

Issues: Group III Written Notice (violation of drug/alcohol policy) and Termination;
Hearing Date: 08/06/09; Decision Issued: 08/24/09; Agency: VDOT; AHO: Lorin
A. Costanzo, Esq.; Case No. 9149; Outcome: No Relief – Agency Upheld in Full;
Administrative Review: AHO Reconsideration Request received 09/03/09;
Reconsideration Decision issued 09/10/09; Outcome: Original decision affirmed.

Commonwealth of Virginia
DEPARTMENT OF TRANSPORTATION

DECISION OF HEARING OFFICER

In the matter of: Case No: 9149

Hearing Date: August 6, 2009
Decision Issued: August 24, 2009

PROCEDURAL HISTORY

Grievant was issued a Group III Written Notice on May 18, 2009, with Termination (effective date: May 22, 2009) for violation of Policy 1.05, Alcohol and Other Drugs. The Offense Date is 4/23/09. "Nature of Offense and Evidence" indicated:

1. Failed to cooperate with testing process.
2. Failed to remain at the testing site until the testing process was complete.
3. Failed to provide urine specimen for the return to duty drug test scheduled.
4. Failed to provide an adequate amount of breath for the return to duty alcohol test scheduled.

Following the failure to resolve the matter at the third resolution step, this grievance was qualified for a hearing on 6/10/09.¹ On July 22, 2009, the Department of Employment Dispute Resolution assigned this matter to the Hearing Officer. Hearing was held on August 6, 2009.

APPEARANCES

Grievant
Agency Representative at Hearing who was also Agency Party Representative
Administrator
Technician
Engineer
Manager
Manager 2

ISSUES

Were the Grievant's actions such as to warrant disciplinary actions under the Standards of Conduct? If so, what was the appropriate level of disciplinary action for the conduct at issue?

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of the witnesses, the

¹ Agency Exhibit Tab 4.

Hearing Officer makes the following findings of fact:

Grievant filed a timely appeal from a Group III Written Notice with termination issued on May 18, 2009, with Termination (effective date: 5/22/09) for violation of Policy 1.05, Alcohol and Other Drugs. The Written Notice alleged that on 4/23/09, Grievant:

1. Failed to cooperate with testing process.
2. Failed to remain at the testing site until the testing process was complete.
3. Failed to provide urine specimen for the return to duty drug test scheduled.
4. Failed to provide an adequate amount of breath for the return to duty alcohol test scheduled.²

Grievant worked for over 14 years at a facility. Grievant's duties included the operation of motor vehicles for Agency and she had a commercial driver's license.

On October 25, 2008, Grievant was informed that the random drug test she took earlier in October of 2008 indicated she was positive for methamphetamines and cannabis. As a result of this first positive drug test Grievant was removed from duties involving operating a motor vehicle. She agreed to and was placed in education/counseling sessions concerning drugs. She participated in 17 group sessions and 1 final individual session. Additionally, four drug screens were negative during the period of her counseling. By document signed 3/30/09 Grievant's counselor confirmed that she had completed such education/counseling sessions.

Grievant's counselor informed Agency that Grievant was ready for a return-to-duty drug and alcohol test. He had recommended to Agency that alcohol testing be conducted.³ A Return-To-Duty Test of drug and alcohol levels was required before Grievant could return to her full duties with Agency.

On April 23, 2009, Grievant reported to work and while she indicated some medical problems she declined to leave work to go home. Later that day, around 11:00 A.M., Grievant was told she needed to take return-to-duty drug and alcohol tests. In compliance with her instructions, she left her work site and drove to a medical facility for such tests.

On April 23, 2009, Grievant reported to the designated medical facility for the tests but in three opportunities did not provide a sufficient breath sample to allow for the measurement of her alcohol level. Grievant also did not provide a urine specimen for drug testing.

Grievant was required to take a urine drug test but refused to do so and walked out of the test site. When Grievant left the test site on 4/23/09 she had not provided a sufficient breath sample to obtain an alcohol level and had not provided a urine sample for the drug test as were required for the return-to-duty drug and alcohol tests.⁴

BURDEN OF PROOF

² Agency Exhibit Tab 4, - "Written Notice".

