

Issues: Group I Written Notice (unsatisfactory job performance), Group II Written Notice (failure to follow policy), and Suspension; Hearing Date: 08/19/08; Decision Issued: 08/28/08; Agency: DMHMRSAS; AHO: William S. Davidson, Esq.; Case No. 8931; Outcome: No Relief – Agency Upheld in Full; **Administrative Review: AHO** Reconsideration Request received 09/12/08; Reconsideration Decision issued 09/17/08; Outcome: Original decision affirmed; **Administrative Review: EDR** Admin Review request received 09/12/08; EDR Ruling #2009-2131 issued 10/15/08; Outcome: Hearing Decision affirmed; **Administrative Review: DHRM** Admin Review request received 09/12/08; DHRM Ruling issued 11/19/08; Outcome: Hearing Decision affirmed.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case No: 8931

Hearing Date: August 19, 2008
Decision Issued: August 28, 2008

PROCEDURAL HISTORY

The Grievant received a Group I and a Group II Written Notice. The Group I Written Notice was issued on April 8, 2008 for:

Unprofessional behavior/conduct that undermines the effectiveness of the Agency. The evidence indicates that you have repeatedly engaged in conduct that is disruptive to the work environment, unprofessional, disrespectful and seriously undermines the effectiveness of the overall operation of Human Resources and SVTC...

The Grievant received the Group II Written Notice on April 8, 2008 for:

Failure to adhere to DHRM policy #2.10, *Hiring*: and the pre-approval requirements and policy in hiring for four (4) wage positions; You failed to follow DHRM policy #2.10 in the selection of the Classification and Compensation Manager and the process for hiring 4 wage positions, 3 HR wage positions and 1 Administrative Services...

Pursuant to the Group II Written Notice, the Grievant was suspended for ten (10) days. On April 29, 2008, the Grievant timely filed a grievance to challenge the Agency's actions. The outcome of the Second Resolution Step was not satisfactory to the Grievant and she requested a hearing. On July 29, 2008, the Department of Employment Dispute Resolution ("EDR") assigned this Appeal to a Hearing Officer. On August 19th and 20th of 2008, a hearing was held at the Agency's location.

APPEARANCES

Grievant
Grievant's Attorney
Agency Party
Agency Representative
Witnesses

ISSUE

1. Whether the Grievant's actions justified the issuance of a Group I Written Notice for unprofessional behavior/conduct that undermines the effectiveness of the Agency.
2. Whether the Grievant's actions justified the issuance of a Group II Written Notice for Grievant's failure to adhere to DHRM Policy 2.10 and whether such failure justified the ten (10) day suspension.

AUTHORITY OF HEARING OFFICER

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the employee's alleged conduct, if otherwise properly before the Hearing Officer, justified termination. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs.*, 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

While the Hearing Officer is not a "super personnel officer" and should give appropriate deference to actions in Agency management that are consistent with law and policy...the Hearing Officer reviews the facts de novo...as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify the disciplinary action. Thus the Hearing Officer may make a decision as to the appropriate sanction, independent of the Agency's decision.

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 Agency provided the Hearing Officer with a notebook containing sixteen (16) tabbed sections and that notebook was accepted in its entirety as Agency Exhibit 1. The Grievant

provided the Hearing Officer with a notebook containing thirty-five (35) tabbed sections and that notebook was accepted in its entirety as Grievant's Exhibit 1.

Over a period of two (2) days and more than twenty (20) hours of testimony, the Hearing Officer heard from nineteen (19) witnesses. While each of these witnesses was under oath when they testified, they all clearly presented facts to the Hearing Officer as they perceived them after having washed them through their own individual filters. Accordingly, there was a significant amount of disagreement between many of the witnesses' testimony on individual fact situations.

The Hearing Officer, more so than usual, must make a determination as to which of the witnesses was testifying most truthfully regarding individual fact patterns.

