred to the joint checking account on October 1, 2003. Therefore, grievant had access to her husband's income throughout the disaster period.

[9] Agency Exhibit 7. Questionnaire completed by eldest son's employer, March 31, 2004.

[10] Agency Exhibit 7. Agency's APECS – Financial Information report of child support payments paid to grievant.

[11] Expenses which would normally have been incurred in the absence of a disaster do not constitute "disaster-caused expenses" as required in the heading of section IV of the application form.

[12] Agency Exhibit 2. Bank statement balances on October 1, 2003 reflect $100.32 in the savings account and $700.20 in the checking account.

[13] Grievant had additional savings in a separate account but does not recall the amount. The existence of this second savings account was not declared until this hearing.

6. Disaster Income Limit[14]	$2,010	$2,010

INELIGIBLE if # 5 is greater than # 6

A hearing officer conducted an administrative disqualification hearing to determine whether grievant, in applying for food stamps, had committed an intentional program violation pursuant to Va. Code § 63.2-524. The hearing officer found the agency's evidence "of concern" and that it had made a prima facie case. However, utilizing the higher standard of proof required in such a hearing, the hearing officer held that evidence was not "clear and convincing" enough to demonstrate an intentional program violation.[15]

The agency's Commissioner made the final decision to remove grievant from employment. He personally reviewed grievant's case as well as the cases of other investigated employees in order to assure consistent application of discipline.

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

[14] Agency Exhibit 5. *Disaster Food Stamp Program for Victims of Hurricane Isabel* hand-out listing income limits.

[15] Agency Exhibit 3. Administrative Disqualification Hearing Decision, October 18, 2004.

circumstances. In all other actions the grievant must present her evidence first and prove her claim by a preponderance of the evidence.[16]

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 employee work performance. The Standards establish a fair and objective process for correcting 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 employment.[17] 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.[18]

"Falsify" is defined as, "To counterfeit or forge; to make something false; to give a false appearance to anything."[19] The word "falsify" means being intentionally or knowingly untrue. The Standards of Conduct lists only *examples* of unacceptable behavior.[20] The Notice of Intent referenced in the Written Notice makes clear that the two most notable aspects of grievant's offense were 1) omission of the adult male's income from the application and, 2) omission of the adult son's income from the application. Thus, grievant was disciplined for falsifying an official state document.

Grievant argues that if the agency cannot prove the elements of "intentional fraud," it cannot prevail in this case. In a criminal proceeding, grievant's argument would have merit. However, in order to prevail in this administrative hearing, the agency need only demonstrate by a preponderance of evidence that grievant was reasonably informed of the offense she committed, and that she committed the offense. In any case, for the reasons below, it is concluded that the evidence supports a conclusion that grievant knew that the

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[16] § 5.8, Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective August 30, 2004.

[17] Agency Exhibit 6. Section V.B.3, DHRM Policy No. 1.60, Standards of Conduct, September 16, 1993.

[18] Agency Exhibit 6. Section V.A. *Ibid.*

[19] *Black's Law Dictionary.*

[20] Agency Exhibit 8. Section V.A. *Ibid.*

application was untrue. The agency gave grievant a written notice of intent to terminate her employment specifying the two offenses cited in the preceding paragraph.[21]

Although the administrative hearing decision records were admitted as evidence in this case, this hearing officer is not bound by the findings, opinion, or decision of another hearing officer. First, this hearing officer is required to adjudicate the grievance based *solely* on the testimony and evidence presented during this hearing. Second, the administrative disqualification hearing was conducted pursuant to Va. Code § 63.2-524 for the purpose of determining whether grievant committed an intentional food stamp program violation. In contrast, this grievance hearing is conducted pursuant to Va. Code § 2.2-3000 to adjudicate grievant's filing of a grievance. The two Code sections are not statutorily related. This hearing officer is not obligated by the other hearing officer's decision just as the other hearing officer would not be obligated by this decision. Finally, in the disqualification hearing, an intentional program violation could be found only if the evidence met the "clear and convincing" evidentiary standard. In contrast, the standard of proof in a grievance hearing is a preponderance of evidence.

Grievant nonetheless argued that the doctrine of *res judicata* requires this hearing officer to render a decision consistent with the decision rendered in the administrative disqualification hearing. The doctrine of *res judicata* provides that a final judgment on the merits by a court of competent jurisdiction is conclusive of the rights of parties in later suits on points determined in the former suit. However, in order for the doctrine to be applicable, the two hearings must be for the same *cause of action*. In this case, the two hearings were for different causes of action – the first determined whether grievant should be disqualified from receiving food stamp benefits, while this hearing adjudicates whether the agency's disciplinary action was warranted. Since each hearing was for a different cause of action, and held pursuant to two unrelated statutes, there is no identity of the cause of action and the doctrine of *res judicata* is not applicable.

