

Issues: Group II Written Notice (failure to follow instructions), Harassment, Retaliation, Misapplication of Policy; Hearing Date: 09/29/10; Decision Issued: 10/18/10; Agency: DOC; AHO: Lorin A. Costanzo, Esq.; Case No. 9409; Outcome: No Relief – Agency Upheld.

**Commonwealth of Virginia**  
**Department of Corrections**

**DECISION OF HEARING OFFICER**

**In the matter of: Case No: 9409**

Hearing Date: September 29, 2010

Decision Issued: October 18, 2010

**PROCEDURAL HISTORY**

On April 5, 2010, Grievant was issued a Group II Written Notice for "Failure to follow instructions and/or policy". The Nature of Offense and Evidence indicate: "Violation of OP 135.1 XI. B.1. Failure to follow supervisor's orders ...".

On May 5, 2010, Grievant timely filed a grievance to challenge the Group II Written Notice. The grievance proceeded through the resolution steps. On July 7, 2010, when the parties failed to resolve the grievance, the agency head qualified the grievance for a hearing.<sup>1</sup> The Department of Employment Dispute Resolution assigned this matter to the Hearing Officer effective September 13, 2010. Hearing was originally scheduled for 9/28/10 but was continued, with the agreement of both parties, to 9/29/10. The grievance hearing was conducted on 9/29/10 beginning at 9:00 A.M. and Grievant was present at hearing.

**APPEARANCES**

Grievant  
Agency Presenter  
Agency Party Designee (who was also a witness)  
HRO  
Major

**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?

**BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its

---

<sup>1</sup> Agency Exhibit Tab1: Grievance Form A.

disciplinary action against the Grievant was warranted and appropriate under the circumstances.<sup>2</sup> 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.<sup>3</sup>

## **FINDINGS OF FACT**

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

Grievant is employed by Agency as an Administrative & Program Specialist II and is an Offices Services Assistant to Major. Major supervised Grievant. Major also supervised security officers at facility including Captain. Both Grievant and Captain worked at the same work facility and had work duties involving contact with the same Agency employees including Major and each other.

Grievant and Captain were involved, off the job, in a personal/romantic type relationship which ended.

At work, over at least a six month period, on numerous occasions, Grievant and Captain exhibited their emotions and frustrations about incidents occurring between themselves outside of work. On numerous occasions each raised and discussed with Agency personnel at work their relationship problems. Both often became upset or angry with the other and exhibited this at work.

Major was concerned with the displays of emotions exhibited by Grievant at work and the effect this was having on Agency. She was concerned with the amount of time and effort being expended with Grievant (and with Captain), and with the effect matters were having on other employees. The frequency of Grievant's outbursts and/or crying increased over time.

Grievant and Captain were very upset and angry over their relationship breakup and frequently exhibited this at work to Major and other Agency employees. Multiple events occurred at the job site which gave concern to Agency and led to formal and informal meetings and counseling with Grievant and Captain. Major had strong concerns over the conflicts and actions related to their personal relationship being exhibited by each at work. Each would regularly address their conflicts with the other to Major. Major testified that she felt like a referee between the parties.

In the end of October first of November, 2009 HRO began hearing from Major that the relation was ending and she was having to deal with matters going on at work. At that time Major indicated to HRO that both Grievant and Captain were very upset and a mess. The initial response was to try to help them get through it. However, at end of November or early December Major called HRO indicating continuing problems at work with Grievant crying and

---

<sup>2</sup> Department of Employment Dispute Resolution, Grievance Procedure Manual, ("GPM") Section 5.8.

<sup>3</sup> Department of Employment Dispute Resolution, Grievance Procedure Manual, ("GPM") Section 9.

Captain being angry. Major felt matters were getting worse at work and she could not handle matters. HRO suggested setting a meeting up with Warden.

In November 2009 Grievant and Captain were each instructed by Major not to bring personal problems to work. Each instructed to act in a professional manner at work and to refrain from allowing their personal matters affecting their work and the work environment.

