

Issues: Misapplication of policy (recruitment/selection), Discrimination (age, race, national origin), Retaliation (grievance activity participation); Hearing Date: 12/15/06; Decision Issued: 03/19/07; Agency: Department of Conservation & Recreation; AHO: Carl Wilson Schmidt, Esq.; Case No. 8469; Outcome: No relief;
Administrative Review: AHO Reconsideration Request received 04/03/07; Reconsideration Decision issued 06/06/07; Outcome: Original Decision Affirmed; Administrative Review: EDR Admin Review received 04/03/07; EDR Ruling #2007-1628 issued 07/26/07; Outcome: AHO's decision affirmed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8469

Hearing Date: December 15, 2006
Decision Issued: March 19, 2007

PROCEDURAL HISTORY

Grievant timely filed a grievance to challenge the Agency's failure to offer him a position for which he applied. The outcome of the Third Resolution Step was not satisfactory to the Grievant and he requested a hearing. On November 15, 2006, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On December 15, 2006, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency Representative
Witnesses

ISSUE

1. Whether the Agency misapplied State policy?

2. Whether the Agency discriminated against Grievant based on his color or national origin?
3. Whether the Agency discriminated against Grievant based on his age?

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 Department of Conservation and Recreation employs Grievant as an Accountant Senior. Grievant is a 67 year old male of East Indian origin. He began working for the Agency on June 1, 1985.

Grievant has earned a Masters in Business Administration, Masters in Economics, Bachelor of Law and is a Certified General Accountant. He has 35 years of experience in finance and accounting including 22 years with the Commonwealth of Virginia. He administered and monitored the Department of Conservation and Recreation Grants Program and Receivables from 1985 to 1994. He worked for six years as a Project Manager, one year as an Inventory Controller, five years as a Finance Officer, one year as a Controller, three years as a Senior Administrative Analyst, one year as a Business Manager, nine years as an Account Senior, one year as an Accountant, and one and a half years as a Fiscal Technician Senior.

In the early 1990s, Grievant reported to Mr. S. Mr. S attempted to take disciplinary action against Grievant. Grievant believed Mr. S was motivated by racial animosity.

Grievant filed several grievances and legal actions against or involving the Agency. His most recent prior action was to file a lawsuit in Federal District Court on February 28, 2001 alleging discrimination and retaliation. He withdrew the matter on May 10, 2001.

Position 901 became vacant on September 25, 2005 when the employee holding the position transferred to another agency. The Agency began recruitment for the position on October 19, 2005.

Position 901 was advertised as follows:

Financial and Auditing Services Manager I – Position # 901: The Division of Finance is seeking a dynamic, customer service oriented individual for the position of Grants and Revenue Accounting Manager. Duties include oversight of the Department's accounts receivable, cash management, and bond obligation accounting; review of grant expenditures for appropriateness, production of internal and external grant financial reports, and reconciliation of grant expenditures; preparation and analytic research of monthly financial reports for all divisions of the Department; liaison with internal and external auditors on grant and review topics; supervises a staff of three.

Qualifications: Considerable knowledge of generally accepted accounting principles and practices, particularly as applicable to government accounting operations. Comprehensive knowledge of grants management policies and procedures. Considerable knowledge and skill in the use of computer based accounting and financial software, preferably Microsoft Access. Demonstrated ability to train and oversee a professional staff, handling personnel matters effectively. Comprehensive managerial experience in the accounting for federal grants, funding assistance agreements or similar project accounting experience. Considerable experience with accounting operations for private or government entity, preferably in a complex private sector or fund accounting environment. Demonstrated ability to manage and direct staff in the efficient and effective execution of accounting practices. Demonstrated ability to research, review, and apply complex policies, procedures, regulations, and laws to operations, ensuring compliance with federal, state, and agency policies. Demonstrated ability to analyze financial information to research meaningful conclusions and develop reasonable alternatives in response to management needs. Demonstrated ability to communicate effectively both orally and in writing. Significant experience with automated accounting systems and financial analysis, including PC based applications preferred. Extensive experience with Microsoft Access preferred. Supervisory experience required. Experience working in a team oriented environment. Certification preferred, including, CPA, CIA, CMA, etc. Graduation from college or university with a bachelor's degree in accounting, finance, or related business area, is preferred.¹

An Employee Work Profile was drafted for Position 901. The purpose of the position was:

¹ Agency Exhibit H.