³ Agency Exhibit Tab 3, pg 14. - "Assessment and Treatment Final Report".

⁴ Agency Exhibit Tab 3, pg.7. - "Memorandum of 4/24/09".

The burden of proof is on the Agency to show by a preponderance of the evidence that the disciplinary action taken was warranted and appropriate under the circumstances. A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than not; evidence that is more convincing than the opposing evidence.⁵

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code Section 2.2-2900 *et seq.*, establishing the procedures and policies applicable to employment within the Commonwealth of Virginia. 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 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).

Code Section 2.2-3000(A) sets forth the Virginia grievance procedure and provides, in part:

"It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employee disputes which may arise between state agencies and those employees who have access to the procedure under Section 2.2-3001."

To establish procedures on standards of conduct and performance for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the Code of Virginia, the Department of Human Resources Management promulgated the *Standards of Conduct*, Policy No. 1.60. 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 of Conduct* 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.

Section B.2.c. of the Commonwealth of Virginia's Department of Human Resource Management Policies and Procedures Manual, *Standards of Conduct*, Policy No. 1.60, provides that Group III offenses include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.⁶

Section A. 2 of the *Standards of Conduct* further provides that, "Examples of offenses, by group, are presented in Attachment A. These examples are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Accordingly, any

⁵ Department of Employment Dispute Resolution, Grievance Procedure Manual, ("GPM") Section 5.8 and 9.

⁶ Agency Exhibit Tab 2, - DHRM Policies and Procedures Manual, Policy No. 1.60, effective April 16, 2008, "Standards of Conduct".

offense not specifically enumerated that in the judgment of agency heads or their designees undermines the effectiveness of agencies' activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section."

Violation of Policy 1.05, Alcohol and Other Drugs, may, depending on the nature of the offense, constitute a Group I, II, or III offense.⁷

Safety Policy and Procedure Workforce Safety and Health Division Drug and Alcohol Testing Policy and Policy 1.05

The unlawful or unauthorized use of alcohol or other drugs in the workplace is a violation of Policy No. 1.05. Agencies may promulgate policies that more strictly regulate alcohol and other drugs in the workplace provide such policies are consistent with Policy No. 1.05 Department of Human Resources Management Policies and Procedures Manual, Alcohol and Other Drugs.

Agency has adopted Safety Policy and Procedure "Workforce Safety and Health Division Drug and Alcohol Testing Policy"(SPP#4). As set forth therein,

"This safety policy and procedure is established in accordance with 49 CFR 29, 40. 98, 382, 383, 390, 391, 392, 393, 395, 396, 397 399 of the United States Department of Transportation (USDOT), the Federal Motor Carrier Safety Administration (FMCSA) and Standards of Conduct Policy 1.60, and Alcohol and other Drugs Policy 1.05, issued by the Department of Human Resources Management DHRM)." ⁸

Agency instituted this substance abuse policy for employees engaged in activities related to public safety and the safety of themselves and co-workers. Employees are to ensure their ability to perform job duties is not impaired by alcohol or drugs, legal or illegal, while on the job.⁹

Agency's *Safety Policy and Procedure "Workforce Safety and Health Division Drug and Alcohol Testing Policy"(SPP#4)* provides, in pertinent part, as follows:

6.2.2.12 Failure to Cooperate

"If the employee refuses to cooperate with the collection process (for examples of refusals see Tool 1) the collection site shall inform VDOT's representative and shall document the non-cooperation on the urine custody and control form. It is not required for the refusing employee/candidate to sign the Federal Drug Custody

⁷ Agency Exhibit Tab 2 - DHRM Policies and Procedures Manual, Policy No. 1.60, effective April 16, 2008, "Standards of Conduct, Attachment A."

⁸ Agency Tab 2 - "Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) November 2008 Rev.5.

⁹ Agency Tab 2 - "Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) November 2008 Rev.5, Section 4.0 and 5.0.

and Control Form or the U.S. Department of Transportation Alcohol Testing Form. A refusal will be treated as a positive test result."