It is undisputed that grievant underreported available income and resources, and over-reported disaster expenses on the food stamp application. Even after the eligibility worker increased grievant's declared income, the figure was underreported by $168. Grievant underreported her husband's income by $896. Grievant did not declare any income for her eldest son, resulting in additional underreporting of $1,176 in available income. Grievant did not declare child support income of $411, despite the fact that she is employed in the child support division of the agency. Grievant underreported available cash in savings and checking accounts of at least $800. She falsely reported moving expense when, in fact, she did not incur any such expense. It is interesting to note that in each instance, grievant's underreporting of income and over-reporting of expenses all resulted in an *understatement* of her disaster income limit - the key

[21] Agency Exhibit 1. Letter from Deputy Commissioner to grievant, December 14, 2004.

determinant of whether one qualifies for food stamps. There was no instance in which grievant overreported any income or understated expenses. Therefore, the totality of the circumstances in this case demonstrates, by a preponderance of evidence, that grievant falsified an official state document.

Based on the available testimony, grievant's husband was not living or eating in grievant's household during the disaster period. Therefore, grievant's decision not to list her husband as a household member on the food stamp application was justified. In fact, the agency did not discipline grievant for not listing her husband; rather it disciplined her for not declaring his income, which constituted an available financial resource during the disaster period. Since grievant's husband was putting his income into their joint bank account, grievant had ready access to this money.

Grievant did not report any income for her adult son. Grievant avers that she did not know her son was employed from July through October 2003. However, grievant acknowledges that she was not supporting her son financially; she did not pay for his clothes, transportation, cell phone, entertainment, or any other expenses. Accordingly, grievant knew, or reasonably should have known, that her son had income. Knowing this, she should have ascertained, or at least estimated, her son's income before declaring that he had no income.

Grievant argues that, in the notice of intent to terminate her employment, the agency cited only two of the issues uncovered by the fraud investigation and that only these issues should be considered in this case. Assuming, for the sake of discussion, that grievant's argument is correct, the agency has shown by a preponderance of evidence that grievant did not declare either her husband's income or her adult son's income. She knew that her husband had income and reasonably should have known of her son's income. Her failure to report this income in the amount of $2,070 was sufficient to make her ineligible for benefits. However, the fact that the agency mentioned only these two issues in the notice of intent does not preclude it from presenting evidence of the full investigation during this hearing. The additional evidence of grievant underreporting her own income, failing to declare the actual amount of money in the joint savings and checking accounts, failing to declare the existence of a second savings account, and falsely claiming moving expenses she did not incur, are all evidence of the same pattern of underreporting assets or over-reporting expenses. This evidence is admissible as corroborative proof of grievant's intent not to fully disclose available financial resources.

Grievant asserts that the administrative disqualification hearing officer found her credible. In fact, this assertion is not supported by the record. The hearing officer's decision does not make a Finding of credibility.[22] The hearing officer actually stated that the evidence was "of concern" but that it did not rise to the standard of "clear and convincing" required in a disqualification proceeding.

[22] Agency Exhibit 3. Administrative Disqualification Hearing Decision, October 18, 2004.

Moreover, even *if* the other hearing officer had found grievant credible, this hearing officer is not bound by such a finding.

DECISION

The disciplinary action of the agency is affirmed.

The Group III Written Notice and removal from employment issued on December 28, 2004 are hereby UPHELD. The disciplinary action shall remain active pursuant to the guidelines in the Standards of Conduct.

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.

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.[23] 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.[24]

[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

[23] 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).

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

DECISION OF HEARING OFFICER

In re:

Case No: 8031

Hearing Date:	April 12, 2005
Decision Issued:	April 13, 2005
Reconsideration Request Received:	April 27, 2005
Response to Reconsideration:	May 6, 2005

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 15 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. This 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.[25]

OPINION

[25] § 7.2 EDR *Grievance Procedure Manual*, effective August 30, 2004.

Grievant requests that the hearing be reopened but has not proffered any newly discovered evidence as a possible basis for reopening.

The grievant alternatively requests that the decision be reconsidered for several reasons which are addressed in the order presented in grievant's request.

