Issue: Group I Written Notice (unsatisfactory job performance); Hearing Date: 06/24/09; Decision Issued: 07/31/09; Agency: SBE; AHO: John V. Robinson, Esq.; Case No. 9056; Outcome: No Relief – Agency Upheld.

COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 9056

Hearing Officer Appointment: April 13, 2009
Hearing Date: June 24, 2009
Decision Issued: July 31, 2009

PROCEDURAL HISTORY AND ISSUES

The Grievant requested an administrative due process hearing to challenge a Group I Written Notice issued on December 9, 2008 by Management of the State Board of Elections (the "Department" or "Agency"), as described in the Grievance Form A dated January 6, 2009. GE 1.[1]

The hearing officer was appointed on April 13, 2009. The hearing officer scheduled a first pre-hearing telephone conference call at 2:30 p.m. on April 16, 2009. The Grievant, the Agency's attorney (the "Attorney") and the hearing officer participated in the pre-hearing conference call. During the call, the Grievant confirmed that she is challenging the issuance of the Group I Written Notice for the reasons provided in her Grievance Form A and is seeking the relief requested in her Grievance Form A, including removal of the written notice from her file. The hearing officer issued a Scheduling Order entered on April 17, 2009 scheduling the hearing for May 11, 2009. The Scheduling Order is incorporated herein by this reference.

On April 28, 2009, the Grievant's recently retained advocate (the "Advocate") informed the hearing officer and the Agency that he had been retained as the advocate for the Grievant. On April 30, 2009, the Advocate, the Attorney and the hearing officer participated in a second pre-hearing conference call to discuss, amongst other things, the parties' respective objections to orders for witnesses and documents sent to the hearing officer. On May 1, 2009, the hearing officer issued his Decision Concerning Order for Documents and Witnesses and Granting Continuance. This Decision is incorporated herein by this reference.

Having resolved their document disputes, the parties requested and the hearing officer scheduled a third pre-hearing conference call, principally to schedule the hearing. The Attorney, the Advocate, the hearing officer and, by consent of the parties, two (2) law students interning at the Office of the Attorney General participated in the call. Following the third pre-hearing

[1] References to the grievant's exhibits will be designated GE followed by the exhibit number. References to the agency's exhibits will be designated AE followed by the exhibit number.

conference, the hearing officer issued a First Amended Scheduling Order entered on June 2, 2009, which is incorporated herein by this reference.

In this proceeding the agency bears the burden of proving upon a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. The Grievant bears the burden of proving upon a preponderance of the evidence the affirmative claims she has raised as her issues 3-10 in her Form A.

At the hearing, the Agency was represented by the Attorney. The Grievant was represented by her Advocate. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely all exhibits in the Agency's binder (1 through 12) and Grievant's Exhibits 1-4; 6-10; and 20-24 in the Grievant's binder.

No open issues concerning non-attendance of witnesses or non-production of documents remained by the conclusion of the hearing.

APPEARANCES

Representative for Agency
Grievant
Witnesses

FINDINGS OF FACT

1. The Grievant has been an employee of the Department for approximately five and one-half (5 ½) years.

2. During the period relevant to this grievance (the "Period"), the Grievant served as the Absentee Voting Coordinator (the "Coordinator") for the Department. GE 1; AE 8.

3. Part of the Grievant's responsibilities included researching, developing and implementing Virginia state policy and legislation that would help citizens covered by the Uniform and Overseas Citizens Absentee Voting Act of 1986 ("UOCAVA"), 42 U.S.C. § 1973ff *et seq*, successfully register and vote absentee. AE 8. In short, the Grievant served as the Agency's UOCAVA subject-matter expert.

4. In preparation for the November 4, 2008 general federal election, the Grievant told the United Stated Department of Justice ("DOJ") that the Commonwealth

would be self-monitoring concerning UOCAVA. Essentially, this meant that rather than have the federal government directly monitor the Virginia localities for compliance with UOCAVA, the Commonwealth would undertake such monitoring and report to the federal government.