On December 4, 2009 Grievant, Captain, HRO, and Warden met and discussed Grievant's and Captain's outside of work relationship being brought into the workplace with emotional displays and with frequent discussions with other employees. Warden was also concerned with the emotions that were being regularly displayed at work and the effect this was having on Agency. Warden was concerned about the constant talking about matters with staff that was going on.

At the 12/4/09 meeting both Grievant and Captain stated they did not want any contact from the other outside of work and each said that the other was constantly calling the other. Warden instructed Grievant and Captain that they were only to interact at work if either had something to do professionally. Warden instructed each that bringing their personal matters into work needed to stop and each both needed to act professionally while at work.<sup>4</sup>

Grievant and Captain stated at the December 4, 2009 meeting that each would abide by the other's wishes to be left alone and each believed they could conduct themselves in a professional manner while at work.<sup>5</sup> However, matters again flared up at work. The parties made accusations at work concerning the other, become angry and upset at work, and continued to frequently discuss their personal problem with others at work.

In February of 2010 Grievant wanted to send a no trespass notice to Captain and told management of this. In mid February a Hotline complaint about Grievant's use of her computer was made. A few days later a Hotline complaint about Captain being in uniform in a photograph on Facebook was made. Agency saw matters worsening and Agency called Richmond to get assistance in handling the situation.

On February 22, 2010 a meeting was held with Grievant and the Employee Relations Manager and EEO Manager who both came from Richmond at the request of Warden. At the 2/22/10 meeting they listened to Grievant and her version of events. Grievant was told what happened outside of work was her business, but when she came to work she had to conduct herself professionally. Grievant was told that the emotional outbursts and talking to other employees had to stop. She was told not to discuss events with her co-workers and leave personal matters outside the work place. She was instructed to do what was necessary to not make the situation worse.<sup>6</sup> Captain also met with these individuals and was told the same things.

HRO testified he was present at the 2/22/10 meetings and they did not feel there was more harassment from one side or the other. Both had claimed the other had given dirty looks.

---

<sup>4</sup> A. Ex. Tab 3 & 4.

<sup>5</sup> A. Ex. Tab 4.

<sup>6</sup> A. Ex. Tab 4.

It was felt their actual conflict was outside of work but the problem was Grievant and Captain continued their emotions, feelings, and actions in different ways when they came to work. HRO indicated the Employee Relations Manager and EEO Manager did not express concern of any work place harassment because nothing was being done at work to any degree but they definitely needed to stop acting the way they were acting.<sup>7</sup>

Before the 2/22/10 meeting an engagement ring issue arose. The issue was that Grievant had the engagement ring and Captain wanted it back. An issue as to a TV also existed. Captain had possession of the TV and Grievant wanted it back. Agency indicated they did not have jurisdiction over this matter and each party was free to take any legal steps thought necessary. However, Agency wanted these matters resolved outside the work environment.

At the 2/22/10 meeting Grievant was asked about the incident with the stuffed bears. She was asked why she felt she needed to have them in her office, and wasn't this just exacerbating the situation at work? Just a few days after the 2/22/10 which discussed the effect the stuffed bears was having on the other party and the need to be professional, Grievant made the decision to begin wearing her engagement ring at work. Grievant had been told management did not have the right to forbid her from wearing the ring at work. Management was concerned, not with her right to wear the engagement ring, but with the effect her wearing it would foreseeably have on Captain. Matters at work continued to get worse from management's perspective.

In March of 2010 Grievant was involved at the workplace with an Employee Fund Project involving candy grams. Captain filled out a form to sent Grievant a candy gram. When she heard she was going to receive a candy gram Grievant became very angry, blew up in presence of several other employees, cursed, and uttering profanities. A few days later Grievant told HRO she didn't feel safe and that she could no longer work in the same place as Captain. On the next business day Captain was told to report for a due process hearing and he has not worked at facility since that day.

