Issues: Group II Written Notice (failure to follow instructions), Group II Written Notice (failure to follow instructions), Group III Written Notice with termination (absence in excess of 3 days without notice), and Retaliation; Hearing Date: 12/05/07; Decision Issued: 12/18/07; Agency: DJJ; AHO: Carl Wilson Schmidt, Esq.; Case No. 8698, 8699, 8700, 8736; Outcome: Partial Relief (Group II – Full Relief, Group II – No Relief, Group III – No Relief, Termination – No Relief, Retaliation – No Relief);
Administrative Review: AHO Reconsideration Request received 01/02/08; Reconsideration Decision issued 01/15/08; Outcome: Hearing to be reopened; Reopened Hearing held 01/15/08; Second Reconsideration Decision issued 04/18/08; Outcome: Original decision affirmed.

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8698 8699 8700 8736

Hearing Date: December 5, 2007
Decision Issued: December 18, 2007

PROCEDURAL HISTORY

On February 22, 2007, Grievant was issued a Group II Written Notice of disciplinary action for failure to bring her case files into compliance by December 4, 2006. On May 23, 2007, Grievant filed a grievance alleging that the Agency retaliated against her. On June 12, 2007, Grievant was issued a Group II Written Notice of disciplinary action with removal for failure to follow a supervisor's instructions. On June 12, 2007, Grievant was issued a Group III Written Notice with removal for absence of excess of three days without approval or authorization.

Grievant timely filed grievances to challenge the Agency's actions. The outcome of the Third Resolution Step of these grievances was not satisfactory to the Grievant and she requested a hearing. The EDR Director issued Ruling Numbers 2008-1803, 1804, 1805, and 1834 consolidating these matters for hearing. On October 30, 2007, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On December 5, 2007, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency Advocate
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?

2. Whether the behavior constituted misconduct?

3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?

4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. 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 Juvenile Justice employed Grievant as a Rehabilitation Counselor II until her removal effective June 12, 2007. She had been employed by the Agency for approximately 17 years. No evidence of prior active disciplinary action against Grievant was introduced during the hearing.

One of Grievant's duties was to update the files of the residents for whom she was responsible. On November 2, 2006, Grievant received a Notice of Improvement Needed/Substandard Performance from a supervisor instructing her "you will review all of your files and bring into compliance by December 4, 2006 all documents that [are] out of compliance." From January 24, 2007 through January 29, 2007, the Agency audited Grievant's case files and concluded that her files were significantly out of compliance with the Agency's requirements for documentation. During the Step Process, the Superintendent who served as the Second Step Respondent randomly selected a sample of Grievant's cases and examined them. He concluded that several cases continued to have problems and were not up to date.

The Agency arranged for training entitled "REACH". Employees working in the same pod were expected to attend training on the same two days. One of the objectives of the training was to enable employees working together on a daily basis to share ideas and concerns with each other in the context of the REACH training program. In order to achieve this objective, the Agency set aside specific dates for training and then required all employees assigned to a particular pod to attend the training scheduled for those dates.

On April 6, 2007, Grievant received from Ms. H an email with the subject, "mandatory two day REACH training". Ms. H had forwarded to Grievant an original email sent by the Treatment Program Coordinator which read:

> Attached is the training schedule for the two-day mandatory REACH training. Please make sure that your staff members are aware of their designated training dates. I tried to take into consideration all of the input that was given in setting the schedules. Please know that because some members in the C100 were already scheduled for some other type of training I switched the dates for C100 and C400.

The attached schedule showed that the employees working with Grievant in pod A100 were scheduled to attend the training on May 30 and May 31, 2007.

On April 16, 2007, Grievant approached the Supervisor and asked if she could take leave from May 26, 2007 through June 9, 2007. The Supervisor asked her if she had any conflicts during that period of time. Grievant incorrectly told the Supervisor that she did not have any conflicts. The Supervisor told Grievant she could take leave during that period of time.

On April 17, 2007, Grievant paid $2150.70 to pay for the cost of an overseas trip scheduled to begin on May 26, 2007 and end on June 9, 2007.

