Issue: Group III Written Notice with Termination (positive drug and alcohol tests); Hearing Date: 09/14/09; Decision Issued: 09/21/09; Agency: VDOT; AHO: Lorin A. Costanzo, Esq.; Case No. 9176; Outcome: Full Relief; **Administrative Review: AHO Reconsideration Request received 10/06/09; Reconsideration Decision issued 10/21/09; Outcome: Original decision affirmed; Administrative Review: EDR Ruling Request received 10/06/09; EDR Ruling #2010-2448 issued 01/05/10: Outcome: AHO's decision affirmed.**

Commonwealth of Virginia
DEPARTMENT OF TRANSPORTATION

DECISION OF HEARING OFFICER

In the matter of: Case No: 9176

Hearing Date: September 14, 2009
Decision Issued: September 21, 2009

APPEARANCES

Grievant
Agency Representative at Hearing who was also Agency Party Representative
Witnesses: M.O.T. II
Manager

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 Hearing Officer makes the following findings of fact:

Grievant filed a timely appeal from a Group III Written Notice with termination (effective date: 6/23/09). The date of offence was 6/15/09. The Written Notice indicated, under *Nature of Offense and Evidence*, "Violation of Policy 1.05, Alcohol and Other Drugs. On 6/15/2009, [Grievant's name] tested positive for alcohol by a breathalyzer test. Further, he tested positive for marijuana on the same date." Section IV of the Written Notice indicated Grievant had an active Group II issued on 1/10/08.

Following the failure to resolve the matter at the third resolution step, this grievance was qualified for a hearing on August 3, 2009.[1] A hearing was held on September 14, 2009.

Grievant is an employee of Agency, Job Title: T.O. III.[2] Grievant, at the time the Group III Written Notice was issued, had one active Group II Written Notice for failure to report to work during an emergency event for snow when directed by supervisors that crew would be working. [3]

[1] Agency Exhibit B-5.
[2] Agency Exhibit B-3, Grievance Form A.
[3] Agency Exhibit A-8, Written Notice, Group II issued 1/10/2008.

On June 15, 2009, Grievant was sent by Agency for an alcohol test and a drug test.

BURDEN OF PROOF

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.[4]

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.[5]

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[4] Department of Employment Dispute Resolution, Grievance Procedure Manual, ("GPM") Section 5.8 and 9.
[5] Agency Exhibit E - Policy No. 1.60, effective April 16, 2008, "Standards of Conduct".

Section B. 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."

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.[6]

Active Written Notice

At the time of the issuance of the present Group III Written Notice Grievant had one active Group II Written Notice. Grievant was issued this Group II Written Notice with a two day suspension on December 30, 2007, for failure to report to work during an emergency event for snow when directed by supervisors that crew would be working.

A Group II Offense has an active life of three years from its date of issuance. Group II Offenses are offenses that include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. A second active Group II Notice normally should result in termination. A Group II Notice in addition to three active Group I Notices normally should result in termination.[7]

Evidence was presented concerning a Group I Written Notice issued Grievant on 2/10/06.[8] The active life of a Group I Notice is two years from the date of its issuance.[9] The Hearing Officer does not take into consideration the Group I Notice issued on 2/10/06 as it is not active.

SPP#4, VDOT Safety Policy and Procedure 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.[10] 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) and, it is set forth therein as follows:

> "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)." [11]

[6] Agency Exhibit E., Policy No. 1.60, effective April 16, 2008, "Standards of Conduct, Attachment A."
[7] Agency Exhibit E., § B.2.b. Standards of Conduct, Policy 1.60, Effective Date: April 16, 2008.
[8] Agency Exhibit A-17.
[9] Agency Exhibit E., § B.2.a. Standards of Conduct, Policy 1.60, Effective Date: April 16, 2008.
[10] Agency Exhibit D. – Policy No. 1.05- Alcohol and Other Drugs.
[11] Agency Exhibit D., "Workforce Safety and Health Division Drug and Alcohol Testing Policy" VDOT Safety Policy and Procedure (SPP#4), November 2008, Rev.5.

Agency instituted *SPP#4, Safety Policy and Procedure* for the detection and deterrence of drug and alcohol abuse and to maintain a safe, healthy, and efficient workplace. Employees are to ensure their ability to perform job duties is not impaired by alcohol or drugs, legal or illegal, while on the job.[12]

Agency has adopted policy *SPP#4 - Drug and Alcohol Testing Policy - Safety Policy and Procedure.* This policy imposed requirements upon both the employee and the Agency concerning testing for drugs and for blood alcohol levels and imposes minimal requirements as to the level of the blood alcohol. Included in the policy requirements set forth in *SPP#4 - Drug and Alcohol Testing Policy - Safety Policy and Procedure are* the following requirements:

§ 6.2.2.1 *Drug and Alcohol Testing Policy-SPP#4-Safety Policy and Procedure* provides:
"Testing of an individual's breath for the presence of alcohol using breath-testing devices shall only be performed by personnel trained to conduct such tests."

