Issues: Misapplication of Telework Policy and Discrimination (disability); Hearing Date: 02/07/11; Decision Issued: 02/14/11; Agency: VEC; AHO: Cecil H. Creasey, Jr., Esq.; Case No. 9483; Outcome: No Relief – Agency Upheld; **Administrative Review: AHO Reconsideration Request received 03/01/11; Reconsideration Decision issued 03/15/11; Outcome: Original decision affirmed.**

COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No. 9483

Hearing Date: February 7 & 9, 2011
Decision Issued: February 14, 2011

PROCEDURAL HISTORY

On April 12, 2010, the grievant filed a grievance seeking reasonable accommodation, alleging violation of State policy and alleging discrimination under the Americans with Disabilities Act ("ADA"). The outcome of the Third Resolution Step was not satisfactory to the Grievant and she requested a hearing. On October 12, 2011, the EDR Director issued Ruling Number 2011-2691, denying qualification for hearing. The grievant appealed to Circuit Court, which granted the grievant a hearing. On January 10, 2011, EDR assigned this grievance to the Hearing Officer. A pre-hearing conference was held by telephone on January 19, 2011. The hearing ultimately was scheduled at the first date available between the parties and the hearing officer, Monday, February 7, 2011, at the agency's central office. The hearing was not completed in one day and the conclusion of the hearing was held on a second day, February 9, 2011.

When she filed the grievance, the grievant was a hearing officer with the Virginia Employment Commission ("agency"). The grievant's April 12, 2010 grievance challenges the agency's denial of her request to telework as a hearing officer. The agency denied this request under its policy because the grievant "cannot currently meet job [requirements]; must have six months sustained satisfactory performance to be considered for telework." However, the grievant requested telework as an accommodation to her medical condition, which has caused her, for example, fatigue and nausea. She states that working from home will eliminate certain causes of stress and nausea and will better allow her to cope with the fatigue. The grievant states that she may be able to meet the job requirements if she is permitted to telework.

During the progress of her grievance, the agency responded by offering the grievant a transfer to a different position in an attempt to accommodate her. The grievant accepted a transfer to a different position within the agency, in customer service, effective July 10, 2010. The new job has the same pay band with the same benefits, providing no reduction in salary.[1]

[1] The grievant asserted during the grievance hearing that she has had to convert her employment to "Q" status (reduced hours and salary) because she could not work the 40-hour schedule of the customer service department. However, this grievance is necessarily limited to the issue of her request for telework in her former position as a hearing officer.

This grievance addresses the denial of the accommodation of telework as it relates to the grievant's former position as a hearing officer. The grievant asserts that her transfer to the customer service job was not voluntary, and she seeks return to her position as a hearing officer with the accommodation of telework.

Both the grievant and the agency submitted documents for exhibits that were admitted into the grievance record, and they will be referred to as Agency's and Grievant's Exhibits, respectively. Additionally, both parties submitted written briefs in support of their respective positions. The hearing officer has carefully considered all evidence presented.

APPEARANCES

Grievant
Grievant's Counsel
Representative/Advocate for Agency
Witnesses

ISSUES

1. Whether Grievant is a qualified individual with a disability entitled to reasonable accommodation?
2. Whether the Agency complied with policy by refusing telework as a reasonable accomodation in Grievant's former position?
3. Whether the Grievant's transfer to another position was voluntary?

The Grievant requests a finding that her transfer was involuntary, reinstatement as an agency hearing officer, with the accommodation of telework.

BURDEN OF PROOF

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. In all other actions, such as claims of retaliation and discrimination, the employee must present his evidence first and must prove his claim by a preponderance of the evidence. *In this policy discrimination grievance, the burden of proof is on the Grievant.* Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

Following a period of short-term disability caused by severe neck pain, shoulder pain, hand pain, stress, and nausea, the grievant returned to her work as a hearing officer in December 2009. The grievant has a probable diagnosis of multiple sclerosis. The agency developed a transitional work plan that lasted 90 days. Following her return to work, the grievant expressed

concerns of her medical conditions negatively affecting her ability to meet the performance requirements of a hearing officer. The grievant requested telework, on the basis that she could manage her stress and nausea effectively at home and reach her production requirements. As accommodations, the agency provided an ergonomic work station, voice recognition software to minimize data entry, private office instead of a cubicle, and some flexibility of her work hours. Despite these accommodations, the grievant continued performance short of the agency's production requirements.

