

Issues: Coercion, misapplication of policy, demotion, retaliation, workplace harassment;
Hearing Date: 08/27/07; Decision Issued: 10/04/07; Agency: DOC; AHO:
William S. Davidson, Esq; Case No. 8655; Outcome: Full Relieve on all issues
except retaliation, No Relief on retaliation; **Administrative Review: EDR Ruling**
Request received 10/15/07; Outcome pending

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case No: 8655

Hearing Dates: August 27, 2007
September 19, 2007
September 20, 2007
Decision Issued: October 4, 2007

PROCEDURAL HISTORY

On November 13, 2006, the Grievant was informed by her Supervisor that she could either take a voluntary demotion or be subject to a Group III Written Notice and a subsequent demotion to a lower position that was being offered if she accepted a voluntary demotion. On November 19, 2006, the Grievant initiated three (3) grievances challenging her demotion. In these three (3) grievances, the Grievant alleged that her demotion was “coerced,” the Agency misapplied Department of Human Resource Management (“DHRM”) Policy 1.60, Standards of Conduct, by failing to provide the Grievant with oral or written notification of the charges and a reasonable opportunity to respond, and the Agency unfairly applied Policy 1.60 as her demotion is inconsistent with how prison management has been treated in other facilities under similar circumstances. On December 4, 2006 the Grievant initiated a grievance alleged that her demotion was “coerced,” the Agency misapplied and/or unfairly applied DHRM Policy 1.60, the Investigative Reports were erroneous, the primary investigator of her alleged mismanagement was biased and acted out of retaliation and the Agency misapplied DHRM Policy 2.30, Workplace Harassment.

The Agency did not qualify any of these grievances for a hearing. The Grievant requested that the Director of EDR issue a ruling that her grievances qualified for a hearing. Such a ruling was issued by the Director of EDR on June 25, 2007, wherein the Director found that all four (4) grievances qualified for a hearing. On July 24, 2007, EDR assigned this appeal to a Hearing Officer. On August 27, 2007, the hearing was held at the Agency’s location. At that hearing, it was determined that two (2) additional hearing dates would be required and they were September 19, 2007 and September 20, 2007. Over the course of these three (3) days, thirty-six (36) witnesses testified in this matter.

APPEARANCES

Grievant
Grievant Representative
Agency Party Designee
Agency Representative
Witnesses

ISSUE

1. Was the Agency's action in demoting the Grievant adverse, disciplinary and unwarranted and/or inappropriate? And as such, did it amount to an adverse employment action resulting in an adverse effect on the terms, conditions or benefits of employment?
2. Did the Grievant's demotion constitute retaliation and was DHRM Policy 2.30, Workplace Harassment, applied improperly or misapplied?

BURDEN OF PROOF

Regarding her claim that the Agency's actions, with respect to her demotion, were adverse and disciplinary, the Grievant has the burden of proof by a preponderance of the evidence. Once that burden has been satisfied, the Agency has the burden of proof, by a preponderance of the evidence, in showing that the demotion was nevertheless warranted and appropriate. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not.¹

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 Hearing Officer heard three (3) full days of testimony from thirty-six (36) witnesses in this matter. The Agency and the Grievant introduced into evidence seven (7) complete notebooks of documentary evidence and several unbound pages of documentary evidence. The witnesses who testified in this matter covered a broad range of topics. However, the Hearing Officer finds that the vast majority of the documentary evidence and testimony is not helpful in reaching a decision in this matter.

The salient facts derived from the documentary evidence and the testimony of the witnesses are as follows:

¹ Grievance Procedure Manual ("GPM") Section 5.8 and Section 9

1. The Grievant was the Superintendent of the facility and she had held that position for several years.
2. Over a period of years, prior to the Grievant's demotion, several investigations were conducted by the Office of the Inspector General at this facility for matters regarding sexual misconduct, violation of Environmental Protection Agency rules, and other matters.
3. Senior management throughout this Agency were aware of these investigations as they proceeded and were aware of the results of each of these individual investigations.
4. On June 6, 2006, the Office of the Inspector General opened another investigation which purported to be a summary investigation of all of the prior investigations for the purpose of determining if the Grievant was responsible for the occurrences at this institution.²
5. Subsequent to the summary investigation, on November 13, 2006, the Grievant was summoned to her immediate prior Supervisor's office, who informed her that she could either accept a voluntary demotion or a Group III Written Notice would be filed and she would be demoted to a significantly lower level than if she took the voluntary demotion.
6. Grievant requested the opportunity to refute the allegations of the summary investigation and made this request with each of her superiors up to and including the Director of this Agency.
7. Faced with the choice of receiving a Group III Written Notice and the possibility of a substantial demotion below the position that was being offered if she took a voluntary demotion, the Grievant acquiesced and agreed to what the Agency designated as a voluntary demotion.

The Hearing Officer heard testimony from four (4) members of management who were the Grievant's immediate superiors. The testimony from the four (4) of them made it difficult to determine exactly who made the decision to present the Grievant with the choice of voluntary demotion or the Group III Written Notice. All four (4) of these managers seemed to indicate that it was someone else's decision.

The Hearing Officer heard from the Assistant Deputy Director of Operations for the Agency. Prior to this position, he was the Regional Director and he was the Regional Director during all of the investigations at this facility. During that time frame he was the Grievant's immediate Supervisor. He indicated that there were ninety-three (93) investigations of this facility and that he had been dealing with these reports since the Grievant was hired. He stated that people were telling him that the Grievant was unapproachable and was intimidating. Further, he stated that she was not in the facility enough and there were times that he visited the facility and no one knew where the Grievant was nor could she be located.

² Agency Exhibit 1, Tab 2

As her immediate Supervisor, this witness was a signatory to the Grievant's annual Employee Work Profile. This document is essentially an annual performance review for each employee of this Agency. When presented with the annual review for the time period of November 1, 2003 through October 31, 2004, this witness acknowledged that he had signed it on October 15, 2004 and that it contained, in his handwriting, the following comment: "Superintendent is a very loyal and dedicated employee who strives very hard for perfection. Always willing to go the extra distance."³ This document indicated that the Grievant's overall rating was "exceeds contributor."

Likewise, this witness was presented with the annual review for the time frame of November 1, 2004 through October 31, 2005 and acknowledged that it was his signature on that document dated October 10, 2005. His comments for that year were: "Good year!"⁴ And again, this document indicated that the Grievant's overall rating was "exceeds contributor." This witness testified that on July 1, 2005, he recommended the Grievant for the Public Policy Institute and he stated that he only recommends good people for that learning opportunity.⁵

Finally, this witness was presented with the annual review for November 1, 2005 through October 31, 2006 and acknowledged that he signed that document on October 12, 2006 and inserted the following comments: "The Superintendent had a rough year with staff management. Had some good eventful programming. Needs to spend more time at facility and talk with staff."⁶ This year the Grievant was rated a "contributor."

³ Grievant Exhibit 1, Tab 18

⁴ Grievant Exhibit 1, Tab 17

⁵ Grievant Exhibit 1, Tab 19

⁶ Grievant Exhibit 1, Tab 16

The Hearing Officer heard testimony from the Deputy Director of Operations, who may have been the person who actually made the determination that the Grievant would lose her current position. He also signed her annual performance reviews and made comments as the Reviewer's Comment. On the annual review dated November 1, 2003 through October 31, 2004, he commented as follows: "Thank you for a great year."⁷ On the annual review dated November 1, 2004 through October 31, 2005, his comment was: "Thank you for another great year."⁸ Finally, his comment on the annual review for November 1, 2005 through October 31, 2006 was: "Thank you for your effort this past year."⁹ When asked about the inconsistency in his review comments and the fact that he determined that the Grievant should be demoted, he testified that it was, "her performance over several years" which caused her to be removed. He further testified that the annual reviews were just one piece of paper and that he simply tried to write something nice. He testified that he was aware of all of the events that went on at this unit over the years as he was kept fully informed of all of the prior investigations as they were occurring and as they were completed.