HRO gave Grievant verbal notification of an offense, and an explanation of the agency's evidence in support of the charge. Also, HRO sent an e-mail to Grievant. Grievant met with Warden and Major on 3/19/10 and was given a reasonable opportunity to respond and present mitigating factors or denial of the charge. On 4/5/10 a Written Notice was issued Grievant.

### **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 legislation includes provisions for a grievance procedure and 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.

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

---

<sup>7</sup> Testimony.

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."

The Department of Corrections ("DOC"), pursuant to Va. Code §53.1-10, has promulgated its own *Standards of Conduct* patterned on the state Standards, but tailored to the unique needs of the Department.

The *Standards of Conduct* (Policy Number 135.1 Effective Date: April 15, 2008) divide unacceptable behavior into three groups, according to the severity of the behavior, with Group I being the least severe. Group I offenses include types of behavior less severe in nature, but which require correction in the interest of maintaining a productive and well-managed work force. Group II offenses include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally should warrant removal. Group III offenses include acts and behaviors of such a serious nature that a first occurrence normally should warrant removal.<sup>8</sup>

Section IV. (A.) of the *Standards of Conduct* states, "The standards of conduct outlined in this procedure are designed to protect the well-being and rights of all employees, to assure safe, efficient government operations, and to assure compliance with public law."

Section IV. (C.) of the *Standards of Conduct* states, "The list of offenses in this procedure is illustrative, not all-inclusive. An action or event occurring either during or outside of work hours that, in the judgment of the agency head, undermines the effectiveness of the employee or of the agency may be considered a violation of these *Standards of Conduct* and may result in disciplinary action consistent with the provisions of this procedure based on the severity of the offense."

Section XI. of the *Standards of Conduct* states (in pertinent part):

- A. These include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally should warrant removal.
- B. Group II offenses include, but are not limited to:
  - 1. failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy;
- C. Procedure for Issuing a Group II Notice.
  - 1. When issuing an employee a *Written Notice* Form for a *Group II* offense, management should issue such notice as soon as practical. Discipline shall normally take the form of the notice and up to 10 workdays maximum suspension without pay (maximum of 80 hours for non-exempt employees).<sup>9</sup>

---

<sup>8</sup> A. Ex. Tab 6. DOC Operating Procedure, "Standards of Conduct".

<sup>9</sup> A. Ex. Tab 6. DOC Operating Procedure, "Standards of Conduct".

### *A. Grievant*

Grievant is charged with a Group II Offense, *Failure to follow supervisor's orders* in violation of DOC Operating Procedure 135.1 XI. B.1. The offense dates extend from 2009 to 2010. The supervisor's orders alleged not followed were the orders to Grievant, issued on multiple occasions by management, not to bring her out of work disputes with Captain or matters related to her break up with him into the work place.

Both Grievant and Captain had strong feelings and emotions concerning the break up and the other party. Both frequently brought to work their out of work relationship issues. Both exhibited at work frequent displays of emotions. Both had frequently discussed with other employees at work their outside of work relationship issues.

Major supervised Grievant who assisted her in her office and Major, as Chief of Security, supervised Captain. Grievant and Captain had work duties that required each to be in contact with the other and in contact with the same Agency employees.

Out of work personal issues, feelings, emotions, and conflicts were being brought to the workplace with such frequency that they were disrupting the work of Agency. Management was expending more and more time and effort in addressing Grievant's personal issues and conflicts. The evidence indicates management was concerned the two parties were creating issues at work because of their outside of work personal relationship. Captain would often become angry and Grievant would often become emotional due to out of work relationship problems. More and more work time was expended by Grievant and Captain discussing their personal problems with other employees at work. More and more time was devoted by management in trying to resolve these matters.

Major indicated that Captain was complaining that after the breakup Grievant would come into his office and sit down when he was talking to the personnel he was supervising. She would listen to what he was saying and talk to everyone there. Grievant told Major she was trying to break the ice with everyone. Captain also complained she was making faces at him and then Grievant came in saying that he was making faces at her. Major was concerned things were getting out of hand.