1. Grievant argues (pp. 5-6) that an overpayment of $465 does not exist. The evidence elicited at the hearing verifies that the agency has not *requested* that grievant repay the benefits she received. However, the agency concluded that an overpayment exists because grievant did not qualify for benefits and should not have received benefits. The hearing officer did not find as fact, or conclude, that an overpayment exists because the decision in this case does not require such a finding or conclusion. Testimony established that the local DSS agency determines whether to collect an overpayment. It is not within the hearing officer's authority to decide whether a local DSS agency should or should not collect an overpayment. Moreover, neither the Written Notice nor the letter of intent to terminate grievant's employment make any mention of an overpayment.[26] The agency's basis for termination was grievant's intentional failure to include required information on the food stamp application form. In order to uphold the removal from employment, it is not necessary to prove that an overpayment exists; it is necessary to prove only that grievant falsified a state document.

2. Grievant renews her argument (pp. 6, 12) that this hearing officer "must accept" the Administrative Disqualification hearing officer's decision. That argument has already been addressed in the Decision in this case and will not be repeated here. Suffice it to say that there is no connection between the two statutes governing the Administrative Disqualification hearing and the Grievance Hearing. This hearing officer is not bound by the program disqualification proceeding.

3. Grievant alleges that the decision expanded the offenses against grievant (p. 7). In fact, that is incorrect. The agency cited grievant for intentional fraud and, in the letter of intent, listed what it considered to be the two most obvious examples of that fraud. That was the issue adjudicated by the decision. However, in presenting its evidence at hearing, the agency provided additional examples of omissions and misstatements on grievant's application form. A party may present corroborative evidence that supports the primary charge, and the agency did so here.

4. Grievant argues that falsifying an official state document was not the offense cited on the Written Notice (pp. 7, 13). Grievant's argument is semantical and therefore, not persuasive. In this case, falsifying a

[26] Agency Exhibit 2, pp 1-2.

document is one form of intentional fraud. Whether one refers to grievant's offense as intentional fraud or, as falsification of a state document is irrelevant since, in this case, they mean the same thing.

5. Grievant asserts that the *agency* should have provided witness testimony from the authors of all documents entered into evidence (p. 8). There is no evidentiary rule that supports such an onerous requirement. If grievant wanted to cross-examine the author of a particular document, she could have called that person as a witness.

6. Grievant argues that because her husband was not living in the household during the disaster period, his income would not have to be listed on the application (pp. 8, 16). It is correct that the income would not have to listed in Part I of the application; however, because grievant had access to her husband's income through their joint checking and savings accounts, that money should have been listed as an available resource in Part III of the application. Grievant's omission of this money from her application was a knowing concealment of resources.

7. Grievant incorrectly asserts that the decision did not require the proving of intent. In fact, the agency did prove intent, by presenting a preponderance of evidence.[27]

8. Contrary to grievant's assertion (p. 9), the hearing officer *did* consider all evidence entered into the record of this hearing; no evidence was dismissed. However, the hearing officer must assign an appropriate amount of evidentiary weight to each piece of evidence in order to arrive at a decision.

9. Grievant notes (p. 10) that the words "child support" appear on the application and suggests that this means that an eligibility worker knew grievant's children were receiving child support money and did not list it. In fact, the application lists the words "**work** child support" (Emphasis added) as the *grievant's* source of income. Because grievant worked in the child support division of DSS, it is clear that grievant listed this as the source of her own income. She did not list any income *or* source of income for her children despite the fact that they received child support payments.

10. Grievant reiterates again (p. 12) her argument that the hearing officer must accept the administrative disqualification hearing evidence "in total or disregard them in total." Grievant provides no legal basis for this statement. In fact, the hearing officer took into evidence all the documents related to the administrative hearing and, the hearing officer *considered* all of that evidence. However, *considering* evidence does not mean

[27] Last paragraph, p.6, *Decision of Hearing Officer*, Case # 8031.

accepting that evidence as fact. The hearing officer must assign the appropriate evidentiary weight to each piece of evidence and make a decision based on the totality of *all* the evidence. In so doing, some evidence may be adjudged as fact, while other evidence is determined not to be factual.

11. Grievant contends (p. 13) that she did not have an opportunity to address the agency's evidence. In fact, grievant was given with a copy of the agency's evidence four work days prior to the hearing. Accordingly, grievant had an opportunity to review the agency's evidence and to prepare her case appropriately.

12. Grievant alleges that she was allowed to testify only from memory. This is factually incorrect. The hearing officer routinely asks all witnesses in hearings to testify from memory rather than reading documents, unless it is necessary to refresh memory regarding a date, number, or to quote a specific passage. Grievant had no difficulty in testifying from memory about relevant events. On one occasion, the agency representative handed a document to a witness just as, on occasion, grievant's representative pointed out documents during her testimony.