The Hearing Officer heard testimony from another Regional Director who filled that position for approximately ninety (90) days at the end of the Grievant's tenure. During those ninety (90) days, he was her immediate Supervisor. He testified that he did not observe any performance problems during those ninety (90) days. On September 26, 2006, approximately forty-five (45) days before the Grievant was demoted, this witness signed, as her Supervisor, an Educational Assistance Application. On that document, he indicated that the Grievant's work was satisfactory and that he expected her service as an employee of the Agency to continue.¹⁰

Finally, the Hearing Officer heard from the Director of the Agency. While he may not have been the person to actually make the decision to demote the Grievant, he testified that he concurred with that decision. He met with her and indicated that he gave her a chance to explain her position, but the meeting was very short in duration. He testified that he offered the Grievant an Assistant Warden position and told her that he would get her housing, similar to that which she had in her current position. He stated that, every time he turned around, there was another investigation at this location. Significantly, he stated that he could remove a person for "performance issues."

The Summary Investigative Report¹¹ seems to have been the single most important item used by the Agency in reaching a decision to demote the Grievant. The Hearing Officer heard nearly a full day of testimony from the author of that report. That report consists of a compilation of other reports and is either hearsay or multiple levels of hearsay from inmates and other Agency employees. The Hearing Officer heard from approximately twenty (20) witnesses, called by the Grievant, to refute nearly each and every point that was found in the Agency report.

⁷ Grievant Exhibit 1, Tab 18

⁸ Grievant Exhibit 1, Tab 17

⁹ Grievant Exhibit 1, Tab 16

¹⁰ Grievant Exhibit 1, Tab 15

¹¹ Agency Exhibit 1, Tab 2

Many of the people who were interviewed for prior investigations, which were compiled into the Summary Investigation, indicated that the Grievant was a difficult person to work with. The Hearing Officer heard evidence from the Agency's witnesses that the Grievant was abrupt, that she was not polite, that people left the dining area when she entered it and that generally, she was not a very pleasing manager to work with at this Unit. Likewise, the Hearing Officer heard from several witnesses that the exact contrary was reality. These witnesses said that the Grievant had an open door policy and that she was a perfectly agreeable manager in her role at this Unit.

The Hearing Officer heard from many Agency witnesses that the Grievant did not spend enough time in the facility. This was established by the fact that when her immediate Supervisors went to the facility she was sometimes not available. It was also testified to by the Investigator, who was the author of the summary report, that the Superintendent was rarely at the facility when he was there. Again, the Hearing Officer heard from many witnesses to indicate that the Grievant was there, when she wasn't there she was reachable by pager or by phone and several documents were introduced to indicate that she was at the premises doing her job.

Nearly all of the witnesses testified that the Grievant, upon being made aware of any specific violation of policy by either an inmate or one of her staff, did that which was necessary to correct the problem. These witnesses included the witnesses that were called by the Agency. No witness alleged that the Grievant, while aware of a specific problem, allowed that problem to continue without either dealing with it personally or seeking instructions from her immediate Supervisors as to how to deal with it.

The Hearing Officer heard from the Grievant. She testified that she attempted to discuss with all layers of management the Investigative Report which led to her demotion. Her testimony was that no one from management wanted to or did talk to her in any detail about the Report. She testified that she was demoted, her Pay Band was reduced and ultimately she will lose her housing allowance.

The Hearing Officer specifically finds that the Grievant's claim of retaliation was not supported by any of the evidence that he heard. Retaliation was not an issue in this case.

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. The dual goals reflect a valid governmental interest in and responsibility to its employees in the workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides in 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 that have access to the procedure under Section 2.2-3001.

DHRM has developed Policy 1.40, Performance Planning and Evaluation. This policy established a means whereby an Agency can put employees on notice of performance issues and give that employee an opportunity to remedy the issue prior to any type of disciplinary action which might result in demotion or termination. The Grievant's immediate Supervisor, who signed off on her three (3) most recent performance reports, indicated that nothing was done regarding policy 1.40 because the Grievant was never a below contributor employee. Indeed, this witness recommended that the Grievant go to the Public Policy Institute and he stated that he only recommends good people for that learning opportunity.