As Grants Accounting Manager, provides oversight and guidance to accounting supervisors and staff, ensuring compliance with federal, state and agency policies and procedures, as well as provide reliable financial accounting information for the program divisions.²

The position closed for new applications on November 4, 2005. Mr. B and the Human Resource Officer screened the applications and decided to interview eight applicants. When the position became vacant, Mr. B spoke with the Human Resource Officer about properly filling the position. Mr. B knew Grievant had previously taken legal action because he was denied a position and Mr. B wanted to ensure the integrity of the process of selecting the person for the position

At the direction of the Agency's Human Resource Officer, each panel member reviewed "Tips for the Interview Panel" containing 14 instructions regarding how to perform the interviews. Two of the tips included:

Avoid "unlawful: questions – Any questions related to gender, race, color, ethnic background, national origin, age, religion, political affiliation, and disabilities is prohibited. Examples: Are you planning to have children? Since you are pregnant or have a disability, how will you be able to conduct field visits? How old are you? You look really young for a person with your credentials? How long do you plan to be in this position or with the agency? What nationality is your last name? ***

If you know the candidate – in a good or bad way – please remain neutral until the other panel members have discussed and written their impressions. Be careful in disclosing negative information about a candidate or making comments about behaviors or issues outside a work setting. Examples: The candidate has two written notices. The candidate is a member of my church/club and that candidate did a good/bad job doing something.³

Panel members were selected in January 2006. Mr. B chaired the panel. He is the Director of Finance. He began working for the Agency in 1999 when Grievant was not working in the Division of Finance. Mr. B supervised Mr. S but did not know of any "issues" between Mr. S and Grievant. Mr. B knew Grievant had filed prior grievances. He learned this information through office gossip.

Mr. B wanted Mr. S to serve on the panel. Mr. S reported to Mr. B. Mr. B decided to have Ms. S on the panel prior to knowing who had applied for the position. Mr. B suspected Grievant would be applying for the position.

² Agency Exhibit H.

³ Agency Exhibit G.

Ms. FC was a panel member. She was selected for the panel because she would have to work with the person in the position on a daily basis (although the position did not report to her). She had a lot of knowledge regarding grants. She began working for DCR in 1987. She had worked with Grievant in the early 1990s when Grievant worked with finance. Ms. FC knew that Grievant and Mr. S worked together in the 1990s but she did not know of any problems in their working relationship. She suspected Grievant had taken legal action in the past because of rumors she heard at work.

Applicants were interviewed by the panel on January 17, 2006 and January 18, 2006. Fourteen questions were asked of each applicant. Panel members wrote down the answers given by each applicant.

After each applicant completed his or her interview, the applicant completed a writing exercise. Each candidate completed a writing exercise in the same office with the same laptop and under supervision of a human resource employee.

Panel members adhered to the "Tips". Panel members considered only the contents of Grievant's application and what Grievant said during the interview when deciding how to rank Grievant's as an applicant.

The three panel members together rated the candidates. They rated the applicants and decided who to select in a collective manner. No one panel member decided which candidate to select. The three panel members did not discuss Grievant's prior grievances. They did not discuss any conflict between Grievant and Mr. S.

Mr. V was the highest ranked candidate. He was a white male in his late 40s. Ms. M was ranked second. Ms. M was a white female born in 1955. Ms. F was ranked third. Ms. F was a black female in her late 40s.

A summary was prepared discussing each candidate interviewed. The panel evaluated the top five applicants as follows:

[Mr. V] demonstrated, verbally and in writing, all the KSAs required of this position. He has extensive accounting experience working for the Commonwealth of Virginia and effectively communicated his knowledge of GAAP to the interview panel. His federal grant experience including administering multiple Medicaid fraud grants, crime prevention grants and domestic violence grants. He has excellent managerial experience in grants, and domestic violence grants. He has excellent managerial experience in grants management, and account receivable, financial reporting and cash management. Just as important, he understood the accounting principles that provide the foundation of grants accounting (i.e. Cash management principles, indirect cost rate preparation). He has experience using Access as a method of tracking debt collection (similar to DCR's accounts receivable database) and Excel, tools needed for this

position. He also has several years of supervisor experience. [Mr. V] displayed strong oral communication skills to the interview panel. Additionally, [Mr. V] displayed strong written communications skills on the work sample.