Major was concerned that Grievant would often cry at work and would often be discussing incidents that arose outside of the work environment which had nothing to do with work. Management addressed these concerns with Grievant on numerous occasions in informal and formal counseling.

In the fall of 2009 Major counseled Grievant on several occasions. Major instructed Grievant on a number of occasions that she needed to handle these out of work relationship conflicts outside of the work environment. She was instructed to leave any negative reactions and negative comments outside of work. However, Grievant continued to talk about personal matters occurring outside of work during work hours. Matters that occurred outside of work continued to affect Grievant's behavior at work and she continued exhibiting crying, emotional outbursts, and other outbursts at work.

In Grievant's 11/6/09 Employee Work Profile ("EWP") for the period of November 1, 2008 - October 31, 2009 Major noted, "[Grievant] has received a counseling this review for an inappropriate exchange between her and another employee."<sup>10</sup> Major had continuing concerns and repeatedly instructed Grievant to act professionally while at work. She repeatedly told Grievant to leave personal relationship conflicts at home so they would not have a negative effect on her or on other employees at work. However, when problems continued in the work place Major requested a formal meeting with Warden be set to address the problems.

On 12/04/09 a meeting was held with Warden, Major, HRO, Grievant, and Captain. Warden was concerned that multiple accusations were going back and forth at work between Grievant and Captain. There were accusations of not leaving the other alone, conflicts concerning an engagement ring, and conflicts over a TV set. Again, Grievant (and Captain) were instructed at to act professionally at work and leave matters outside of work that were not related to work.<sup>11</sup>

Again, matters at work did not improve. Grievant filed an Incident Report of 2/10/10 concerning sending Captain a notification from her not to trespass/bother/harass etc. On 2/18/10 Grievant sent a letter to Captain of her intent to issue a complaint of workplace harassment if his actions continue. In this letter she notes that, "It has been brought to my attention that you believe that I have mailed photo of you to [Warden]. Let me assure you that I would not cause inconvenience to myself to do such a thing ...". She also indicated, "I have reported to my supervisor, the threatening glare you delivered to me ...".<sup>12</sup>

As a result of the continued issues in the workplace a meeting was held on 2/22/10 with Employee Relations Manager and EEO Manager who were called in from Richmond. They came at the request of Warden who had expressed frustration at getting the Grievant and Captain to stop their emotional behavior against each other at work. Grievant and Captain had separate meetings this date with the Employee Relations Manager and EEO Manager. Both were again told to maintain professionalism at all times while at work, keep all contact at a minimum, and that contact must be for a business purpose only.<sup>13</sup>

Soon after this meeting Major noted that Grievant resumed wearing at work, after not wearing it for months, an engagement ring that was the subject of much conflict between Grievant and Captain. Both Major and Warden had discussed with Grievant that that they did not have the right to forbid her from wearing the ring but expressed the concern that wearing the ring would be interpreted by Captain as a provocation and would further inflame the situation at work.

Testimony indicated that Grievant decided to and did wear the ring at work and that she discussed matters concerning the ring also at work. Lieutenant told Major that Grievant was at work wearing the engagement ring, flashing it, and was trying to sell it. She was trying to sell it

---

<sup>10</sup> A. Ex. Tab 5.

<sup>11</sup> A. Ex. Tab 4.

<sup>12</sup> A. Ex. Tab 4.

<sup>13</sup> A. Ex. Tab 4.

at the Agency facility during work hours and made statements about the ring including that he said it was worth \$3000.00 and I will take \$2500.00 for it. She also asked, " do you know anyone who wants to buy one".

When later Major saw the ring and commented that she was wearing it Grievant became angry. Grievant indicated to Major, "F--- [Captain] this is not about him this is about me this is my g-- d-- ring and I will wear it if I want to. Its mine and am sick about hearing about him, I am sick about worrying about his feelings". Major confirm to Grievant she was not telling her not to wear the ring.