The annual performance plan which is provided to each employee is designed to give that employee an overview of his or her performance for the entire year. It is signed by her immediate Supervisor and by a Reviewer. The Reviewer is normally the next highest ranking member of management. The Reviewer must review the performance plan and performance evaluation sections of the evaluation form before they are presented to the employee. If the Reviewer does not agree with the evaluation, the Reviewer should discuss the disagreements with the Supervisor. The Reviewer has the authority to change the employee's evaluation.¹²

Policy 1.40 also provides a mechanism whereby employees, whose performance is not adequate, can be put on notice of their inadequacies prior to them reaching a level where that employee might be demoted or terminated. Supervisors should immediately identify poor, substandard or unacceptable performance.¹³ If substandard performance is noted, the immediate Supervisor may provide the employee with a Notice of Improvement Needed/Substandard Performance form during the performance cycle to document substandard performance and the need to improve performance.¹⁴

If an employee receives an annual overall performance evaluation of "below contributor," whose performance during a re-evaluation has not improved, then that employee might be subject to a performance demotion. Employees who are demoted for performance reasons must have their salaries decreased by a minimum of 5%. They may retain their current position with a reduction in duties and the appropriate salary reduction or they may be placed in a lower level position within the same Pay Band or they may be placed in a lower Pay Band. In all events, they must have their salary decreased by a minimum of 5%.¹⁵

¹² Grievant Exhibit 1, Tab 11, Page 9

¹³ Grievant Exhibit 1, Tab 11, Page 6

¹⁴ Grievant Exhibit 1, Tab 11, Page 2

¹⁵ Grievant Exhibit 1, Tab 11, Page 2

If an employee has received a Notice of Improvement Needed/Substandard Performance form and if there continues to be substandard performance on the improvement plan, then that employee may be subject to a disciplinary action under the Standards of Conduct set forth as Policy 1.60 of DHRM.

DHRM has established Policy 1.60 which are Standards of Conduct. The objective of the Standards of Conduct is to promote the well being of employees in the workplace and to maintain high standards of professional conduct in work performance. The Policy sets forth standards of professional conduct, behavior that is unacceptable, and corrective actions that Agencies may impose to address behavior and employee problems.¹⁶ This Agency has adopted Policy 135.1, which is its version of the Standards of Conduct. In large measure, Policy 1.60 and Policy 135.1 are mirror images.

A corrective action under these policies is any action taken by management to address employee problems such as unacceptable performance and/or behavior. Corrective action may range from an informal action, such as counseling, to a formal disciplinary action.¹⁷

A disciplinary action may include demotion or transfer in lieu of termination. In such cases, the Agency must initiate a disciplinary salary action, which must be reviewed and approved by the Human Resource Director or his designee prior to being implemented. With a disciplinary salary action, an employee may be retained in his or her current position with reduced duties, or be moved to a position in the same or lower Pay Band with fewer job responsibilities. In either case, the employee's salary must be reduced by 5%.¹⁸

Supervisors should be aware of inadequate or unsatisfactory work performance or behavior of employees and attempt to correct the performance or behavior immediately.¹⁹

Prior to any disciplinary demotion, an employee shall be given the Written Notice Form confirming the cause in nature of the disciplinary demotion, transfer, or suspension.²⁰

Unacceptable behavior is divided into three (3) groups according to the severity of the behavior. Group One is the least severe, Group Two is moderately severe and Group Three requires an action for which immediate termination is the general remedy. Policies 135.1 and

¹⁶ Grievant Exhibit 1, Tab 27, Page 1

¹⁷ Grievant Exhibit 1, Tab 11, Page 1, Grievant Exhibit 1, Tab 27, Page 1

¹⁸ Grievant Exhibit 1, Tab 27, Page 2

¹⁹ Grievant Exhibit 1, Tab 11, Page 4, Grievant Exhibit 1, Tab 27, Page 8

²⁰ Grievant Exhibit 1, Tab 11, Page 5

1.60 provide examples of each of these types of behavior and clearly state that these are not all inclusive examples.²¹