§ 6.2.2.2 *Drug and Alcohol Testing Policy-SPP#4-Safety Policy and Procedure* provides:
"Testing of an individual's collected urine specimen shall check for the presence of the following drugs, except as noted, by a certified laboratory..."

§ 6.2.2.3 *Drug and Alcohol Testing Policy-SPP#4-Safety Policy and Procedure* provides:
"Any laboratory performing specimen analysis for drugs shall be certified by the Department of Health and Human Services and shall meet the requirements set forth in 49 CFR Part 40.

All positive tests shall be forwarded to the MRO for final review. A positive test result does not automatically identify an employee/applicant as having use drugs in violation of DOT regulations or this policy. It is the responsibility of the medical review officer to review, interpret and verify a test as positive or declare the test as negative."

§ 6.2.2.5 *Drug and Alcohol Testing Policy-SPP#4-Safety Policy and Procedure* provides:
"A MRO shall review each report received from the laboratory to verify test results. The medical review officer shall meet the qualifications established in 49 CFR Part 40."

§ 6.2.4.1 *Drug and Alcohol Testing Policy-SPP#4-Safety Policy and Procedure* references employees having a blood alcohol level equal to or greater than .02.

Agency has not addressed these policy requirements and Agency has failed to establish these policy requirements were met by Agency in Grievant's blood alcohol testing and/or drug testing. The Agency has not submitted evidence of Grievant having a blood alcohol level equal to or greater than .02. It is alleged in the Written Notice that Grievant tested positive on 6/15/09

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[12] Agency Exhibit D - "Workforce Safety and Health Division Drug and Alcohol Testing Policy" (SPP#4) November 2008 Rev.5, Section 4.0 and 5.0.

for alcohol by a breathalyzer test and Grievant indicated a breathalyzer test in his Grievance Form A. No other evidence was introduced concerning blood alcohol testing. The Agency has not submitted evidence of any blood alcohol level. The evidence did not address or indicate if the testing of Grievant's breath for the presence of alcohol using breath-testing devices was performed by a person trained to conduct such tests.

As to Grievant's drug testing, no documentary evidence or testimony concerning the drug test itself was admitted. No evidence was presented as to the testing indicating whether a laboratory performed a specimen analysis for drugs or whether drug testing involved any specimen at all. There was no evidence of whether the laboratory, if a laboratory did perform an analysis for drugs, was certified. No evidence was presented whether Grievant's test was forwarded to an MRO for final review. Policy charges the Medical Review Officer with the duty to review, interpret and verify a test as positive or declare the test as negative.

Evidence and the burden

Section II. of the *Rules for Conducting Grievance Hearings* charges the Hearing Officer with conducting the hearing in an equitable manner. Section V. of the *Rules for Conducting Grievance Hearings* provides the Hearing Officer is to deliberate on the evidence admitted at the hearing in arriving at a decision.

"The responsibility of the hearing is to determine whether the agency has proven by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. To do this, the hearing officer reviews the facts de novo (afresh and independently, as if no determinations had yet been made) to determine (i) whether the employee engaged in the behavior described in the Written Notice; (ii) whether the behavior constituted misconduct, (iii) whether the agency's discipline was consistent with law (e.g. free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense) and, finally, (iv) whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances."[13]

In disciplinary actions, the agency must present its evidence first and must show by a preponderance of the evidence that the action was warranted and appropriate under the circumstances.[14]

In arriving at a decision the Hearing Officer takes into consideration only the evidence that was presented at hearing. Witness testimony and documents admitted were taken into consideration. The Hearing Officer makes no assumptions. As above discussed, policy mandated that certain standards, requirements, and procedures be met by Agency in alcohol and drug testing. Agency did not address these matters in their evidence. Agency has not established that alcohol and drug testing policy was followed and that the requirements imposed

[13] §VI.B. of the Rules for Conducting Grievance Hearings.
[14] § 5.7 of the Grievance Procedure Manual.

by policy were met.

Grievant did not present witnesses at hearing or testify at the hearing. Grievant only presented as evidence, one letter from a Certified Substance Abuse Counselor.