In response to the grievant's request for telework as an accommodation for her conditions, the agency denied the request. The position of hearing officer qualifies for telework under the agency's policies, but the agency denied the telework to the grievant because of its policy performance prerequisites. However, as the EDR Director questioned in her qualification ruling, there may have been merit to the grievant's request for telework if the telework would accommodate her disability and cure her performance deficiencies. *See* EDR Ruling Number 2011-2691 (October 12, 2010). No evidence presented at the grievance hearing would negate the EDR Director's analysis.

The grievant testified extensively on her situation, and the agency presented multiple witnesses regarding the grievant's work performance, the agency's provision of various accommodations, and the grievant's ultimate lateral transfer to another position out of the adjudication section of the agency.

The grievant was not meeting the agency's production expectation as a hearing officer. She struggled with the voice recognition software provided to her as an accomodation. As early as April 2010, the grievant requested the agency's consideration of a job transfer. *See* Agency's Exhibit 5. The grievant followed up multiple times in an effort to secure a job transfer away from the adjudication section. In an email dated April 14, 2010, to the agency's human resource manager, the grievant stated, "I am asking you to help me find another position as soon as possible. I am willing to take a cut in pay if necessary. I need to be out of [my supervisor's] unit immediately." Agency's Exhibit 5. In another email, dated June 7, 2010, to the agency's equal opportunity specialist, the grievant stated, "I am requesting as an accommodation for my medical problems to be moved to a different position that is not in the adjudication center. . . I believe I would be successful in an analyst position such as a customer service analyst . . ." Agency Exhibit 5.

The agency identified an available job in the customer service department, a position considered a lateral transfer within the same pay band, and it was offered to the grievant on June 25, 2010. The grievant investigated the job duties and elected to accept the transfer, effective July 10, 2010, with the same salary and similar prospects for potential advancement. The agency did not condition the transfer or require the grievant to drop her grievance for the telework accommodation pertaining to her former job as a hearing officer, and she did not do so. EDR ruled that the grievance did not qualify for a hearing because the grievant voluntarily transferred to the other position. On appeal, the circuit court overruled EDR and ordered that the grievant was entitled to a grievance hearing. The circuit court provided no other findings or conclusions regarding the facts or applicable law of the grievance.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

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

In this case, the grievant has asserted a claim of discrimination based on disability and the agency's failure to provide an accommodation thereto.

The grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions." Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment. *See, e.g., Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007). The allegations in this case are assumed to present a sufficient question of an adverse employment action to pass this threshold question.[2]

[2] This result is consistent with many federal court ADA decisions, which do not appear even to require that an employee prove an adverse employment action in a failure to accommodate case. The employer's act of failing to satisfy its duty to provide a reasonable accommodation is actionable discrimination and in effect constitutes an adverse employment action in and of itself. *See, e.g., Turner v. Hershey Chocolate USA*, 440 F.3d 604, 611 n.4 (3d Cir. 2006); *Williams v. Philadelphia Hous. Auth. Police Dep't*, 380 F.3d 751, 771 (3d Cir. 2004); *Harvey v. Wal-Mart La. L.L.C.*, No. 3:06-cv-02389, 2009 U.S. Dist. LEXIS 90745, at *31 (W.D. La. Sept. 30, 2009); *Wade v. DaimlerChrysler Corp.*, 418 F. Supp 2d 1045, 1051 (E.D. Wis. 2006); *Nawrot v. CPC Int'l*, 259 F. Supp. 2d 716, 723-24 (N.D. Ill. 2003).