In Policy 135.1, one of examples set out as a Group I offense is as follows: “Inadequate or unsatisfactory job performance.” An accumulation of three (3) Group I Written Notices can result in no punishment worse than a five (5) day suspension.²²

Policy 135.1 sets forth as a Group II offense: “Failure to follow a Supervisor’s instructions, perform assigned work, or otherwise comply with applicable established written policy.” When issuing an employee a Written Notice form for a Group II offense, management should issue such notice as soon as practicable. Discipline shall normally take the form of the Notice and up to ten (10) working days maximum suspension without pay.²³

Finally, Policy 135.1 defines as a Group III offense the following: “Violating safety rules where there is a threat of physical harm.” When issuing an employee a Written Notice form for a Group III offense, management should issue such notice as soon as practicable. Discipline should normally take the form of the Notice and removal or Notice and up to thirty (30) days maximum suspension without pay in lieu of removal.²⁴

DHRM policy 3.05 deals with compensation. It defines voluntary demotion as: “Employee initiated movement to a different position in a lower Pay Band. This move may result from a competitive ‘recruitment’ or non-competitive ‘employee request’ process.” That same policy defines performance or disciplinary demotion as: “Management initiated assignment of an employee to the same or a different position in the same or lower Pay Band with less job responsibilities that results in a minimum of a 5% reduction in base salary.”

In order for the Agency to prevail in this matter, it must find justification for its actions within the confines of DHRM Policies 1.40, 1.60, 3.05 and/or DOC Policy 135.1, or it must somehow establish, with a preponderance of the evidence, that its actions were warranted and appropriate.

It appears that the Agency tried to mix and match parts of these various Policies in order to justify the Grievant’s demotion. The Agency called this a voluntary demotion which is defined in Policy 3.05. However, a voluntary demotion requires that it be employee initiated. It is quite simply farcical to say that an employee, who when presented with the options of accepting a voluntary demotion or accepting a Group III Written Notice and the threat of a much more severe demotion, is acting voluntarily.

²¹ Grievant Exhibit 1, Tab 11, Pages 6 through 9, Grievant Exhibit 1, Tab 27, Pages 5 through 8

²² Grievant Exhibit 1, Tab 11, Page 6

²³ Grievant Exhibit 1, Tab 11, Page 7

²⁴ Grievant Exhibit 1, Tab 11, Page 8 and 9

Next, the Agency tries to say that they could have succeeded with a Group III Written Notice. The Agency Director testified that the ultimate reason for the demotion was the Grievant's performance over a number of years. He cited no specific incident but rather a cumulation of incidents. Policy 135.1 defines as a Group I offense "inadequate or unsatisfactory job performance." That is exactly what the Director of this Agency said was the reason that the Grievant was demoted. A single Group I offense is not an offense with which you can be demoted.

That same Policy defines as a Group II offense "failure to follow a Supervisor's instruction or failure to perform assigned work." It is arguable that the Grievant was not following some Supervisor's instruction, but the closest thing that the Hearing Officer heard along that vein was that she was not inside the facility enough and that she was not polite to her employees and inmates. A single Group II offense does not justify a demotion.

Finally, Policy 135.1 defines as a Group III violation the violation of safety rules where there is a threat of physical harm. In this case, there was overwhelming testimony that, over a period of years, sexual activity took place at this facility and, in at least one case, resulted in the impregnation of an inmate. The problem here is that Policy 135.1 requires that a Group III Written Notice be provided to the Grievant as soon as practicable. The evidence was that these types of events took place months, if not years, prior to the Grievant being threatened with a Group III offense. Furthermore, it was clear that all levels of management in this Agency above the Grievant were aware of these potential safety issues as they were occurring and as they were being investigated and nothing was done. It is the finding of the Hearing Officer that the threat of a Group III Written Notice was an empty threat for the Hearing Officer heard no evidence indicating that the Grievant committed any violation that would have justified a Group III Written Notice.