On April 18, 2007, Grievant received written approval from the Supervisor to take leave from May 26, 2007 through June 9, 2007.

At some point, Agency supervisors realize that Grievant had asked for leave on days scheduled for mandatory training. Grievant was informed that her leave request was rescinded. Grievant attempted to obtain a refund of her money from the tour operator but was unable to receive a refund or reschedule the tour date.

On May 8, 2007, the Supervisor sent Grievant an email stating:

> Because you stated, in our brief meeting today, that you had "no recollection" of the conversation on 5/4/07, in which [the Assistant Superintendent] correctly and in statically instructed you to be present at the REACH training on 5/30--31/07 I am sending you this reminder.

> As [the Assistant Superintendent] again instructed you today, via teleconference, you are expected to be present at the REACH training on 5/30--31/07. All personnel assigned to HA-100 will be present and you are a vital part of this team.
>
> As your supervisor I strongly suggest that you attend this training as assigned, or you could and will be subject to disciplinary action according to DJJ policy/procedure.[1]

On May 14, 2007, the Supervisor sent Grievant a memorandum regarding REACH training as follows:

> As we discussed in my office on Thursday, May 3, 2007, and again on Tuesday May 8 2007, you are expected to be present for, and participate in, the mandatory REACH training for which you have been registered.
>
> This training will take place on Wednesday & Thursday, May 30 and 31, 2007. Failure to attend this training as assigned will cause you to be subject to disciplinary action according to DJJ policy/procedure.[2]

Although Grievant was scheduled to work, she did not report to work on May 25, 2007 through June 8, 2007. She traveled overseas as part of her tour group.

CONCLUSIONS OF POLICY

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include types of behavior least severe in nature but which require correction in the interest of maintaining a productive and well-managed work force."[3] Group II offenses "include acts and behavior which are more severe in nature and are such that an additional Group II offense should normally warrant removal." Group III offenses "include acts and behavior of such a serious nature that a first occurrence should normally warrant removal."

Group II Written Notice Regarding Case Files

"Failure to follow a supervisor's instructions" is a Group II offense. Grievant was instructed to have her case files up to date by December 4, 2006. Her files were not up-to-date by that date nor by January 29, 2007. Grievant failed to comply with a supervisor's instructions.

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[1] Agency Exhibit 2.

[2] Agency Exhibit 2.

[3] The Department of Human Resource Management ("DHRM") has issued its *Policies and Procedures Manual* setting forth Standards of Conduct for State employees.

Va. Code § 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Employment Dispute Resolution…."[4] Under the *Rules for Conducting Grievance Hearings,* "[a] hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency's discipline, the hearing officer shall state in the hearing decision the basis for mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive.

Grievant has presented sufficient evidence to mitigate the disciplinary action against her. First, Grievant was a nonexempt employee under the Fair Labor Standards Act. The Agency did not permit her to work overtime even if she needed to do so. Second, another counselor holding a position similar to Grievant's position left the agency in July 2006. Her position remained vacant until January 2007. Grievant assume responsibility for half of the cases that were formally the responsibility of this counselor. This materially increased Grievant's workload. Third, on November 16, 2006, a resident threw an object at Grievant and hit her in the back of her head and neck. She sought medical care and therapy, causing her to be absent from work for 73.2 hours. When these factors are considered as a whole, Grievant could not be expected to be current on all of her cases. Accordingly, the Group II Written Notice must be reversed.

Retaliation

An Agency may not retaliate against its employees. To establish retaliation, Grievant must show he or she (1) engaged in a protected activity;[5] (2) suffered a materially adverse action[6]; 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

[4] *Va. Code § 2.2-3005.*

[5] *See* Va. Code § 2.2-3004(A)(v) and (vi). 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.