DHRM Policy 2.05 "[p]rovides that all aspects of human resource management be conducted without regard to race, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation, or *disability* . . . ." (emphasis added). Under Policy 2.05, "'disability' is defined in accordance with the 'Americans with Disabilities Act,'" the relevant law governing disability accommodations.[3] Like Policy 2.05, the ADA prohibits employers from discriminating against a qualified individual with a disability based on the individual's disability. A qualified individual is defined as a person with a disability, who, with or without "reasonable accommodation," can perform the essential functions of the job. 42 U.S.C. § 12111(8). An individual is "disabled" if he "(A) [has] a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) [has] a record of such an impairment; or (C) [has been] regarded as having such an impairment." 42 U.S.C. § 12102(1). The "essential functions" are the "fundamental job duties of the employment position the individual with a disability holds or desires."[4]

The focus of this case, however, turns on whether the claimant's ultimate transfer to another position renders moot further assessment of accommodation of the hearing officer position. The grievant asserts the transfer was involuntary—a result of the agency's failure to provide reasonable accommodations in her hearing officer position. The Hearing Officer will assume for the sake of argument that the grievant is a qualified individual with a disability because making such assumption will not affect the outcome of this case.

Generally speaking, an agency should consider accommodation in an employee's current position before offering reassignment to a different position. Indeed, according to guidance provided by the EEOC, reassignment is a last resort and only after the agency has determined "1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship."[5] However, the EEOC guidance also indicates "if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee."[6]

Although the grievant contends the transfer essentially was involuntary, there is no evidence that would indicate that the grievant's agreement to the transfer was involuntarily given. Further, the evidence shows that the grievant actually suggested and requested a transfer

---

[3] 42 U.S.C. §§12101 *et seq.* In 2008, Congress passed the Americans with Disabilities Act Amendments Act of 2009 (ADAAA). This Act, which became effective on January 1, 2009, was intended to expand the number of individuals covered by the ADA. In particular, the ADAAA expressly states that the current EEOC ADA regulations "express [ ] too high a standard" by defining "substantially limits" as "significantly restricted."

[4] Courts have considered a number of factors in determining what functions are essential. These factors include, but are not limited to, the employer's judgment regarding which functions are essential, the number of employees available among whom the performance of the functions can be distributed, the amount of time spent performing the functions, the consequences of not performing the function, and the actual work experience of past or current incumbents in the same or similar jobs. *See* 42 U.S.C. 12111(8); 29 C.F.R. 1630.2(n); *Hill v. Harper*, 6 F. Supp.2d 540, 543 (E.D. Va. 1998).

[5] EEOC Enforcement Guidance, Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Oct. 17, 2002, *available at* http://www.eeoc.gov/policy/docs/accommodation.html.

[6] *Id.*

away from her hearing officer position and that the agency considered the transfer further movement along the continuum of accommodations already made.[7] Therefore, the grievant's acceptance of the reassignment effectively resolved the grievant's telework request as it pertained to her former position, as well as any other accommodation requests pertaining to her former position.[8] Indeed, since the agency offered an alternative accommodation that the grievant suggested, requested, and accepted, the agency cannot be found to have misapplied or unfairly applied the applicable policies. As such, even if a sufficient question could be raised as to whether the agency improperly denied the grievant's earlier request to telework in her former position, this question is no longer relevant because the grievant is already installed in a new position as an alternative accommodation that she was offered and accepted.