13. Grievant objected to the agency's submission of documents during the hearing (p. 14). While the grievance procedure provides for a pre-hearing exchange of all available documents, this exchange does not preclude later admission of a relevant document that comes to a party's attention just before the hearing. As long as the document is relevant, and the opposing party has a chance to review it, the document is admissible as evidence. Moreover, either party may offer new documents during the hearing as rebuttal evidence. In any case, the fact that grievant worked at a second job was certainly not new evidence to the grievant. Grievant did not contest this evidence and did not dispute the authenticity of the documents or the information contained therein. Accordingly, grievant's argument about the admissibility of these documents is moot.

14. Grievant objects to the utilization of data from Agency Exhibit 5 (pp. 15, 22). However, grievant offered no evidence to contradict this document or to show that the information contained therein is incorrect. In the absence of evidence to the contrary, the information is presumed to be correct.

15. Grievant contends that the statement "Applicants were allowed to list their net incomes rather than gross income" is incorrect (p. 15). However, grievant has offered no evidence to prove her contention. In any case, the fact that applicants were allowed to use net income inures to grievant's benefit. Therefore, it is not clear why she would object to this statement.

16. Grievant contends that she was "separated" from her husband (p. 16). In fact, there was no testimony or documentary evidence to show that they were legally separated during the disaster period. They were physically apart only because grievant's husband was temporarily staying with his parents in another part of the state to assist them. Further, contrary to grievant's assertion, she did have both actual and legal access to her husband's income. She and her husband shared joint checking and savings accounts thereby giving her actual and legal access.

17. Grievant suggests (p. 17) that the agency must prove that her son had living expenses during the period at issue. The hearing officer may, and did, take administrative notice that a 20-year-old male has daily expenses of living such as food, clothing, transportation, entertainment, and incidentals. Accordingly, the agency does not have the burden of proving that which an adjudicator may take official notice of. In view of that fact, and in view of grievant's testimony that she gave him no financial support, it is not credible that she would not have known that he had some source of income.

18. Grievant now avers that she did not complete Part IV of the application (p.18). However, during the hearing, she testified that she had completed Parts I through VI. Moreover, the handwriting of the words "pro nebl" is the same as the handwriting of the names in Part I, and quite different from the handwriting of the eligibility worker. Grievant listed an inhaler as a medical expense (item 3) and then listed a nebulizer as a separate expense in item 6. An inhaler and a nebulizer are the same thing.

19. Grievant alleges that the agency conducted a "new" investigation (p. 19) but offers no evidence to support her allegation. The documents to which grievant refers (Agency Exhibit 7) were part of the original investigation as evidenced by the dates (March and April 2004) on some documents and, by the name and signature of the investigator.[28] Accordingly, there is no doubt that these documents were part of the original investigation. As both corroborative evidence and rebuttal evidence of the offense, they are admissible.

20. Grievant alleges that she should have been allowed to address each exhibit entered into evidence. The record reflects that grievant was represented by an experienced advocate and that grievant was given full opportunity on both direct examination and cross-examination to address any and all exhibits admitted into evidence.

[28] For example: Letter from J.T. (investigator) to employer, March 31, 2004; Response from employer, March 31, 2004; Fax transmittal cover letter to 2nd employer, March 31, 2004; Response from 2nd employer, March 31, 2004; Document detailing agency conference with grievant, signed by grievant and J.T., April 9, 2004.

21. Grievant again raises the issue of *res judicata* (p. 22), asserting that the doctrine bars this hearing officer from deciding adversely against grievant. This issue was addressed in the Decision. To reiterate, the doctrine is inapplicable because there was no identity in the causes of action of the two hearings. The disqualification hearing decided only that there was not clear and convincing evidence of an intentional program violation. The grievance hearing did not address that issue; it addressed *only* the issue of whether grievant's actions were subject to discipline under the *Standards of Conduct*.

Grievant takes issue with certain Findings of Fact, and with the hearing officer's Opinion. Many of 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.

DECISION

Grievant has not proffered either any newly discovered evidence or any evidence of incorrect legal conclusions. The hearing officer has carefully considered grievant's arguments and concludes that there is no basis to reopen the hearing. Further, after careful consideration of grievant's arguments, there is no basis to change the Decision issued on April 13, 2005.

APPEAL RIGHTS

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

1. The 15 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.[29]

_____
David J. Latham, Esq.
Hearing Officer

[29] 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).