[6] On July 19, 2006, in Ruling Nos., 2005-1064, 2006-1169, and 2006-1283, the EDR Director adopted the "materially adverse" standard for qualification decisions based on retaliation. A materially adverse action is, an action which well might have dissuaded a reasonable worker from engaging in a protected activity.

business reason for the adverse action, retaliation is not established unless the Grievant's evidence shows by a preponderance of the evidence that 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.[7]

Grievant engaged in a protected activity by filing a grievance alleging unsafe work conditions.[8] She suffered a materially adverse action because she had leave approved but later rescinded. Grievant has not established a causal link between the adverse action and the protected activity. Grievant's Supervisor rescinded Grievant's leave approval because he subsequently learned that Grievant had mandatory training scheduled for the dates she wanted leave. Grievant's Supervisor was not aware that Grievant had filed a grievance alleging unsafe work conditions. Accordingly, Grievant's request for relief from retaliation is denied.

Group II Written Notice for Failure to a Follow Supervisor's Instructions

"Failure to follow a supervisor's instructions" is a Group II offense. The Treatment Program Specialist, a supervisor, distributed an email on April 6, 2007 to all counselors including Grievant. This email contained an instruction that Grievant attend mandatory training on May 30, 2007 and May 31, 2007. Grievant did not attend the training thereby acting contrary to a supervisor's instruction. The Agency has presented sufficient evidence to support the issuance of a Group II Written Note for failure to follow a supervisor's instruction.

Grievant argues she was not obligated to attend the training once the Supervisor approved her request for annual leave covering the time period of the training. Grievant's argument fails. Grievant has not presented a policy prohibiting an Agency from rescinding approval for leave based on a legitimate business reason. In this case, the Supervisor asked Grievant if she had any events that may conflict with her taking leave on May 30, 2007 and May 31, 2007. Grievant incorrectly reported that she had no conflicts.[9] Based on the incorrect information provided by Grievant, the Supervisor approved Grievant's leave. The Supervisor was entitled to reverse his approval upon learning that Grievant in fact had mandatory training scheduled for May 30, 2007 in May 31, 2007.

There are no mitigating circumstances which would justify a reduction in this Group II Written Notice.

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[7] This framework is established by the EDR Director. See, EDR Ruling No. 2007-1530, Page 5, (Feb. 2, 2007) and EDR Ruling No. 2007-1561 and 1587, Page 5, (June 25, 2007).

[8] Her grievance regarding unsafe work conditions was not part of this grievance hearing.

[9] The Supervisor testified that had he known of Grievant's conflicts, he would not have approved her leave request. He relied on Grievant's representation that she did not have any conflicts.

Group III Written Notice for Absence in Excess of Three Days

"Access in excess of three days without proper authorization or a satisfactory reason" is a Group III offense. Grievant was absent from work from May 25, 2007 through June 8, 2007. Grievant did not have authorization from the Agency to be absent from work on those days. The reason Grievant was absent from work was because she chose to disregard the Supervisor's instruction to attend training. Instead she went on a vacation. Her reason for absence was not a satisfactory reason under the DHRM Policy 1.6 Standards of Conduct. The Agency has presented sufficient evidence to support its issuance to Grievant of a Group III Written Notice for absence in excess of three days without proper authorization or a satisfactory reason. Upon the issuance of a Group III Written notice, an employee may be removed from employment. Accordingly, Grievant's removal from employment must be upheld.

Grievant argues that she obtained approval to be absent from work on May 30 and May 31, 2007. Based on this approval, she spent $2150.70 to secure her position with a group traveling to a foreign country. If she had rescinded her plans to travel, she would have had to forfeit a significant portion of the money she had deposited for her trip. Grievant contends it was neither fair nor appropriate for the Agency to resend approval of her leave request and expect her to suffer a financial hardship. Grievant's argument fails because she knew or should have known that she was scheduled to attend mandatory training on May 30 and May 31, 2007 prior to asking for leave for those days. The Supervisor initially granted to Grievant's leave request based on incorrect information that she provided to him. In particular, she incorrectly informed the Supervisor that she did not have any conflicts from May 26, 2007 through June 8, 2007.