Regarding the Group I Written Notice for unprofessional behavior/conduct, there were numerous allegations about the unprofessional conduct of the Grievant. In this matter, the Grievant is the Human Resource Director for the Agency. There were allegations that the Grievant made the following statements at various times:

1. "What Grievant wants Grievant gets."
2. "The head of the Agency does what the Grievant tells him to do."
3. "The head of the Agency is in the Grievant's hip pocket."
4. "Don't even think about leaving because I will never give you a good reference."
5. "I do not know how another member of Management got her job."
6. "I am going to talk to the Agency head about getting rid of another Management level."
7. "Central Office is stupid."
8. "Called an employee's husband and told him that the employee was having an affair."
9. "I don't understand why people with thirty years don't leave."
10. "I am the boss and it's my way or the highway."
11. "Grievant told a member of the Agency that she was a cancer on the Department."
12. "Grievant screamed at the top of her lungs that an employee of the Agency was a liar and this screaming was heard by many members of the Agency."
13. "Grievant walked out of a meeting."
14. "Grievant offered to show personnel files to other employees when it was not related to their normal work."

The Hearing Officer heard testimony from witnesses for the Agency alleging all of the above. The Hearing Officer heard from witnesses for the Grievant denying most of the above. There are two (2) circumstances that the Hearing Officer finds significant. Regarding the issue of calling an employee a "cancer on the Department," the Hearing Officer heard from that employee. The Grievant testified that what she really said was that "another employee had called this employee a cancer on the Department." The Grievant testified that she was telling her subordinate this fact in an effort to help her become a better employee. Regarding the matter of "screaming at an employee that she was a liar," the Hearing Officer heard from many witnesses for the Agency who testified that they witnessed or heard that confrontation. The Grievant, while acknowledging that the confrontation took place, uniquely does not remember whether or not she called the person a liar and simply stated that it was an "intense confrontation" and that "her voice carries." Considering the totality of the testimony before the Hearing Officer, the Hearing

Officer finds that it is more probable that the Grievant did, in fact, tell the employee that she “was a cancer on the Department” and that she did, in fact, call another employee a “liar” in a fashion and with a voice such that many employees heard the screaming. These two (2) events alone are sufficient to characterize unprofessional behavior and/or conduct and justify a Group I Written Notice.

Because of the prior finding, the Hearing Officer does not have to reach a decision regarding the other allegations of unprofessional conduct. However, after having observed the witnesses closely, the Hearing Officer finds credible the allegation that the Grievant indicated that she did, in fact, control the head of the Agency.

Regarding the Group II Written Notice, there were two (2) distinct components to that Written Notice. The first involved a pre-selection allegation in the hiring of a Classification and Compensation Manager. The issue here is whether or not a decision was made prior to the actual interviewing of applicants as to who was going to get this job. Policy 2.0-Hiring of DHRM’s Policies and Procedures Manual sets forth steps that must be completed in a hiring matter. At page 7 of 17 of Policy 2.10 the selection process is set forth. A first step in that process is that the Agency must screen positions according to the qualifications established for the position and must apply those criteria consistently to all applicants.¹ In this matter, there were no written criteria. The Grievant assigned a newly hired subordinate the task of handling the screening process. This person testified that she kept all of the screening criteria in her head. After she reviewed the applications that were received, pursuant to an ad process, she screened out all but four (4) applicants and those applicants were then interviewed by the Grievant and three (3) other members of her management team. Following the interview process, a job was offered to one of the applicants. Subsequent to that, a pay action worksheet was submitted regarding this new employee asking that she receive a fifteen percent (15%) increase in pay. This was above the normal range and caused people at the Agency to question it. Because of that, an Agency expert was brought in to review the entirety of the process to determine if it comported with Agency policy. This witness, perhaps the only witness who testified before the Hearing Officer that had no perceived bias in this matter, testified clearly that the process for hiring this Compensation and Classification Manager was fatally flawed. The advertisement did not sufficiently set forth the requirements that were needed and the questions asked at the interview were not designed to illicit adequate answers to determine that the applicant had sufficient knowledge and ability to perform his or her job as a Compensation and Classification Manager.