5. The Grievant was stricken by cancer and received her last chemotherapy treatment on September 4, 2008. The Agency arranged for her to telework for a period before she returned to work after September 4, 2008.

6. Partly because of the Grievant's absence from the workplace, the Grievant's supervisor at the time ("Supervisor A") adopted a web-based application ("Survey Monkey") which allowed local registrars to self-report their ballot readiness in real time.

7. The Grievant understands and is extremely proficient in Survey Monkey.

8. The Grievant was instructed by her supervisor to use Survey Monkey alone to monitor and assess the readiness of the Virginia localities concerning absentee balloting. During the Period, the Grievant also spoke on the telephone to local registrars concerning absentee balloting.

9. After the Grievant had returned to the workplace on September 30, 2008, the Grievant received a telephone call from a trial attorney in the Voting Section, Civil Rights Division, DOJ ("LB").

10. LB called the Grievant to "determine whether Virginia localities had mailed their absentee ballots to military and overseas voters in a timely manner." AE 5.

11. The Grievant assured LB that all of Virginia's localities had sent absentee ballots to all the UOCAVA voters who had requested an absentee ballot up until that date, namely September 30, 2008. AE 5.

12. On November 3, 2008, "[a/the Presidential Campaign]" filed a Complaint in the United States District Court for the Eastern District of Virginia, Richmond Division (the "Court"), alleging amongst other things, that in many Virginia counties and cities local election officials failed to mail absentee ballots to UOCAVA voters by the asserted deadline of September 20, 2008. GE 7.

13. On November 14, 2008, the United States moved to intervene as a party plaintiff to enforce the rights of UOCAVA voters (the "Motion"). AE 4.

14. "[a/the Presidential Campaign]" has been dismissed from the proceeding but the litigation between the Agency and the U.S. continues. The hearing officer entered a Protective Order on May 14, 2009.

15. In her affidavit to the Motion, LB declares that on November 12, 2008, the Virginia State Board of Elections sent the Justice Department a list of absentee ballot data for UOCAVA voters from the November 4, 2008 election, which included the names of UOCAVA voters, in what locality they were registered to vote, when their requests for absentee ballots were processed by the localities, the dates the absentee ballot envelope labels were printed, and the date, if any, the voted absentee ballot was processed by the local electoral board or registrar. This data indicated that hundreds of UOCAVA voters who had requested their absentee ballots in a timely manner were sent their ballots long after [Grievant] assured me that their ballots had been mailed. AE 5.

16. On November 12, 2008, the Secretary of the Agency (the "Secretary") discussed with the Grievant what had been asserted by LB.

17. The Grievant admits that on September 30, 2008, she told LB that "all the absentee ballots had indeed been sent as of September 30, 2008 which was the date of my phone call." AE 2.

18. The Secretary asked the Grievant what she used to support her statement. The Grievant responded that she used the Absentee Ballot Readiness Report (the "Report") at AE 7 generated by Survey Monkey.

19. The Report clearly shows that as of September 26, 2008, certain localities were not close to being ready, let alone sending out all their absentee ballots as the Grievant misrepresented to DOJ.

20. On approximately September 1, 2008, Supervisor B replaced Supervisor A as the direct supervisor of the Grievant.

21. Although the call between LB and the Grievant occurred on September 30, 2008, Supervisor B only learned of the misrepresentation around November 13, 2008, in the midst of the Grievant's performance review process.

22. Supervisor A had awarded the Grievant an overall rating of "Extraordinary Contributor" but Supervisor B said she could not sanction the rating in view of the LB incident and the Grievant's overall rating was reduced to "Contributor." Supervisor B also added Part D on page 6 to the Grievant's evaluation. AE 8.

23. On November 14, 2008, and on November 21, 2008, Supervisor B prior to the issuance of the Written Notice to the Grievant, gave the Grievant oral notification of the offense, an explanation of the Agency's evidence in support of the charge and a reasonable opportunity to respond. *See, also*, AE 2.

24. The Agency consulted with DHRM concerning policy before Supervisor B issued the Written Notice to the Grievant on December 9, 2008.