[Ms. M] demonstrated, verbally and in writing, all the KSAs required of the position. However [Ms. M] has some exposure to federal grant. [Ms. M] had excellent experience with accounts receivable, financial reporting and cash management. She also displayed excellent knowledge of the accounting principles of grant accounting (i.e. Cash management principles, indirect cost rate preparation). [Ms. M] has limited Access experience, using Access to maintain a Workforce Investment Act database in her current position, but she has a strong computer programming background, taking annual program classes to stay current. [Ms. M] also displayed good oral, communication skills. [Ms. M's] work sample was well written.

[Ms. F] demonstrated vital KSAs required of the position – relating to the interview panel relevant experience dealing with federal grants and accounts receivable. However, she did not demonstrate the necessary experience in financial analysis and reporting nor the cash management principles that exhibit comprehensive knowledge of grants management policy. For example, [Ms. F] was unfamiliar with the Cash Management Investment Act (CMIA) of 1990 and with indirect cost rate calculations. [Ms. F] had good experience with Access. [Ms. F] also displayed good oral communications skills. [Ms. F's] work sample was not well composed.'

[Mr. M] had good grant experience, dealing with administration of entitlement grants, construction grants and subgrantee allocations. He did not indicate the accounts receivable background and Access experience. Additionally, there was some concerns about his supervisory philosophy – he used the word “blunt” on more than one occasion to describe his management style. Finally, [Mr. M] had to refer to several pages of notes during the interview before answering questions.

[Grievant] could not elaborate on his previous grant experience, e.g. He could not recall how many grants he was responsible for or the dollar value of these grants. [Grievant] did not indicate that he prepared an indirect cost proposal. [Grievant] did not elaborate his relevant experience in accounts receivable or cash management to the interview panel. He stated that he had many years of experience, but offered no details such as the type of receivables, or the key elements of cash control procedures. [Grievant] stated that he has training in Access, but has not used it in his current job.⁴

⁴ Agency Exhibit J.

The panel selected Mr. V and an offer of employment was made to him. Mr. V rejected the offer because he had already accepted an offer of employment with another employer.

The panel rated Ms. M second because she had a lot of grant experience and cash management experience. She was offered the position and accepted the offer.

Mr. B did not select Grievant because Grievant did not provide details of his work experience to substantiate his experience. Grievant just listed his experience without giving details of that experience.

CONCLUSIONS OF POLICY

Classified employees are to be selected “based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications” Va. Code § 2.1-111. Executive Order Number One declares that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal opportunity in all facets of state government. Discrimination on the basis of age, color and national origin is prohibited. Policy 2.05 of the Department of Human Resource Management (“DHRM”) prohibits employment discrimination in all aspects of the hiring process. Agency positions must be filled in accordance with Department of Human Resource Management (“DHRM”) Policy 2.10.

Misapplication of Policy

Department of Human Resource Management Policy 2.10 governs the hiring of executive branch employees. Once applications for employment are submitted, the Agency screens those applications and advances to an interview those applicants possessing at least the minimum qualifications for the position. A group of two or more individuals may interview job applicants for selection or for referral to the hiring authority for selection. A set of interview questions must be developed and asked of each applicant. Interviewers must document applicants’ responses to questions to assist with their evaluation of each candidate’s qualifications. Selection is “the result of the hiring process that identifies the applicant best suited for a specific position.”

The Agency did not violate DHRM Policy 2.10. The panel made its decision based on each applicant’s written application and also on each applicant’s “performance” during the interviews. The panel gave considerable weight to how well each applicant performed during the interviews. Nothing in DHRM Policy 2.10 prohibits this weighing. Grievant’s answers to the panel did not fully describe the particulars of his experience. Although Grievant may have been a strong candidate “on paper”, his oral performance did not fully present his strengths. Since the panel was relying

primarily on the candidate's oral presentations, Grievant did not appear as strong a candidate as he might otherwise have been.

Grievant contends the Agency violated DHRM Policy 2.10 by permitting Mr. S to remain on the interview panel because Mr. S was familiar with Grievant's prior work performance. Nothing in DHRM Policy 2.10 prohibits an agency from permitting a panel to include a member knowledgeable about one of the candidate's work performance. The Agency did not act contrary to DHRM Policy 2.10 by permitting Mr. S to serve on the hiring panel.

Grievant argues he was more qualified for the position than was Ms. M. DHRM Policy 2.10 does not require agencies to select the most qualified candidate; it required agencies to select "the applicant best suited for a specific position." Ms. M's responses during the interview panel were more detailed and related to grants.