Subsequent to the interview, it is the Agency practice to produce a document that is entitled Panel Interview Summary Report. In this matter, it was not prepared in a timely fashion as the head of the panel and the Hiring Manager, the Grievant, was suspended prior to its completion. Indeed, this Report was not prepared until after the Central Office requested the file. This Report contained a section that was to be completed with either positive or negative comments which would be used to justify either hiring or not hiring the interviewee. Regarding one of the interviewees, this section of the Report contained the following statement:

Over fifteen years management experience; applicant overqualified, stated that the position should be upgraded; has managed many projects.²

¹ Agency Exhibit 1, Tab 7, Page 7

² Agency Exhibit 1, Tab 9

The testimony from the disinterested witness indicated that this applicant was far and away the most qualified person for the Compensation and Classification Manager position. Counsel for the Agency questioned the employee who completed this form as to why her Summary Report indicated that the applicant was overqualified and she and other witnesses for the Grievant indicated that was a “bad choice of words” and that what they really meant to say was that this applicant was rejected because she had been arrogant and because she had given the names of employees when answering her interview questions. The applicant that was hired for this position had interviewed with this Agency only months earlier for a position and had been denied that position. There was testimony that she may have been promised a position in the future. Finally, when Central Office requested the file in this matter, the new employee who was being tasked with managing this hiring process produced an Applicant Screening Worksheet.³ This is a document that appears to be used to establish screening criteria and the witness testified that she produced it, not only after the screening was completed, not only after the hiring had been done, but only when told that Central Office was requesting the file and this should be in the file. It was produced solely from her memory and it contained errors on its face.

Therefore taken in the order that there were no written screening criteria to reduce the applicants to the interviewees; that there was no Summary Report filed until after a request was made from Central Office; that there was no screening criteria report until after a request from Central Office; that the Grievant, as head of Human Resources, was chair of the interview panel and that her fellow management team made up the rest of the interview panel; that the only disinterested witness that the Hearing Officer heard from testified that neither the ad nor the questions were properly crafted to even remotely solicit someone who had the requisite experience for the Compensation and Classification Management position, and; that the one interviewee that was most qualified was rated as “overqualified.” The Hearing Officer finds that it is more probable than not that a pre-selection was in fact made.

The second portion of the Group II Written Notice involved the hiring of employees without specific approval when a hiring restriction was in place. In September of 2007, the Governor placed state Agencies on a hiring restriction. With the exception of a few exempt positions, all positions needed to have approval before being filled. The Hearing Officer heard testimony that the Grievant, as Director of Human Resources, went to one of her subordinates and told her to fill three (3) positions. The subordinate knew that the Grievant was aware of the hiring restrictions because the Grievant notified all of her employees of these restrictions. The subordinate further assumed that the Grievant had obtained permission for these hires. The hiring process then took place and people were hired to fill these positions. As it turns out, the Grievant had not obtained prior approval and these positions were filled in contradiction to the Governor’s policies. There was much testimony regarding this issue and, in particular, involving who was responsible for obtaining the approval for these hires. The Hearing Officer finds that it is reasonable for a subordinate, two rungs below the Human Resources Director, to assume that the Human Resources Director has obtained prior approval when ordering that people be hired in the face of a hiring restriction. Further, when all is said and done, it is the responsibility of the Grievant, who was both the Hiring Manager and the Director of the Human Resources Department, to confirm that all approvals are obtained. Contrary to this, the Grievant testified that it is not her responsibility. Indeed, the Grievant testified that it was not her responsibility for almost everything that her subordinates did. Further, the Grievant testified that she feels there is

³ Grievant Exhibit 1, Tab 35

a grand conspiracy between her subordinates and Central Office to remove her from her current position. When questioned, the Grievant had no valid or legitimate reason for why such a conspiracy would be in place. The Hearing Officer finds that it is more probable than not that the Grievant did direct her subordinate to make these hires and that the Grievant is responsible for seeing to it that she not make such a direction until and unless she had acquired the appropriate approvals. In the alternative, prior to any of these hires being consummated, the Grievant should have confirmed that the approvals were in place.