25. The Grievant did not challenge her performance evaluation but told Supervisor B that if the Agency issued a Written Notice, she would grieve it.

26. The Grievant's misrepresentation has had a serious adverse impact on the Agency because, amongst other things, it has eroded the credibility of the Agency particularly concerning the DOJ and the Federal Voting Assistance Program ("FVAP").

27. The Grievant agrees that what she told LB is a serious matter for the Agency.

28. On February 7, 2008, Supervisor A issued a disciplinary counseling memorandum to the Grievant concerning personal use of the office facsimile machine without permission. AE 9. The Grievant did not contest the issuance in any manner.

29. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.

30. The Department's actions concerning this grievance were reasonable and consistent with law and policy.

31. The Department has fully accounted for all mitigating factors in determining the corrective action taken concerning the Grievant.

32. The testimony of the witnesses called by the Agency was both credible and consistent on the material issues before the hearing officer. The demeanor of such Agency witnesses at the hearing was candid and forthright.

APPLICABLE LAW, ANALYSIS AND DECISION

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

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent 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 who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60. The Department's Standards of Conduct (the "SOC") are contained in the General Order No. 19. AE 9. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

Pursuant to the SOC, the Grievant's assurance to LB could have constituted a Group II offense, as asserted by the Department. The testimony of the Secretary, Supervisor B and the Agency's policy adviser (himself an attorney licensed to practice law in the State of New York) was compelling on the seriousness of the consequences to the Agency. Of course, Supervisor B acting within the prerogative afforded her by the Secretary as the Grievant's direct supervisor, elected to mitigate the offense to a Group I. DHRM also suggested that the Agency consider a Group II because of the impact on the Agency.

As previously stated, the Agency's burden is to show upon a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances and essentially the Grievant contests this determination by the Department in her Issues One and Two in the Form A.

The hearing officer decides for the offense specified in the Written Notice (i) the Grievant engaged in the behavior described in the Written Notice; (ii) the behavior constituted serious misconduct; (iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action. The hearing officer's mitigation analysis is discussed in greater detail below.

Concerning Grievant's first issue on the Form A, the Grievant contests the adequacy of the pre-disciplinary due process protections afforded her by the Agency. The hearing officer's findings of fact regarding the Grievant's pre-disciplinary notice and opportunity to be heard dispose of this matter. EDR has recognized that under the *Loudermill* standard only limited due process protections must be afforded an employee prior to the disciplinary action. EDR Ruling No. 2007-1481 at page 4 and EDR Ruling No. 2009-2231 at page 8. The Department clearly met such minimal pre-disciplinary due process standards. *See, also Ewald v. Va. Dept. of Waste Management*, 1991 U.S. Dist. LEXIS 15828.

The Grievant's second issue consists of a number of components:

> "2. Discipline received was too harsh, as it had already been addressed and corrective action agreed to in the performance appraisal."

GE 1.

Supervisor B did address the LB incident in the Grievant's performance appraisal but Supervisor B did not agree that this was the end of the matter, as the Grievant asserts. Rather, Supervisor B informed the Grievant that there would be further consequences and the Grievant understood this because she responded to Supervisor B in words to the effect that "If you write me up, I will grieve it." As the Attorney asserts, DHRM Policy 1.60 does not prohibit both the reference in an evaluation to misconduct during the Period and the issuance of disciplinary action. *See, also, Decision of Hearing Officer in EDR Case Number 690 at 6.*

As discussed above, the hearing officer has found that under the circumstances the discipline was not harsh. The SOC specifically allow the Agency in considering the level of discipline to "consider any unique impact that a particular offense has on the agency and the fact that the potential consequences of the performance or misconduct substantially exceeded agency norms." SOC(B)(2), pages 7-8. AE 11.