6.2.3.7 Return to Duty Testing

"A Return-to-Duty testing is performed only after the Substance Abuse Professional has advised the WSHD's Designated Employer Representative (DER) that the employee has successfully complied with their prescribed education and/or treatment program. The employee must have a negative Return-To-Duty Test drug test result and/or an alcohol test result to be considered for return."

6.2.3.9 Refusal To submit To Testing

"Employees refusing to submit to the required tests shall have the refusal noted in the supervisor's employee performance file. Such a refusal shall be treated as a positive test result."

6.2.5 Failure to Submit to Testing

"The following actions will be taken when employees fail to submit to a required test or fail to cooperate with the testing as outlined in this policy:

- A Group III Notice shall be issued for failing to comply with established policy and applicable Federal and State regulations.
- An employee's refusal to comply shall be treated as a positive test result.

A second refusal to submit to the required testing shall result in the issuance of a Group III Notice under the Standards of Conduct and dismissal."

"Safety Policy and Procedure - Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) provides examples of testing "Refusals" which include:

Failure to remain at the urine collection site If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.

Failure to provide a urine specimen If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.

Fail to provide an adequate amount of saliva or breath If the STT or BAT (Breath Alcohol Technician) reports that the employee left the collection site before providing a required amount of saliva or breath, it is a refusal.

For the first confirmed positive drug test Agency Policy provides the employee is given opportunity to get assistance through the WSHD. If the employee refuses to take or does not successfully complete the education/treatment program the employee is to be terminated. Additionally, employees operating state-owned vehicles or equipment are removed from those duties until it is determined that the employee has successfully complied with prescribed education and/or treatment, has taken a return-to-duty test(s) with a negative test result and/or an alcohol test with an alcohol concentration of less than 0.02, and he/she is no longer a threat to themselves, other employees, or the safety of the public. Employees may be returned to full duty following these determinations and passing a return-to-duty physical. A second offense calls for issuance of a Group III Notice and termination.¹⁰

Return-To-Duty Testing

¹⁰ Agency Tab 2. - Sections 6.2.4.1 and 6.2.4.2 "Safety Policy and Procedure -Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) November 2008 Rev.5.

In October of 2008, Grievant had a first positive drug test for methamphetamines and cannabis which led to her removal from driving a vehicle and CDL duties with Agency. Grievant was given the opportunity to receive rehabilitation assistance and she accepted such assistance. In order for Grievant to return to full duty with the Agency she was required to do a number of things. She was required to, among other requirements, satisfactorily complete an education/counseling program and pass a Return-To-Duty Test achieving a negative test result on drug and alcohol tests.

Grievant's first positive drug test (in October of 2008) gave rise to the requirement of a Return-To-Duty Testing. On April 23, 2009, Grievant was required by Agency to submit to a Return-To-Duty Testing for both a urine drug test and a breath alcohol test.

Offense alleged:

Grievant was issued a Group III Written Notice for violation of Policy 1.05, Alcohol and Other Drugs. It was specifically alleged that Grievant:

1. Failed to cooperate with testing process.
2. Failed to remain at the testing site until the testing process was complete.
3. Failed to provide urine specimen for the return to duty drug test scheduled.
4. Failed to provide an adequate amount of breath for the return to duty alcohol test scheduled.

On 4/23/09 Grievant was informed by Agency that she needed to appear at the designated testing site and take a Return-To-Duty Testing of involving both breath alcohol testing and urine drug testing. This testing gave rise to the 4 offenses indicated in the Written Notice, to-wit:

1. Failed to cooperate with testing process.

While Grievant appeared for Return-To-Duty Testing she failed to produce a sufficient amount of breath for the alcohol testing to occur. The failure to produce a sufficient amount of breath was considered a failure to cooperate with the testing process. Three times Grievant was given opportunity to blow into the alcohol testing machine, however, she did not produce sufficient breath for a measurement to occur on any occasion.

Grievant does not contest that she failed to produce sufficient breath for testing. However, she contends that she was physically unable to produce sufficient breath for the breathalyzer test to obtain a measurement.