Upon review of the detailed record in this appeal, there exist sufficient facts to support the conclusion that Ms. M was qualified for Position 901 and that the Agency's panel could formulate the opinion that Ms. M was the best suited for the position. The Agency's decision to rank Ms. M and offer her the position was not arbitrary or capricious.

Discrimination Based on National Origin and Color

An employee can establish discrimination by presenting evidence of disparate treatment or disparate impact.⁵

Disparate Treatment. Grievant may establish discrimination based on color or national origin by presenting evidence⁶ that: (1) he is a member of a protected class; (2) he is qualified for the position; (3) in spite of his qualifications he was rejected; and (4) he was rejected in favor of someone not of his color or national origin. If the Agency presents credible evidence of a nondiscriminatory reason for its actions, then Grievant has not established he was discriminated against because of his color or national origin, unless there is sufficient evidence that the Agency's stated reason is merely a pretext or excuse for improper discrimination.

⁵ *Disparate Impact.* Grievant may establish age discrimination by presenting evidence of an unlawful employment practice based on disparate impact.⁵ Grievant must establish either (1) the specific employment practice⁵ that causes a disparate impact on the basis of color or national origin and the Agency fails to establish that the practice is job related and consistent with business necessity or (2) the Agency refused to implement an effective alternative practice that would have had a lesser adverse impact.

No evidence was presented showing the Agency engaged in an unlawful employment practice based on disparate impact. Grievant was qualified for an interview but not selected based on the judgment of the panel members regarding which candidate was best suited for the position.

⁶ Disparate treatment discrimination is the *intentional* discrimination against an individual because of that person's race, color, religion, sex, nation origin, age, or disability.

Grievant has established that he is the member of a protected class who was rejected for position 901 even though he was qualified for the position. He was rejected in favor of a white female. Grievant has met his *prima facie* case.

The Agency has presented credible evidence of a nondiscriminatory reason for its failure to select Grievant, namely that it believes it selected the better suited applicant. Ms. M was qualified for the position and she fully presented her qualifications during the panel interviews. There is no reason to believe the Agency rejected Grievant as a pretext or excuse for improper discrimination against him.

Grievant argues Mr. S hates him because he is East Indian. Grievant presented as evidence of this conclusion the ongoing conflict he had with Mr. S when Grievant reported to Mr. S.

The existence of conflict between a supervisor and a subordinate may result from many causes. The conflict could arise because of differences of opinion regarding work performance. It could arise because of personality conflicts between the supervisor and subordinate. It could arise because a supervisor dislikes persons of a certain race and the employee is of that race. Grievant has not presented sufficient evidence to show that the conflict between him and Mr. S was based on Mr. S's dislike of him because he is an East Indian. Conflict alone proves the existence of the conflict, but not the reason for the conflict.

Grievant argues a pretext for discrimination was revealed by the Agency's summary of his answers to the interview questions. For example, the summary states, "[Grievant] did not indicate that he prepared an indirect cost proposal."

The summary statement about Grievant is misleading. The question asked was, "Do you have any experience in creating an indirect cost proposal? If so, please describe your methodology for calculating an indirect cost rate." Grievant answered the question, "Yes" and then presented his methodology. Grievant answered the question asked of him. He was not asked if he had actually prepared an indirect cost proposal, he was asked if he had experience and what was his methodology. The summary criticizes Grievant for failing to say he had previously prepared an indirect cost proposal but that was not the question Grievant was asked.

The question is whether this mistake in the summary is sufficient to establish a pretext for discrimination. The Hearing Officer finds it is not sufficient. The mistake appears to be an oversight. The mistake appears to be minor. The panel members' primary focus was on Grievant's inability to describe in detail his grant experience. Grievant's inability to give a description is understandable given that he was not involved in grants since the mid 1990s. If the panel members had not made a mistake regarding describing Grievant's answer to the indirect cost question, it is unlikely that their rank of him would have changed.

Discrimination Based on Age

Age discrimination can be established by proof of disparate treatment. When an employee who is 40 years or older alleges disparate treatment, liability depends on whether the Agency's action was motivated by the employee's age. Since there is seldom eyewitness testimony as to an employer's mental processes, age discrimination can also be established through circumstantial evidence using an analysis of the employee's *prima facie* case and shifting burdens of production.

To establish a *prima facie* case of age discrimination, an employee must show that: (1) the employee is at least 40 years old, (2) was otherwise qualified for the position, (3) was rejected despite being qualified for the position, and (4) was rejected in favor of a substantially younger candidate on the basis of age.⁷

Grievant has established his *prima facie* case. He was over 40 years old. He was otherwise qualified for the position. He was rejected for the position in favor of a candidate approximately 16 years younger.