Concerning issue 3 raised by the Grievant, the hearing officer finds that Supervisor A instructed the Grievant to rely on Survey Monkey alone for assessing ballot readiness and as testified by Supervisor A, this was in part done as an accommodation to the Grievant when she was absent from the office for health reasons. Survey Monkey provided all the information in real time which the Grievant needed to assess ballot readiness. The hearing officer agrees with the Attorney that the Grievant's argument that she wanted to reconcile against the VERIS system is a red herring. If this were the case that Grievant believed she needed more information, she could simply have told LB that she needed more information before she could respond and no misconduct would have occurred. Supervisor A testified that the Grievant was very proficient in Survey Monkey, the Grievant never complained to her that she needed additional support and that the Grievant appeared to be on top of everything. The Grievant also could and did reconcile by calling the local registrars on the telephone.

As the Attorney pointed out in the hearing, the Grievant really did not present any meaningful evidence concerning issues 4-6 and 9-10. Based on a comment made by the Advocate at the hearing, this appeared to be due to a conscious decision on the part of the Grievant and the Advocate not to pursue these issues at the hearing even though they were raised on the Form A.

The Grievant did present at least some evidence concerning her issue no. 7 "Double standard" and her issue no. 8 "Inequitable treatment among staff" and this is considered in the hearing officer's mitigation analysis below. However, at the hearing, as pointed out by the

Attorney, the Grievant neither presented meaningful evidence nor argued "harassment" (issue no. 4), nor bullying (issue no. 5), nor "hostile work environment" (issue no. 6), nor unethical treatment (issue no. 9), nor "Discrimination based on Breast Cancer Diagnosis, Breast Cancer Treatment and race" (issue no. 10). GE 1. Accordingly, because the Grievant appeared to decide not to pursue these issues at the hearing and because the Grievant did not begin to meet her burden of proof concerning these issues, the hearing officer has only addressed such matters as they concern his mitigation analysis. Under such circumstances, EDR recognizes that the hearing officer need not undertake a detailed analysis of the legal elements of each of these affirmative claims. *See, EDR Ruling Number 2007-1716, at pages 5-6.*

The hearing officer finds that the Department did not misapply or unfairly apply policies or otherwise act in an arbitrary and capricious manner so as to punish the Grievant but rather acted in a measured, carefully considered manner in accordance with the SOC and applicable policies of progressive discipline to correct misconduct, etc.

DHRM has previously ruled that there is no requirement under an earlier version of DHRM Policy 1.60 that an agency even consider mitigating circumstances. DHRM Policy Ruling, Grievance No. 8636, September 19, 2007.

However, this DHRM ruling does not negatively impact the Grievant's position under the facts and circumstances of this proceeding because under Va. Code § 2.2-3005 and EDR precedent, this hearing officer is charged with the duty to "[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Employment Dispute Resolution". EDR's *Rules for Conducting Grievance Hearings* (the "Rules") provide in part:

> The *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." 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. *Rules* § VI(B) (alteration in original).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant, including her otherwise good work performance over approximately 5 ½ years.

As previously discussed the Grievant could have received a Group II Written Notice because of the seriousness of the offense (which seriousness the Grievant acknowledged at the hearing).

Accordingly, because the Department assessed mitigating factors and in fact mitigated the discipline, the Rules only allow this hearing officer to mitigate the discipline further if this hearing officer upon consideration of the evidence finds that the Department's discipline exceeded the limits of reasonableness.

While the Grievant might not have specified all of the mitigating factors below, the hearing officer considered many factors including those specifically referenced above and all of those listed below in his analysis:

1. the absence of any other corrective action other than the formal written counseling specified in my findings of fact paragraph 28;

2. the Grievant's good service to the Agency over 5 ½ years;

3. the Grievant's cancer and treatment;

4. the fact that the Grievant had recently returned to the workplace after teleworking;

5. the fact that the Grievant was having difficulty focusing shortly after her return;

6. the death of the Grievant's mother during the Period; and

7. the fact that the Grievant has not denied what she told LB.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the offense was serious, could potentially impact the Agency for a long time (as the Secretary testified) and could stand as Group II offense. Clearly, the mitigation decision by the Department was within the permissible zone of reasonableness.