MITIGATION

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.

The Agency mitigated the Group I Written Notice from a Group II Written Notice. The Hearing Officer finds that there is no reason for further mitigation.

DECISION

For reasons stated herein, the Agency’s issuance to the Grievant of a Group I Written Notice and a Group II Written Notice with suspension 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:

⁴Va. Code § 2.2-3005

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.⁵ 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.⁶

[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

⁵An 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).

⁶Agencies 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: 8931

Hearing Date:	August 19, 2008
Decision Issued:	August 28, 2008
Reconsideration Request Received:	September 12, 2008
Response to Reconsideration:	September 17, 2008

APPLICABLE LAW

A Hearing Officer's original decision is subject to administrative review. A request for review must be made in writing, and *received* by the administrative reviewer, within 15 calendar days of the date of the original hearing decision. A request to reconsider a decision is made to the Hearing Officer. A copy of all requests must be provided to the other party and to the EDR Director. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.⁷

OPINION

The Grievant seeks reconsideration of the Hearing Officer's decision based on the following:

1. With respect to both Written Notices, you failed to address how the facts which were proven by the Agency establish a violation of the Standards of Conduct, and if so, what level of violation occurred.
 - a. With respect to the Group I Written Notice, your Decision fails to articulate how the particular facts which were proven by the Agency establish a violation of the Standards of Conduct.

⁷ §7.2 Department of Employment Dispute Resolution (EDR) *Grievance Procedure Manual*, effective August 30, 2004.

- b. With respect to the Group II Written Notice, your Decision fails to articulate how the particular facts which were proven establish a violation of the Standards of Conduct.
2. With respect to both Written Notices, you failed to address the reasonableness of the Agency's mitigation, given your factual findings.
 - a. With respect to the Group I Written Notice, given your factual findings, you failed to review the Agency's mitigation decision for reasonableness.
 - b. With respect to the Group II Written Notice, given your factual findings, you failed to review the Agency's mitigation decision for reasonableness.

The Grievant complains that the Hearing Officer did not articulate how the particular facts, which were proven by the Agency, established a violation of the Standards of Conduct. To support that position, the Grievant states in part as follows:

- (1) You found the Agency had proven only that three (3) statements which the Grievant allegedly made were made;
- (2) Given that you find that the majority of the allegations, upon which the Agency relied in its issuance of a Written Notice, were not founded; and
- (3) Given that you ruled against the Agency with respect to the majority of the allegations.⁸

The Grievant clearly is misstating the findings in the Hearing Officer's Decision. The Hearing Officer stated in his Decision as follows:

Because of the prior finding, the Hearing Officer does not have to reach a decision regarding the other allegations of unprofessional conduct.⁹

The Hearing Officer did not need to make a finding regarding all of the allegations of impropriety that were set forth in the Group I Written Notice as the three (3) that the Hearing Officer found that the Grievant committed were of sufficient seriousness to warrant the Group I Written Notice.

The Grievant alleges that the Hearing Officer did not comply with the Rules of Conducting Grievance Hearings where it states at V(C) in part that:

The decision must contain a statement of the issues qualified; findings of fact on material issues and the grounds in the records for those findings; **any related conclusions of law or policy...**(Emphasis added)

⁸ Grievant's Request for Reconsideration, Pages 3-4

⁹ Hearing Officer Decision, Page 4

The Hearing Officer did not need to address any related conclusions of law or policy as there were none that needed to be addressed. The Hearing Officer found that the Grievant clearly called one of her subordinates a “cancer on the Department,” that she was heard screaming at an employee that the employee was a liar, and that she indicated that she controlled the Agency and not the head of the Agency. Once that finding had been made by the Hearing Officer, nothing more by way of related conclusions of law or policy were necessary.