The annual reviews which were presented by the Grievant clearly indicate that she was either "exceeds contributor" or "contributor" during the years in question. These reviews were signed by her immediate Supervisor and his Supervisor, the Reviewer. At no time did the Agency indicate to the Grievant in these reviews that any of her work was substandard or below contributor rating. At no time was she issued a Notice of Improvement Needed/Substandard Performance form. Clearly, if this Agency was concerned with the Grievant's abilities, then complying with Policy 1.40 would have put them in a position where they could have demoted or terminated her had they followed the procedure set forth in this Policy and had the Grievant not corrected any perceived substandard performance.

Finally, while attempting to classify this as a voluntary demotion, the Agency did not reduce the Grievant's pay by the required 5% set forth in all of these Policies for a voluntary demotion or for a performance demotion. The Agency simply reduced her Pay Band and reduced her duties. For whatever reason, the Agency took bits and pieces of a number of Policies and attempted to justify the Grievant's demotion. The net result was that, whether or not such action was justified, it was improperly accomplished.

The Agency did not demote the Grievant pursuant to DHRM Policy 1.60. The Agency did not demote Grievant pursuant to DHRM Policy 1.40. It is clear from the testimony from all witnesses that the Grievant did not voluntarily accept this demotion. This demotion was accepted with the threat of a Group III Written Notice.

DHRM Policy 3.05 requires a voluntary decision prior to implementation of a voluntary demotion and voluntary transfer. Since the Grievant's decision was not voluntary, the Agency failed to comply with this policy because it implemented a voluntary demotion and transfer when no such demotion nor transfer would have been permitted.

The Hearing Officer finds that the overwhelming evidence was that the Grievant was considered an "exceeds contributor" employee through the vast majority of the investigations that took place at her facility. The Hearing Officer specifically finds that her immediate Supervisors were aware of the investigations while they were ongoing and were aware of the results. The Hearing Officer specifically finds that the Grievant dealt with all issues as they came before her. The Hearing Officer finds that the Grievant did not fail to act on any issue that was brought to her. The Hearing Officer finds that, rather than follow DHRM Policy 1.40, the Agency attempted to threaten and coerce the Grievant into a demotion by threatening her with a Group III Written Notice pursuant to DHRM Policy 1.60 and Policy 135.1. The Hearing Officer finds that the Agency did not comply with Policy 3.05.

The Hearing Officer specifically finds that the Grievant's claim of retaliation was not supported by any of the evidence that he heard. Retaliation was not an issue in this case.

DECISION

For the reasons stated herein, the Agency's actions are found to be an adverse employment action, which were primarily used to punish or correct the Grievant's behavior. The Hearing Officer is loathe to disrupt any continuity that has been established at the Grievant's prior location since her involuntary demotion. For that reason, the Hearing Officer orders the Agency to reinstate the Grievant to a comparable position as either a Superintendent or an Assistant Warden, such that she will be in the same Pay Band as she was when she was involuntarily demoted. The Hearing Officer orders the Agency to provide the Grievant similar housing as she had in her prior position or a supplement to her pay to compensate her for that housing. To the extent that the Grievant has lost wages because of being in a lower Pay band since her involuntary demotion, the Hearing Officer orders that the Agency reimburse her for such lost wages, if any. If the Agency is unable to provide an Assistant Wardenship, which is in the same Pay Band that the Grievant occupied when she was Superintendent, along with the appropriate housing or housing allowance, the Hearing Officer orders that the Agency return the Grievant to her original position with her original Pay Band and the housing provided at that Unit. Further, the Hearing Officer orders the Agency to send out an Agency-wide email announcing the Grievant's new position, just as the Agency did when it announced her demotion. Lastly, the Hearing Officer orders the Agency to comply with Policy 1.40 in so far as it is required to provide interim performance evaluations if management deems that the Grievant is not performing at a sufficient level.

The Hearing Officer specifically denies the Grievant's request for a fifteen percent (15%) salary increase, reimbursement for travel to the new demoted position at the State rate and reimbursement for attorney's fees and expert witnesses, as there were none.

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:

Director
Department of Human Resource Management
101 North 14th Street, 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 Street, 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 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 a review have been decided.

You may request a judicial review if you believe the decision is contradictory to law.²⁵ 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.²⁶

²⁵An 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).

²⁶Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.

[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]

William S. Davidson
Hearing Officer