The burden of proof is not Grievant's. The burden of proof belongs to the Agency and burden of proof is a material consideration in this cause. Agency has failed to prove, by a preponderance of the evidence, that policy was properly followed. Agency has failed to prove, by a preponderance of the evidence, that the action taken in issuing Grievant a Group III Written Notice and termination was warranted and appropriate under the circumstance.

Agency has established Grievant had one active Group II at the date of the offense alleged in the Group III Written Notice. Under the *Standards of Conduct*, Written Notices which are active may be utilized in conjunction with other disciplinary actions as a basis for termination.[15] However, in light of the decision in this cause, termination on account of accumulated discipline is not warranted or appropriate.

DECISION

For the reasons stated herein, the Agency's issuance to the Grievant on 6/23/09 of a Group III Written Notice and termination is hereby ***RESCINDED.***

The Group III Written Notice issued to the Grievant on 6/23/09 shall be expunged from the Grievant's personnel file. The Grievant is reinstated to his former (or an objectively similar) position with full back pay and benefits. The award of back pay must be offset by any interim earnings, and by any unemployment compensation received.

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.

[15] §VI. B. 2, Rules for Conducting Grievance Hearings.

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.

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Lorin A. Costanzo, Hearing Officer

Commonwealth of Virginia
DEPARTMENT OF TRANSPORTATION

DECISION OF HEARING OFFICER

In the matter of: Case No: 9176

Hearing Date:	September 14, 2009
Decision Issued:	September 21, 2009
Reconsideration Request Received:	October 06, 2009
Response to Reconsideration Issued:	October 21, 2009

RECONSIDERATION DECISION

Agency seeks reconsideration of the decision based on evidence of incorrect legal conclusions. Agency's request for reconsideration was timely filed with the Hearing Officer on October 6, 2009, via fax.

Per the *Grievance Procedure Manual* § 7.2 a Hearing Officer is authorized to reconsider or reopen a hearing and, generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such request.

Agency's Request for Reconsideration contends that Grievant grieved that management did not properly follow policy and the facts supporting this statement were listed on the grievance form. Agency's Request further indicated, "The grievant raised three issues; 1) he did not believe his blood alcohol was measured; 2) he felt he should have been evaluated by a SAP; and 3) he felt he should not have been terminated as this was his first time testing positive."

Agency contends that the grievant never disputed the qualifications of the personnel who administered the breathalyzer, the certification of the laboratory where the tests were conducted, the review conducted by the MRO, or the results of the breathalyzer and urinalysis and these are the issues that were stated as the basis for the hearing decision. Agency also contends that these issues are outside of the scope of the grievance as the *Grievance Procedure Manual* §2.4 citing "Once the grievance is initiated, additional claims may not be added."

Grievant's *Grievance Form A.* stated, "I believe that I was wrongfully dismissed. Policy and procedures were not properly followed by management". The Agency further was aware that this was a formal disciplinary matter and, in fact, a Group III Written Notice was issued with termination.

§4.1(s) of the *Grievance Procedure Manual* indicates formal discipline (a Written Notice); and dismissal for unsatisfactory performance automatically qualify for a hearing.

§ 5.8 (2) of the *Grievance Procedure Manual* provides, "In disciplinary actions and dismissals for unsatisfactory performance, the agency must present its evidence first and must

show by a preponderance of the evidence that the action was warranted and appropriate under the circumstances.

Section II. of the *Rules for Conducting Grievance Hearings* charges the Hearing Officer with conducting the hearing in an equitable manner.

Section V. of the *Rules for Conducting Grievance Hearings* provides that after the hearing, the Hearing Officer should **deliberate on the evidence admitted at the hearing** and arrive at a decision in an expeditious. *(emphasis added)*

Section VI. B. of the *Rules for Conducting Grievance Hearings* states:

> "The responsibility of the hearing is to determine whether the agency has proven by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. To do this, the hearing officer reviews the facts de novo (afresh and independently, as if no determinations had yet been made) to determine (i) whether the employee engaged in the behavior described in the Written Notice; (ii) whether the behavior constituted misconduct, (iii) whether the agency's discipline was consistent with law (e.g. free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense) and, finally, (iv) whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances."

In arriving at the decision in this cause the Hearing Officer specifically took into consideration only the evidence admitted at the grievance hearing which was held on 9/14/09.

The Agency's Request for Reconsideration cites *Grievance Procedure Manual* § 5.7 (8). This section does address the Hearing Officer's authority to accept offers of proof of excluded evidence. It is noted first, that this authority is permissive and not mandatory in nature and, second, no evidence was excluded by the Hearing Officer either pre-hearing or at hearing.