The Breath Alcohol Technician who administered the breath test indicated that she believed Grievant was purposefully blowing insufficient breaths. She described Grievant as upset, crying, and hyperventilating when she approached the testing.¹¹ The Technician, who was also a paramedic, took Grievant's vitals and testified they were all "fine". She described Grievant as being very upset with something and that she seemed to get more and more upset the closer

¹¹ Grievant's Exhibit page 13. "Memorandum of 4/23/09".

she got to the testing.

The Technician, who was also certified and experienced in both alcohol breath and urine drug tests, stated that, in her opinion, Grievant had purposely blew insufficient breaths to "sabotage testing".¹²

Grievant failed to cooperate with the drug testing required when she refused to provide a urine sample as directed. This refusal is further discussed below.

2. *Failed to remain at the testing site until the testing process was complete. and*
3. *Failed to provide urine specimen for the return to duty drug test scheduled.*

On 4/23/09 after being informed that the breath test for alcohol was failed because sufficient breath was not produced for the machine to measure alcohol level Grievant refused the Return-To-Duty urine drug test.

The Technician asked Grievant to do the urine drug test, however, Grievant declined and left the facility without providing a urine specimen. The Technician suggested she should still do the urine test. The Technician conducting the test had requested that Grievant do the urine drug test even though she failed to produce sufficient breath for the alcohol testing. Grievant stated, "Just forget it, they are going to fire me anyway. There is no reason to do the urine test. I am calling my lawyer and employer." She also stated, "Since I am not able to do breath alcohol why should I do this."¹³

Grievant walked out of the building where the testing was to occur without submitting a urine specimen for the required drug testing.¹⁴ She failed to remain at the testing site until the testing process was completed and failed to provide a urine specimen for the drug test.

4. *Failed to provide an adequate amount of breath for the return to duty alcohol test scheduled.*

Grievant did not contest she failed to produce a sufficient amount of breath for the Return-To-Duty alcohol test scheduled for 4/23/09. She does not contest this. Three attempts were afforded her. Grievant contends that she was physically unable to produce sufficient breath and was in severe pain.

From the time the Technician met Grievant for the breath test Grievant was observed to be very upset and hyperventilating. The Technician, who was a paramedic also, took Grievant's vitals and testified they were all fine. The Technician described Grievant as very upset with something and that she seemed to get more and more upset the closer she got to the testing.

¹² Agency Exhibit Tab 3, page 19, and testimony.

¹³ Grievant's Exhibit page 13 and 14; Agency Exhibit Tab 3, page 19 & 20 – "Federal Drug Testing Custody and Control Form" and Testimony.

¹⁴ Grievant Exhibit page 15 and Testimony.

The technician talked with Grievant and explained the testing procedure. She was with Grievant from approximately 1:30 P.M. to nearly 3:00 P. M. The Technician, who was certified and experienced in both alcohol breath testing and urine drug testing, stated that, in her opinion, Grievant had purposely blew insufficient breaths to "sabotage testing".¹⁵

49 C.F.R. 40.265 notes that a medical condition does not include unsupported assertions of "situational anxiety" or hyperventilation. However, provisions exist for the employee to provide information concerning a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath.

Policy provides for certain actions by an employer regarding an employee who is unable to provide a sufficient amount of breath for an alcohol test. These actions address medical issues raised by the employee's failure. An employer, under certain conditions, is required to direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to the employer and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

However, Grievant's actions in refusing to provide a urine specimen and walking out of the Return-To-Duty Test affected the employer's duty concerning this. If an employee fails to remain at the testing site until the testing process is complete it is deemed the employee is to be considered to have refused to take the test.¹⁶ Refusal to cooperate with the collection process is treated as a positive test result.¹⁷ A successful Return-To-Duty Test requires both alcohol and drug testing to show negative test findings.

Mitigation

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.¹⁸ The hearing officer does not find that the agency's discipline, in this case, exceeds the limits of reasonableness.

Conclusion

Agency has proven, by a preponderance of the evidence, that Grievant failed to cooperate with the testing process and failed to remain at the testing site until testing was complete. She failed to provide the required urine specimen and failed to provide an adequate amount of breath for the return to duty alcohol test. She refused to take the urine drug test. She left the test site without completing the testing and this also is, per 49 C.F.R. 40.191(a)(2), considered a refusal to have taken the test.