Grievant filed an incident report of an incident of 3/10/10 concerning a fund raising event in which a candy gram label was addressed to her from Captain.<sup>14</sup> Lieutenant filed an incident report noting that on learning of the candy gram label Grievant became very upset and angry and began using profanity in front of others.<sup>15</sup>

A day or so after the candy gram issue, Captain accused Grievant of harassing him.<sup>16</sup>

Management observed and was concerned that matters did not appear to be improving in the work place even after their efforts to address matters. Grievant's personal out of work conflicts continued to being brought to the workplace and continued to be affecting Agency.

Grievant did not follow the instructions of Agency to leave personal matters regarding her out of work relationship outside the work environment. Grievant had numerous discussions with Agency of their concerns. Management was concerned that after an extended period of counseling and warnings the behavior continued. She was still having outbursts at work and using work time to discuss personal out of work problems with other employees. Her actions at work negatively impacted the work and resources of the Agency. Agency resources were being utilized to address out of work problems and issues she brought into the workplace.

The evidence indicates that Grievant failed to follow supervisor's instructions. She did bring out of work relationship matters to the job site and did not act in a professional manner. She did exhibit profanity and did show, discuss, and attempt to sell her engagement ring during work hours, at work. She did allow personal feelings to affect her and those around her with her outbursts in the presence of other employees.

Furthermore, there is no evidence that management dealt differently with Captain in this situation than with Grievant. Testimony indicated that Captain was called in for a disciplinary action and that Captain does not work at the same facility as Grievant.

## ***B. Harassment, Retaliation, Misapplication:***

### *1. Harassment:*

---

<sup>14</sup> A. Ex. Tab 4.

<sup>15</sup> A. Ex. Tab 4.

<sup>16</sup> A. Ex. Tab 2.

Policy 2.30, *Workplace Harassment* provides,

It is the policy of the Commonwealth to provide its employees with a workplace free from harassment and/or retaliation against employees who either complain of harassment or aid in the investigation of such a complaint.

Additionally this Policy provides:

A. **Prohibited Conduct**

1. **Harassment**

The Commonwealth strictly forbids harassment of any employee, applicant for employment, vendor, contractor or volunteer on the basis of an individual's race, sex, color, national origin, religion, age, veteran status, political affiliation or disability.

Employees and applicants for employment seeking to remedy workplace harassment may file a complaint with the agency human resource director, the agency head, their supervisor(s), or any individual(s) designated by the agency to receive such reports. **Under no circumstances shall the individual alleging harassment be required to file a complaint with the alleged harasser.**<sup>17</sup>

Furthermore, Policy 2.30 defines:

**Sexual Harassment**

Any unwelcome sexual advance, request for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-workers or non-employee (third party).

- **Quid pro quo** - A form of sexual harassment when a manager/supervisor or a person of authority gives or withholds a work-related benefit in exchange for sexual favors. Typically, the harasser requests sexual favors from the victim, either rewarding or punishing the victim in some way.
- **Hostile environment** - A form of sexual harassment when a victim is subject to unwelcome and severe or pervasive repeated sexual comments, innuendoes, touching, or other conduct of a sexual nature which creates an intimidating or offensive place for employees to work.

**Workplace Harassment**

Any unwelcome, verbal, written or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of race, sex, color, national origin, religion, age, veteran status, political affiliation, or disability, that: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects an employee's employment opportunity or compensation.

Grievant contends that Policy 2.30, *Workplace Harassment*, was violated in that Section B of policy 2.30 specifically provides that, "Under no circumstances shall the individual alleging harassment be required to file a complaint with the alleged harasser." She contends by putting her in a position to be a part of a meeting with Captain and placing her in the same room with him left her feeling she was forced to confront her harasser and this was a violation of Policy 2.30.

The evidence does not indicate that Grievant had filed a complaint for Workplace

---

<sup>17</sup> Workplace Harassment, Policy 2.30, effective date 5/1/02, Revised 5/16/06, Revised: 2/5/10.