At hearing, exhibits were admitted e*n masse* by agreement of the parties. It is only when the Agency attempted to introduce additional evidence after the hearing was concluded that the Hearing Officer refused to accept, admit, and consider the additional evidence of Agency.

All exhibits/documents offered by Agency during the hearing were admitted. No documents were excluded by the Hearing Officer at or prior to the hearing. However, on 9/15/09, the day after the hearing was concluded, an e-mail was sent to the Hearing Officer concerning Agency getting a copy of drug testing from VDOT Workforce Safety and Health. Additionally, 7 days after the hearing was concluded, on 9/21/09, it is indicated that there was an attempt to submit test results.

The Hearing Officer cannot accept evidence, in this cause, after the hearing has been concluded. There are basic due process concerns. This is not newly discovered evidence and basic fairness requires the decision be based on the testimony at hearing taken under oath and the documents and exhibits admitted into evidence at hearing.

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. The party must show that (1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has be exercised; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended. In the present case lab reports and related matters, including procedures and the results of the testing, were known by Agency prior to the hearing.

The Agency's Request for Reconsideration indicates that:

> "The Agency excluded the results as evidence when preparing for the hearing since the grievant did not contest or dispute the results. On September 21, 2009, Workforce Health and Safety attempted to submit these results, but the submission was denied."

In the present case, the Agency chose that they would not submit certain evidence that was in existence and known to the Agency prior to the hearing. The Agency acknowledged that the Agency excluded the results as evidence when preparing for the hearing.

SPP#4 (VDOT Safety Policy and Procedure, Workforce Safety and Health Division, Drug and Alcohol Testing Policy) was admitted into evidence and taken under consideration.

An Agency Memo dated July 1, 2009, re: Grievance Meeting Minutes 6/30/09 was admitted as Agency Exhibit B-7 and taken under consideration. Neither the party who wrote or received the memo testified nor was there any testimony concerning the meeting or the memorandum. The memo indicates under "Reasons Employee Gave For Requesting Relief:"
that Grievant does not believe policy was followed in the events leading to the Group III. Grievant is reported in the memo to have stated that this was his first offense, his first positive test in 10 years, he received a breathalyzer test, by policy he should have received a blood test, and he was not retested at any point. The memorandum indicated that when asked if he contested the results, Grievant indicated, on July 1, 2009, that he didn't.

There was a document marked "(continued)" and Follow Up (7/06/09)" which was not signed and did not state who it was from or to but was marked as Page 3 (Agency Exhibit B-9) The form typed on it "Was Policy Followed?" And under this question it was noted that Employee tested positive for alcohol by breathalyzer test. This page also cited that Employees having a blood alcohol level equal to or greater than .02 shall be issued a Group III Notice ... . Nowhere does this exhibit, the testimony, or other evidence cite Grievant's blood alcohol level.

Grievant's July 10, 2009, written statement indicated he tested positive for alcohol with a breathalyzer and marijuana with a urine test. He refers to when the lab informed he of the positive marijuana result he requested testing of his B. sample. Again no testimony as to level or procedure was received.

Agency admitted Agency Exhibit C-1 consisting of one page of printed material of what

appears to be a copy of an internet article entitled *HowStuff Works "How Breathalyzers Work*". This page indicated there were 7 topics within the Article and only 1 of the 7 was admitted, "Principle of Testing". It was not clear on the one page if the full topic was presented on that one page or not. Agency Exhibit C-1 did indicate in part, "Because the alcohol concentration in the breath is related to that in the blood, you can figure the BAC by measuring alcohol on the breath." and "The concentration of the alcohol in the alveolar air is related to the concentration of the alcohol in the blood." The article noted, "There are several different devices used for measuring BAC." The exhibit also referenced Home Breathalyzers on sale.

This case was determined upon consideration of the evidence presented at hearing and upon consideration of the burden of proof. The Hearing Officer did not assume facts. The Hearing Officer is charged with determining weight to be afforded evidence. No assumptions were made as to testing results and/or testing process or procedures. No assumption was made as to having a blood alcohol level equal to or greater than .02 (discussed above and mandated in SPP#4 at 6.2.4.1 which was admitted as Agency Exhibit 8A). No assumption was made as to the procedures, testers, or testing administered. No assumptions were made as to documents that were not admitted or matters that were not testified to.

Agency did not meet its burden. This proceeding is a formal disciplinary action involving a Written Notice. Agency, therefore, is required to prove, by a preponderance of the evidence, that the action taken was warranted and appropriate under the circumstances if their action is to be upheld.

The Agency's request for reconsideration does not identify any incorrect legal conclusions or any newly discovered evidence. For the reasons stated above, the request for reconsideration is ***denied***.

APPEAL RIGHTS

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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