¹⁵ Agency Exhibit Tab A#, pg 19, and testimony.

¹⁶ Testimony, and Agency Exhibit; 49 CFR § § 40.265; 40.191; 40.261(a)(2).

¹⁷ Agency Tab 2. - Sections 6.2.2.12 and 6.2.4.2 "Safety Policy and Procedure -Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) November 2008 Rev.5.

¹⁸ Section VI. B. - Dept. of Employment Dispute Resolution – Rules for Conducting Grievance Hearings.

As per Section 6.2.3.9 of Agency Safety Policy and Procedure – Workforce Safety and Health Division Drug and Alcohol Testing Policy, a refusal is required to be treated as a positive test result. In this case, the refusal is a second positive test result calling for a Group III Notice and Termination under the Standards of Conduct.

For the reasons stated above, the Agency has proven, by a preponderance of the evidence, that Agency's disciplinary action of issuing a Group III Written Notice and termination was warranted and appropriate under the circumstances.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant on May 18, 2009, of a Group III Written Notice with termination is hereby **UPHELD**.

APPEAL RIGHTS

You may file an Administrative review request within **15 calendar days** from the date the decision was issued.

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 are 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: Director of the Department of Human Resources Management, 101 N. 14th Street, 12th Floor, Richmond, Virginia 23219.

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: Director, Department of Employment Dispute Resolution, Main Street Centre, 600 East Main Street, Suite 301, Richmond, VA 23219.

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 the 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 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. You must give a copy of your notice of appeal the Director of the Department of Employment Dispute Resolution.

Lorin A. Costanzo, Hearing Officer

Commonwealth of Virginia
DEPARTMENT OF TRANSPORTATION

RECONSIDERATION DECISION OF HEARING OFFICER
In the matter of: Case No: 9149-R

Reconsideration Decision Issued: September 10, 2009

RECONSIDERATION DECISION

Grievance Procedure Manual authorizes the Hearing Officer to reconsider a decision or reopen a grievance hearing. § 7.2 of the *Grievance Procedure Manual* provides:

"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."¹⁹

On May 18, 2009, Grievant was issued a Group III Written Notice with disciplinary action of termination (effective date: May 22, 2009) for violation of Policy 1.05, Alcohol and Other Drugs. The "Nature of Offense and Evidence" indicated Grievant:

1. Failed to cooperate with testing process.
2. Failed to remain at the testing site until the testing process was complete.
3. Failed to provide urine specimen for the return to duty drug test scheduled.
4. Failed to provide an adequate amount of breath for the return to duty alcohol test scheduled.

On August 24, 2009, a decision was issued by the Hearing Officer in this cause. By e-mail dated September 3, 2009, Grievant timely requested the Hearing Officer "reconsider the decision or reopen the hearing".

In her September 3, 2009 request to reconsider or reopen, Grievant indicated she understood that the decision would be based on the witness testimony and that her testimony would carry no consideration. Grievant additionally contended,

".... it appears to me the witness testimony and evidence that I provided lacked consideration. I feel that my testimony would bear weight in your decision."

Grievant's request for reconsideration/reopen does not identify any newly discovered evidence or any incorrect legal conclusions reached by the Hearing Officer. Hearing decisions are based on the evidence presented during the hearing. Consideration was given by the Hearing

¹⁹ Newly discovered evidence is evidence that was in existence at the time of the hearing, but was not known (or discovered) by the aggrieved party until after the hearing ended.

Officer to the evidence admitted at the hearing in arriving at the decision in this cause. The Hearing Officer has authority to weigh the evidence and determine witness credibility.

Grievant could have presented her testimony to the Hearing Officer at the time of the hearing but she chose not to. She had the opportunity to testify, however, she made a specific decision not to testify at the grievance hearing.

Grievant's request for reconsideration or to reopen does not identify any newly discovered evidence or any incorrect legal conclusions reached by the Hearing Officer.

For the reasons stated above, Grievant's request for reconsideration of the decision and/or to reopen the hearing is **denied**.

APPEAL RIGHTS

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision:

Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

Lorin A. Costanzo, Esq.
Hearing Officer