Although the Circuit Court granted the grievant a hearing on her grievance, the court did not direct anything further. There is no grievance procedure for summarily addressing whether a grievance issue becomes moot.[9] The grievant could have, for instance, shown that her job

---

[7] For a determination of whether the grievant's transfer was voluntary, EDR's consideration and approach regarding whether a resignation is voluntary is instructive. EDR has held that voluntariness of a decision is based on an employee's ability to exercise a free and informed choice in making the decision. Generally, the voluntariness of an employee's resignation is presumed. A resignation may be viewed as involuntary only (1) "where [the resignation was] obtained by the employer's misrepresentation or deception" or (2) "where forced by the employer's duress or coercion." *See* EDR Ruling Number 2010-2370 (September 3, 2009) (citations omitted). There is no allegation that the grievant's transfer was procured by misrepresentation. A resignation can be viewed as forced by the employer's duress or coercion, if it appears that the employer's conduct effectively deprived the employee of free choice in the matter. *Id*. "Factors to be considered are: (1) whether the employee was given some alternative to resignation; (2) whether the employee understood the nature of the choice he was given; (3) whether the employee was given a reasonable time in which to choose; and (4) whether he was permitted to select the effective date of resignation." *Id*.

Here, the grievant could have remained in her hearing officer position and continued to strive to meet the production requirements, all the while pursuing telework through the grievance process, if necessary. The grievant did not believe she could ultimately satisfy the hearing officer job requirements without the telework option. The record also shows that the grievant affirmatively sought a lateral job transfer. In the context of a resignation in face of disciplinary termination, EDR has held that such choice does not in itself demonstrate duress or coercion, unless the agency "actually lacked good cause to believe that grounds for termination existed." *Id*. "[W]here an employee is faced merely with the unpleasant alternatives of resigning or being subject to removal for cause, such limited choices do not make the resulting resignation an involuntary act. *Id*.

Thus, while the grievant may have had a difficult choice, and, in hindsight, the grievant may have made a different choice, the facts do not support a finding of involuntariness in view of the general presumption of a voluntary act.

[8] *Cf. Walter v. United Airlines, Inc*., No. 99-2622, 2000 U.S. App. LEXIS 26875, at *13 (4th Cir. Oct. 25, 2000) (noting that "the ADA does not require an employer to provide the specific accommodation requested by the disabled employee, or even to provide the best accommodation, so long as the accommodation provided to the disabled employee is reasonable").

[9] The grievance procedure does not allow an agency to close a grievance on the basis that, in its judgment, the grievance issues are "moot." This holds even when the grieving employee has left state service. However, the *Grievance Procedure Manual* only requires that an employee have been "employed by the Commonwealth *at the time the grievance is initiated*." If a grievant with access to the grievance procedure initiates a timely grievance and at some point later decides to leave the agency,

transfer was essentially involuntary and negating its impact. However, the weight of the evidence does not support such a finding. There is no authority that requires employers to maintain multiple or alternative tracks of employment and accommodation for disabled employees. For these reasons, the grievant is not entitled to any further relief concerning this grievance because her voluntary transfer rendered further accommodations for the hearing officer job moot.

The grievant could have remained a hearing officer until her grievance was concluded. By suggesting, requesting, and accepting a job transfer, the grievant denied not just the grievant but also the agency the opportunity to see to fruition the accommodations actually made. Such course to a final grievance decision may have led ultimately to telework as the grievant sought. The EEOC guidance states that when an employer has completed its alternative job search, identified whether there are any vacancies (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the employer will have fulfilled its obligation.[10] If an employer has fulfilled its obligation by making a job offer, once the employee accepts the new job, continuing on a course expecting further accommodation in the former job is a *non sequitur*. An employer's obligation to address reasonable accommodations is continuous, but issues of continuing disability and accommodations regarding the grievant's customer service position are not before this hearing officer. Should the claimant identify and assert entitlement to unmet accommodations in her current position, she may advance those requests separately.

DECISION

For the reasons stated herein, the grievant has not shown that she is entitled to any further relief and the grievance is, accordingly, denied.

APPEAL RIGHTS

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

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

---

whether by resignation or retirement for instance, the grievant still has the right to proceed with that grievance. Such is the case here, although the grievant has moved to a different position. Further, it does not appear that the grievant agreed to close the grievance. EDR Ruling No. 2009-2232 (March 6, 2009); *see also*, EDR Ruling No. 2008-1951; EDR Ruling No. 2001-060.