Grievant argues that the training scheduled for May 30 and May 31, 2007 was not actually mandatory training for all staff. Grievant argues that some counselors were permitted to attend makeup sessions on dates other than those originally scheduled for the counselors. The question, however, is not whether the Agency permitted some counselors to attend makeup sessions while forcing Grievant to attend her scheduled session -- the question of significance is, why? In other words, assuming for the sake of argument, that the training was mandatory for some counselors but not others, Grievant must show that that distinction was for some improper purpose or pretext. Grievant has not shown that the Agency acted in bad faith by expecting her to attend the mandatory training as scheduled. The Superintendent testified that one counselor was on probation and not yet been assigned to a pod. Thus, that counselor would not have begun working with a team and would not have needed to attend training on a date set aside for the entire team. Another counselor was not able to attend training as scheduled because of an injury to his finger. There is no credible evidence to show that the Agency unnecessarily or unreasonably expected Grievant to attend training on May 30 and May 31, 2007. There is no reason to believe that the Agency singled out Grievant for harsher treatment than for other employees. Indeed, the Agency's expectation was that the quality of Grievant's training would be enhanced if it was held with the other employees on her pod attending.

Grievant argues that she presented a sufficient medical reason for being absent from work. She had an appointment with her Medical Provider on May 25, 2007. The Medical Provider gave Grievant a preprinted note with blank spaces dated May 25, 2007 stating:

> This is to certify that [Grievant] has been under my care and is able to return to work or school on was here in my clinic today. Remarks: OK to return to work after trip.

The medical note lacks credibility. It does not appear to address Grievant's medical needs but rather to address her need to go on a trip. The note does not state that Grievant is unable to work.

Grievant contends the Agency could have denied her leave only for May 30 and May 31, 2007 but permitted her to take leave on the other days she was on vacation. Within the context of the evidence before the Hearing Officer, the Agency did not make such a decision. In addition, it is not clear the Agency was asked to make such a decision prior to the hearing. The Hearing Officer cannot make findings of fact based on what the Agency could have or should have done. Under the facts of this case, Grievant sought leave for the period May 25, 2007 through June 8, 2007. She did not have authority from the Agency to take leave for any of those days.

In light of the standard set forth in the *Rules*, the Hearing Officer finds no mitigating circumstances exist to reduce this disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action for failure to follow a supervisor's instructions regarding her case files is **rescinded**. Grievant's request for relief from retaliation is **denied**. The Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action for failure to follow a supervisor's instructions regarding attending training is **upheld**. The Agency's issuance to the Grievant of a Group III Written Notice of disciplinary action with removal for absence in excess of three days without proper authorization or a satisfactory reason is **upheld**.

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 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.[10]

[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

[10] 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: 8698 / 8699 / 8700 / 8736-R

Reconsideration Decision Issued: January 15, 2008

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 sought reconsideration on January 3, 2008 of the Hearing Officer's decision dated December 18, 2007, in part, because:

> [Grievant] also learned that her requested witnesses were not provided their Orders to attend the hearing on her behalf until after December 5, 2007. These Orders were sent out on November 27, 2007. They were most likely received by the Agency and withheld from the witnesses.

Upon investigation, the Hearing Officer has determined that the orders for several witnesses were drafted on November 29, 2007 and delivered to the Department of General Services to be delivered to the United States Postal Service. Postage was not placed on the envelopes containing the orders until December 3, 2007 and the envelopes were not placed into the mail service until December 4, 2007. Several witnesses did not receive their orders until after the hearing date on December 5, 2007. Accordingly, the Hearing Officer finds that the witness orders were untimely delivered but not due to the fault of the Department of Employment Dispute Resolution or the Department of Juvenile Justice. The hearing must be reopened to obtain the testimony of any witnesses for which Grievant timely sought witness orders but those orders were untimely delivered. For this reason, the request for reconsideration is **granted.** The parties are instructed to contact the Hearing Division so that a date can be selected to take additional evidence.