Harassment prior to the 12/04/09 meeting or that she was required to file any such complaint with Captain. As stated in Policy 2.30 the Commonwealth strictly forbids harassment of an employee on the basis of an individual's race, sex, color, national origin, religion, age, veteran status, political affiliation or disability. When questioned as to the basis alleged she indicated it was "sex".

Applying the definitions above set forth for sexual harassment it does not appear, based upon the evidence presented at hearing, that there is sufficient evidence to find there has been sexual harassment, quid pro quo or hostile environment.

Applying the definitions above set forth for workplace harassment it does not appear, based upon the evidence presented at hearing, that there is sufficient evidence to find workplace harassment.

The evidence indicates that Grievant stated at the EEO Meeting of 2/22/10 that she felt safe at work but indicated she did not feel safe in her own home. Warden indicated in his Second Step Response that at no time after 2/22/10 was Grievant subject to a meeting with Captain. He also stated that she did not have to work with Captain since 3/12/10 when she told HRO that she was afraid and would not ever work with Captain.<sup>18</sup>

Based upon the evidence presented at hearing, Harassment is not found in this cause.

## 2. Retaliation

Grievant contends that the Group II Written Notice itself was a retaliation. However, Grievant could not indicate, when asked at hearing, what it was in retaliation for. She does contend, in her Form A., that the disciplinary action is in retaliation to her report of harassment by Captain. However, there is insufficient evidence presented at hearing to find retaliation.

Based upon the evidence presented at hearing retaliation is not found.

## 3. Misapplication contended

Section III. Of the D.O.C. Operating Procedure 135.1, *Standards of Conduct* provides

Due Process - Prior to any pre-disciplinary or disciplinary actions, employees must be given oral or written notification of an offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond. DOC must provide a clear and descriptive explanation of the offense in a manner that ensures that the employee understands the facts presented and will be able to present mitigating factors or denial of the charge.

The evidence indicates that Grievant was given notification of an offence, an explanation of the evidence in support of the charge, and a reasonable opportunity to respond. Prior to the

---

<sup>18</sup> A. Ex. Tab 3 & 4.

issuance of the Written Notice, HRO and Warden gave notification of the offense and an explanation of the evidence. The Written Notice was issued on April 5, 2010 and the record indicates that she discussed matters on or before March 16, 2010 with HRO. On March 16, 2010 Grievant sent an E-mail to HRO requesting additional information concerning what was alleged as her offense. On 3/19/10 Grievant met with Warden and Major. Testimony of Warden indicated he met with Grievant prior to the issuance of her Group II disciplinary action. Warden testified Grievant was given notification of an offense and an explanation of the agency's evidence in support of the charge. Management met with Grievant prior to issuing the Written Notice and she was given a reasonable opportunity to respond, present her side, and present any mitigating factors or denial.<sup>19</sup>

Based upon the evidence presented at hearing misapplication of policy is not found. Grievant was given oral or written notification of an offense, an explanation of the evidence in support of the charge, and a reasonable opportunity to respond to the charges and present mitigating factors or denial of the charges.

### ***C. Conclusion:***

Under the *Rules for Conducting Grievance Hearings*, Section VI, B, 1, 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.

The Agency's discipline is not found to exceed the limits of reasonableness. It is further noted that mitigating circumstances were taken into consideration by Agency. The Section XI C.1. of the *Standards of Conduct* provide that, "Discipline shall normally take the form of the notice and up to 10 workdays maximum suspension without pay..." In this cause Agency did not impose any suspension.

The Agency has proven by a preponderance of the evidence that (i) Grievant engaged in the behavior described in the Written Notice, (ii) the behavior constituted misconduct, and (iii) the Agency's discipline was consistent with law and policy. The disciplinary action of issuing a Group II Written Notice was warranted and appropriate under the circumstances.

## **DECISION**

For the reasons stated above, the Agency's issuance of a Group II Written Notice to Grievant is hereby ***UPHELD***.

## **APPEAL RIGHTS**

---

<sup>19</sup> Testimony & Exhibit No. 7.

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, 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 Office