[10] EEOC Enforcement Guidance, Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Oct. 17, 2002, *available at* http://www.eeoc.gov/policy/docs/accommodation.html.

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.

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

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

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of 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 days; the day following the issuance of the decision is the first of the 15 days). A copy of each appeal must be provided to the other party.

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

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

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

I hereby certify that a copy of this decision was sent to the parties and their advocates shown on the attached recipient list.

Cecil H. Creasey, Jr.
Hearing Officer

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

RECONSIDERATION
DECISION OF HEARING OFFICER

In the matter of: Case No. 9483

Hearing Date:	February 7 & 9, 2011
Decision Issued:	February 14, 2011
Reconsideration:	March 15, 2011

APPLICABLE LAW

A hearing officer's original decision is subject to administrative review. A request for review must be made in writing, and received by the administrative reviewer, within 15 calendar days of the date of the original hearing decision. A request to reconsider a decision is made to the hearing officer. A copy of all requests must be provided to the other party and to the EDR Director. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.[11]

OPINION

On March 1, 2011, the grievant timely requested reconsideration of the February 14, 2011, decision. The grievant asserts errors of law or incorrect legal conclusions by the hearing officer. In sum, the grievant asserts that her transfer to another job was involuntary and not a reasonable accommodation. At the time of her transfer, the grievant actually had a pending grievance seeking telework for her hearing officer position. The grievant was decidedly and purposefully seeking telework through formal grievance procedure. The agency resisted the telework as a reasonable accomodation. However, to abandon the very job in which she sought the telework accommodation by voluntarily transferring to another position, the grievant denied all parties the opportunity actually to provide that accommodation, whether ultimately voluntarily or ordered through the grievance hearing. This voluntary transfer to another position rendered the point moot, regardless of merit to the grievant's contention that telework was a reasonable accommodation for her hearing officer position.

[11] § 7.2 Department of Employment Dispute Resolution (EDR) Grievance Procedure Manual, effective August 30, 2004.

In initially denying the grievance, I observed that the EEOC guidance indicates, "if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee."[12] I relied upon the grievant's multiple expressions in writing, stating that she requested and preferred a transfer out of the adjudication division of the agency. I found her disavowal of volunatriness at the hearing unpersuasive to overcome her repeated efforts to obtain a transfer and the agency's witnesses regarding the transfer process. The agency agreed to provide the requested transfer. One party cannot elicit an agreement from the other side and then use the agreed change in circumstances as a sword against the other party. By requesting and agreeing to the job transfer, that action prevented the parties from seeing to fruition the effects of accommodations already made in the hearing officer position and exploring other potential accommodations, short of telework.

Telework may ultimately have been found to be a reasonable accommodation under the ADA. However, the issue of accommodation in the hearing officer position could only be justiciable if the grievant can show that her transfer to the customer service position was involuntary. Without some finding of involuntariness to the transfer, the hearing officer has no jurisdiction to order reassignment. Generally, an action is considered moot when it no longer presents a justiciable controversy because issues involved have become academic or dead. Based on the evidence presented, I do not find that the grievant's request for and acceptance of the job transfer to customer service was anything other than voluntary. Issues of further accommodation within the customer assistance position, however, are not within the purview of this grievance.

DECISION

The grievant has not established an incorrect legal conclusion. The hearing officer has carefully considered the grievant's arguments and concludes that there is no basis to change the Decision issued on February 14, 2011.

APPEAL RIGHTS

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

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

4. **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.

[12] EEOC Enforcement Guidance, Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Oct. 17, 2002, *available at* http://www.eeoc.gov/policy/docs/accommodation.html.

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

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

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of 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 days; the day following the issuance of the decision is the first of the 15 days). A copy of each appeal must be provided to the other party.

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

3. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
4. 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.

I hereby certify that a copy of this decision was sent to the parties and their advocates shown on the attached recipient list.

Cecil H. Creasey, Jr.
Hearing Officer