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

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Carl Wilson Schmidt, Esq.
Hearing Officer

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case No: 8698 / 8699 / 8700 / 8736-R2

Reconsideration Decision Issued: April 18, 2008

SECOND RECONSIDERATION DECISION

The Hearing Officer reopened this grievance for the taking of additional evidence. Eight witnesses including Grievant testified at the reopened hearing.

Counselor M testified that he attended his scheduled training and interacted with his unit leader as part of the training.

Rehabilitation Counselor E testified that he was originally scheduled for training on April 30, 2007 and May 1, 2007 but did not attend that training because he injured his hand towards the end of March 2007 and had surgery on April 16, 2007. His ability to drive was restricted. He attended the training on other dates with another unit that was similar to his unit.

Substance Abuse Counselor R attended training as scheduled. She was late for the training and forgot to sign the attendance sheet on the first day of the training, April 26, 2007. She attended both days of training.

Office Services Assistant B did not attend the training. She had surgery and was out on medical leave. The Superintendent testified that Office Services Assistant B was not obligated to attend the unit training because she was not part of a team receiving the scheduled training.

The Correctional Rehabilitation Counselor B testified that she attended training on June 11, 2007 and June 12, 2007. Her unit manager also attended training on those dates.

The evidence presented is not sufficient to show that Grievant was singled out for discipline for failing to attend her scheduled training. The weight of the evidence shows that the Agency expected its employees to appear on the scheduled dates for training so that customary work units could be trained as teams. Grievant argues that not everyone who was scheduled to attend the training actually attended the training as scheduled. The only exception to this training was the Rehabilitation Counselor E who was unable to attend due to medical injury. His circumstances are not similarly to Grievant's such that the Hearing Officer can conclude that the Agency singled out Grievant for discipline. No basis exists to mitigate the disciplinary action against Grievant.

Grievant presented evidence showing that the Supervisor did not like Grievant and had criticized her in a location where other employees could over hear. For example, the Rehabilitation Counselor M testified that she observed the Supervisor reprimanding Grievant approximately two or three times per month. While the Supervisor's behavior may reflect poor management practices, it is not sufficient to show that the Supervisor set a separate standard for Grievant regarding training or that the Supervisor retaliated against Grievant.

Grievant argued that the attendance sheets for June 10, 2007 and June 11, 2007 were not produced by the Agency. The Agency was unable to find these sheets. There is no reason for the Hearing Officer to believe that the Agency has the attendance sheets but is withholding them to affect the outcome of this case. It is most likely that the Agency misplaced the attendance sheets for those days. The Hearing Officer will not draw an adverse inference from the Agency's failure to produce attendance sheets for June 10, 2007 and June 11, 2007.

Grievant argues the Hearing Decision is incorrect because the Supervisor knew of the scheduling conflict because the Supervisor received Grievant's training schedule prior to Grievant's receipt. This argument is unsupported by the evidence. Although both the Supervisor and Grievant had received an email specifying the dates for Grievant's training and the dates for training by other employees, at the moment when Grievant approached the Supervisor to ask to take leave, the Supervisor did not have the email before him and did not know when Grievant was scheduled to attend training. The Supervisor asked Grievant if she had any conflicts during her proposed vacation time. The Supervisor most likely asked because he did not recall the terms of the email regarding Grievant's scheduled training.

Grievant argues that if Grievant was under an incorrect assumption that she could attend training on other dates, the Supervisor had a responsibility to inform her. No Agency or State policy supports this assertion. The April 6, 2007 email clearly states the training is mandatory and provides the dates for the scheduled training. Grievant made such assumptions at her own risk.

Grievant reasserts that her absence was medically authorized and, thus, she could not be disciplined for absence. Although medical providers are usually best able

to evaluate the medical condition of an employee and the Hearing Officer gives appropriate deference to such medical opinions, in this case the medical provider's note appears designed to justify Grievant's desire to go on a trip and not her medical condition. The Hearing Officer will not give deference or weight to the medical provider's note.

The request for reconsideration does not identify any newly discovered evidence or any incorrect legal conclusions. For this reason, the 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:

3. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
4. 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