DHRM Standards of Conduct Policy 1.60 sets forth examples of Group I, Group II and Group III offenses. At page 7 of that document, it states as follows:

These examples are not all inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Accordingly, any offense not specifically enumerated, that in the judgment of Agency heads or their designees undermines the effectiveness of Agency activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section.¹⁰

The fact that the Hearing Officer upheld the Group I Written Notice clearly indicates that he thought the facts proven justified the Group I Written Notice. It is not the duty of the Hearing Officer to go further and explain how a set of facts falls within a Group I, Group II or Group III Written Notice. This type of discussion would be found under Mitigation if the Hearing Officer determined that the facts did not support the Group level with which the Grievant was charged. Here, the Hearing Officer found that the facts proven supported the Group levels with which the Grievant was charged.

Regarding the Grievant’s Request for Reconsideration set forth in 1(b), the Grievant seems to fail to recognize that the Hearing Officer makes a decision as to which witnesses’ testimony he believes and which witnesses’ testimony he does not believe. The Hearing Officer made it abundantly clear in his Decision that the hiring process was sufficiently flawed, so that it appeared and was proven that a preselection took place regarding the hiring of a Classification and Compensation Manager. The Grievant simply appears to be requesting the Hearing Officer to believe only the testimony of the Grievant and her witnesses and to disregard the testimony of the Agency’s witnesses. The Hearing Officer, pursuant to the evidence before him, found that the Grievant initiated and controlled this hiring process.

Regarding Grievant’s Request for Reconsideration set forth in 2(a) and 2(b), the Hearing Officer clearly stated that he found no reason for further mitigation after the Agency had in fact mitigated a Group II Written Notice to a Group I Written Notice. Rules for Conducting Grievance Hearings VI(B)(1) states in part as follows:

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.** (Emphasis added)

¹⁰ DHRM Policy 1.60(B)(2)

The Hearing Officer is called upon by this Section to set forth the reasons for his mitigation when he in fact mitigates. If the Hearing Officer does not find a basis for further mitigation from what the Agency did, then there is no basis in the Rules requiring him to set forth why he did not further mitigate. As set forth in his Decision the Hearing Officer considered several factors for Mitigation and found that the Agency had acted reasonably in this matter.

DECISION

The Hearing Officer finds that none of the reasons given for reconsideration by the Grievant rise to a level that would require him to reconsider his Decision. The Hearing Officer has carefully considered the Grievant's arguments and has concluded that there is no basis to change the Decision issued on August 28, 2008.

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.¹¹

William S. Davidson
Hearing Officer

¹¹ An appeal to circuit court may be made only on the basis that the decision was *contradictory to law*, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. *Virginia Department of State Police v. Barton*, 39 Va. App. 439, 573 S.E. 2d 319 (2002).

November 17, 2008

RE: **Grievance No. 8931**

Dear :

The Agency head, Ms. Sara Wilson, has asked that I respond to your request for a review of the hearing officer's decision in the above referenced case. Please note that a party to the grievance may file an administrative review request within 15 calendar days from the date the decision was issued if any of the following applies:

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.
3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply.

Our records show that the grievant fully met the requirement of filing her request for an administrative review in a timely manner regarding inconsistent application of policy. Our records also show that the grievant requested that the hearing officer reconsider the decision and that EDR conduct an administrative review. The issues put before each of the aforementioned bodies were the same issues raised in the appeal to DHRM. In the reconsideration decision by the hearing officer and in the administrative review ruling by EDR, all issues related to the inconsistent application of policy were addressed adequately. Because you have not presented any evidence that the hearing decision is inconsistent with DHRM Policy 1.60 and DHRM Policy 2.10, as per item number 2 above, there is no need to discuss further these issues. Rather, it appears that the issues you raise are related to how the hearing officer assessed the evidence and the conclusions he made regarding the evidence. Thus, we have no basis to interfere with the application of the hearing officer's decision.

Sincerely,

Ernest G. Spratley, Assistant Director
Office of Equal Employment Services