The Attorney presented the hearing officer at the hearing with a recent decision (the "Decision") out of the United States District Court for the Western District of Virginia, Roanoke Division, *Brown v. Va. Dept. of Transportation*, 2009 U.S. Dist. LEXIS 12462 (2009). In the Decision, the Court held that for purposes of establishing a *prima facie* claim of racial

discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-5 ("Title VII"), one of the plaintiff's required showings is that "other employees who are not members of the protected class were retained under apparently similar circumstances. *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 188 (4th Cir. 2004).

Concerning this element of a Title VII racial discrimination claim, the Court continued:

> In this case, Brown does assert that he was treated differently than other VDOT employees. Specifically, Brown alleges in his deposition that Jess Weitzenfeld and Timothy Dowdy also came in late "consistently every day," however they were not disciplined by their supervisor. *See* Brown Deposition at 179. Weitzenfeld and Dowdy are white, whereas Brown is African-American. The defendant contends, however, that Brown has not been able to demonstrate that Weitzenfeld or Dowdy were similarly situated to him, and that, as a result, he is again unable to successfully make out a prima facie case of discrimination under Title VII against VDOT.
>
> When comparing different employees and their discipline, this court has stated that "[a plaintiff] must establish that these other employees are similarly situated in all material respects." *Monk v. Stuart M. Perry, Inc.*, 2008 U.S. Dist LEXIS 74748, 2008 WL 4450220, at * 4 (W.D. Va. 2008) (quoting *Cobb v. Potter*, 2006 U.S. Dist. LEXIS 63118, at *28 (W.D.N.C. Aug. 22, 2006)). Specifically, "[t]he employees 'must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.'" *Id.* (quoting *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992)).
>
> In this case, neither Weitzenfeld nor Dowdy were supervised by Becker, Brown's supervisor. In fact, Brown himself admitted that they were supervised by Peter Hammack, although all of these employees, including himself, worked in the same office. *See* Brown Deposition at 178. . .
>
> Ultimately, the court concludes that neither Dowdy nor Weitzenfeld were similarly situated to Brown and are not proper comparators because they were supervised by different individuals and had different disciplinary histories than Brown.

The Attorney argued that the testimony offered by the Grievant concerning GE 19 (which the Grievant ultimately did not seek to introduce into evidence over the Attorney's objections)

should be disregarded because any claim by the Grievant concerning disparate treatment must fail in and of itself because different supervisors were involved. While such an assertion might very well hold water for an analysis of racial discrimination, the hearing officer decides it is too restrictive concerning his mitigation analysis.

The Rules give three examples of "mitigating circumstances" and one is: "Inconsistent Application: The discipline is inconsistent with how other similarly situated employees have been treated." Notwithstanding my more expansive interpretation than that advanced by the Attorney, the Grievant made no showing that the other alleged instances of misconduct were treated any differently nor were the other employees referenced shown to be similarly situated. Even in the case of the Secretary's misconduct, the Secretary disciplined herself and made the Secretary of Administration aware of the matter.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

In this proceeding, the Department's actions were clearly consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer. *Id.*

DECISION

The Department has sustained its burden of proof in this proceeding and the action of the Department in issuing the Group I Written Notice and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Department's action concerning the Grievant is hereby upheld, having been shown by the Department, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

APPEAL RIGHTS

As the *Grievance Procedure Manual* sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review: This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. 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.

2. **A challenge that the hearing decision is inconsistent with state or agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests should be sent to the Director of the Department of Human Resources Management, 101 N. 14th Street, 12th Floor, Richmond, Virginia 23219 or faxed to (804) 371-7401.

3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests should be sent to the EDR Director, Main Street Centre, 600 East Main Street, Suite 301, Richmond, Virginia 23219 or faxed to (804) 786-0111.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of original hearing decision**. (Note: the 15-day period, in which the appeal must occur, begins with the date of **issuance** of the decision, **not receipt** of the decision. However, the date the decision is rendered does not count as one of the 15 days; the day following the issuance of the decision is the first of the 15 days.) A copy of each appeal must be provided to the other party.

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.

ENTER:

_____

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by U.S. Mail and e-mail transmission where possible and as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).