

Issues: Misapplication of policy, fabrication of policy, retaliation regarding training;  
Hearing Date: 05/11/05; Decision Issued: 05/13/05; Agency: VITA; AHO: Carl  
Wilson Schmidt, Esq.; Case No. 8052; Outcome: Agency upheld in full;

**Administrative Review: HO Reconsideration Request received 05/28/05;**

**Reconsideration Decision issued 06/01/05; Outcome: Original decision affirmed;**

**Administrative Review: EDR Ruling Request received 05/28/05; EDR Ruling No.  
2005-1053 issued 09/30/05; Outcome: HO's decision affirmed.**



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER**

In re:

**Case Number: 8052**

Hearing Date: May 11, 2005  
Decision Issued: May 13, 2005

**PROCEDURAL HISTORY**

On March 16, 2005, Grievant filed a grievance alleging misapplication of policy, fabrication of policy, and retaliation regarding training. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On April 18, 2005, the EDR Director issued Ruling Numbers 2005-1013 and 2005-1014 consolidating case 8052 and case 8051 but authorizing the Hearing Officer to issue two separate decisions at his discretion. This Hearing Officer will issue two separate decisions for the purpose of expediency. On April 19, 2005, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On May 11, 2005, a hearing was held at the Agency's regional office.

**APPEARANCES**

Grievant  
Agency Party Designee  
Agency Representative  
Witnesses

**ISSUE**

Whether the Agency has misapplied policy, fabricated policy, or retaliated against Grievant regarding training.

### **BURDEN OF PROOF**

The burden of proof is on the Grievant to show by a preponderance of the evidence that the relief he seeks should be granted. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

### **FINDINGS OF FACT**

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Virginia Information Technologies Agency employs Grievant as an IT Specialist I. He provides information technology support to employees of the Virginia Department of Transportation. For example, if a VDOT employee has a problem with a personal computer and calls Grievant, Grievant will attempt to find solutions to that employee's computer problem.

On March 4, 2005, Grievant's Supervisor sent an email to the Agency's Training Coordinator requesting training for Grievant and another IT employee to attend "Fast Start In Business Systems Analysis" on April 6<sup>th</sup> through April 8, 2005, "Survival Skills for Analysts" on May 10 and May 11, 2005, "Mastering the Requirements of Process" on June 15<sup>th</sup> and June 16<sup>th</sup>, 2005, and "Analysis Simulation" on July 18<sup>th</sup> and July 19<sup>th</sup>, 2005. The total cost per person for these courses was \$2,600. Although Grievant is employed by VITA, the cost of his training is paid by the Virginia Department of Transportation.

On March 15, 2005, Grievant was notified by his Supervisor that VDOT's local Business Manager had denied Grievant's proposed training because of her concerns about Grievant's work performance. According to Grievant, the VDOT Business Manager is the aunt of a woman who has a close relationship with one of Grievant's co-workers. Grievant and the co-worker worked in the same office and have an adverse relationship. Grievant testified that he had filed a grievance against the co-worker.

In response to the VDOT Business Manager's decision, another employee in Grievant's unit was selected to attend the training in Grievant's place. According to Grievant's Supervisor that employee was "VDOT's choice." Subsequently, VITA chose not to send anyone from Grievant's unit in Grievant's place.

## CONCLUSIONS OF POLICY

The VDOT Business Manager should not have access to Grievant's performance evaluations. No evidence was presented suggesting Grievant's work performance was discussed by VITA managers and the VDOT Business Manager. No evidence was presented suggesting the VDOT Business Manager or other VDOT employees had complained about Grievant's work performance. Other than possible anecdotal observations of Grievant while he performed his duties, there is no reason to believe that the VDOT Business Manager had any basis to objectively evaluate Grievant's work performance. Grievant postulates that the VDOT Business Manager learned incorrect information about his work performance through her interactions with Grievant's co-worker who dislikes Grievant.

The Virginia Department of Transportation is not a party to this grievance.<sup>1</sup> Although Grievant has raised many legitimate questions and concerns about the role of the VDOT Business Manager in his denial of training, the Hearing Officer lacks the authority to take any action concerning VDOT since VDOT is not a party to the grievance.

No evidence was presented showing the Virginia Information Technologies Agency violated any State policy. VITA approved Grievant's training. VITA cannot be deemed to have retaliated against Grievant for denying him training because the decision to deny training was made by VDOT. In addition, the Hearing Officer lacks the authority to order VITA to take action against or make inquiry of VDOT.

In short, there is no basis to grant Grievant's requested relief with respect to VITA. The Hearing Officer lacks the authority to take any actions with respect to VDOT since VDOT is not a party to the grievance.

## DECISION

For the reasons stated herein, Grievant's request for relief is **denied**.

## 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:

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<sup>1</sup> Grievant did not file his grievance with VDOT. VDOT has not had the opportunity to consider Grievant's concerns through the grievance step process. The EDR Director's Ruling is styled "In the matter of Virginia Information Technology Agency." As part of her decision to consolidate cases 8051 and 8051, the EDR Direction stated that the "grievances involve the same management officials" but did not mention VDOT officials. There is no reason for the Hearing Officer to believe that the EDR Director considered VDOT a party to the grievance.

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. Please address your request to:

Director  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

3. If you believe that 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. Please address your request to:

Director  
Department of Employment Dispute Resolution  
830 East Main St. STE 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. 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.<sup>2</sup>

[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].

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Carl Wilson Schmidt, Esq.  
Hearing Officer

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<sup>2</sup> 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: 8052-R**

Reconsideration Decision Issued: June 1, 2005

**RECONSIDERATION DECISION**

Grievance Procedure Manual § 7.2 authorizes the Hearing Officer to reconsider or reopen a hearing. “[G]enerally, newly discovered evidence or evidence of incorrect legal conclusions is the basis ...” to grant the request.

The Hearing Officer issued Decision 8052 denying relief to Grievant because the Virginia Department of Transportation was not a party to the grievance. Grievant seeks reconsideration as follows:

I would like to request this issue be re-heard with the VDOT parties present. It was my understanding that EDR was going to handle this issue and make sure that all parties were present or at least the correct parties. With the close relationship that VITA requires with other agencies, this [is] going to have to be resolved and a policy for grieving across agency lines be addressed.

The Hearing Officer lacks the authority to join a party to a grievance. The Hearing Officer cannot re-hear the matter with VDOT as a party.

Grievant’s request for reconsideration does not identify any newly discovered evidence or any incorrect legal conclusions. For this reason, Grievant’s request for reconsideration is **denied**.

## 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 DHRM, 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. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

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Carl Wilson Schmidt, Esq.  
Hearing Officer