If an employee can establish a *prima facie* case, the burden of producing evidence shifts to the employer. This means that the employer must produce evidence that the employee was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason. This burden is one of production, not persuasion. Credibility does not factor into the analysis at this stage.

DCR has met its burden of production. The Agency selected Ms. M because in the judgment of the panel members she was the best suited candidate for the position.

If the employer meets its burden of production, the employee has the opportunity to prove by a preponderance of the evidence that the reasons offered by the employer were not the employer's true reason, but were a pretext for discrimination. In other words, the employee may attempt to establish that the employer's proffered explanation is unworthy of credence. In appropriate circumstances, the Hearing Officer can reasonably infer from the falsity of the employer's explanation that the employer is trying to cover up a discriminatory purpose.

Grievant has not established by a preponderance of the evidence that the reasons offered by the Agency for selecting someone other than Grievant were not the true reasons underlying the Agency's actions. The Agency's selection of an employee other than Grievant was not a pretext for discrimination.

Retaliation

⁷ See, Reeves v. Sanderson Plumbing, Inc., 530 U.S. 133 (2000) and O'Connor v. Consolidated Coin Caters Corp., 56 F.3d 542 (1995), *rev'd on other grounds*, 517 U.S. 308 (1996).

An Agency may not retaliate against its employees. Retaliation is defined by Section 9 of the Grievance Procedure Manual 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 (e.g. 'whistleblowing')." To establish retaliation, Grievant must show he or she (1) engaged in a protected activity;⁸ (2) suffered a materially adverse action; and (3) a causal link exists between the adverse action and the protected activity; in other words, management took an adverse action because the employee had engaged in the protected activity. If the agency presents a nonretaliatory business reason for the adverse action, retaliation is not established unless the Grievant's evidence raises a sufficient question as to whether the Agency's stated reason was a mere pretext or excuse for retaliation. Evidence establishing a causal connection and inferences drawn therefrom may be considered on the issue of whether the Agency's explanation was pretextual.

Grievant engaged in protected activity by filing grievances. He suffered a materially adverse action because he was denied a position for which he sought. Grievant has not established that he was denied the position because he engaged in protected activity. Grievant did not receive the position because he was not the best suited for the position. Grievant has not established a causal link between his protected activity and the materially adverse action.

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:

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:

⁸ See Va. Code § 2.2-3004(A)(v). Only the following activities are protected activities under the grievance procedure: participating in the grievance process, complying with any law or reporting a violation of such law to a governmental authority, seeking to change any law before the Congress or the General Assembly, reporting an incidence of fraud, abuse or gross mismanagement, or exercising any right otherwise protected by law.

Director
Department of Human Resource Management
101 North 14th St., 12th 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 all of your appeals to the other party and to the EDR Director. 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.⁹

[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].

S/Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

⁹ 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: 8469-R

Reconsideration Decision Issued: June 6, 2006

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.

Grievant seeks reconsideration because he questions the credibility of Mr. B. Grievant asserts, “Mr. B sat in as recorder of a grievance hearing for [Grievant] in February 2000. Mr. B was asked at this December 2006 hearing whether he served as recorder in the 2000 hearing. He denied it.” The document entitled “History of the Grant and Receivable Position” was attached to Grievant’s request for administrative review. This document was not written by the Chair of the February 2000 hearing as asserted by Grievant. The document appears to have been written by Grievant.

If the Hearing Officer assumes for the sake of argument that Mr. B sat in Grievant’s February 2000 hearing, the outcome of this case does not change. During the grievance before this Hearing Officer, Mr. B testified that he knew Grievant had filed a prior grievance when Grievant did not get an interview for a position prior to Mr. B’s arrival. Mr. B said he had heard through office gossip that Grievant had filed other complaints, but Mr. B was unaware of the details of those complaints. This testimony shows that Mr. B was not attempting to hide his knowledge that Grievant had filed prior grievances. Grievant’s assertion that Mr. B was untruthful about whether he participated in the February 2000 would be of significance if Mr. B had denied any knowledge of Grievant’s prior grievances. Instead, Mr. B admitted he knew of Grievant’s prior grievances; he merely denied participating in one grievance hearing occurring several years earlier. The evidence and arguments offered by Grievant are insufficient to contradict Mr. B’s credible testimony during the hearing.

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.

S/Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer