

Issues: Group II Written Notice (insubordination), Compensation (role change), Benefits/Leave (unconditional leave), Discrimination (disability, gender, pregnancy), Retaliation (other protected right); Hearing Date: 05/09/11; Decision Issued: 05/18/11; Agency: GMU; AHO: Frank G. Aschmann, Esq.; Case No. 9550; Outcome: No Relief – Agency Upheld; **Administrative Review: AHO Reconsideration Request received 06/02/11; AHO Reconsideration Decision issued 06/08/11; Outcome: Original decision affirmed; Administrative Review: EDR Ruling Request received 06/02/11; EDR Ruling No. 2011-3007 issued 09/15/11; Outcome: AHO's decision affirmed; Administrative Review: DHRM Ruling Request received 06/02/11; DHRM form letter issued 08/11/11 declining to review.**

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

DIVISION OF HEARINGS
DECISION OF HEARING OFFICER

In the matter of: Case No. 9550

Hearing Date: May 9, 2011
Decision Issued: May 18, 2011

PROCEDURAL ISSUE

No procedural issues raised.

APPEARANCES

Grievant
Agency Presenter
Agency Representative
Nine Witnesses

ISSUES

- 1) Did the Grievant violate Agency policy by being absent from her office without approved leave; refusing to perform assigned job duties and; failing to maintain a proper customer service attitude such as to warrant the issuance of a Group II Written Notice?
- 2) Did the Agency fail to properly compensate the Grievant for work performed?
- 3) Did the Agency improperly deny the Grievant a one year unconditional leave?

FINDINGS OF FACT

George Mason University (hereafter GMU) employs the Grievant, a female, in a position as an Administrative Associate and Program Coordinator. The Grievant provides administrative support to GMU administrators, faculty and students. The Grievant has been employed by GMU for close to ten years and has received "high achiever" performance evaluations. The Grievant started employment with GMU in 2002 as an Executive Secretary, earning \$28,500.00 per year; in 2004, she was promoted to her current position at a salary of \$38,000.00 per year. The Grievant has received salary increases to her current salary of \$44,941.00 per year. The Grievant's position is "exempt" under the Fair Labor Standards Act (hereafter FLSA). The Grievant's duties included working in support for an economics group which included a Nobel Prize winning economist. This group was recognized with elite status and was able to receive funding approval directly from the Provost's office. Special projects and supplemental payments to employees were, at times, approved through this channel. The Grievant's supervisor had indicated he thought she should be paid at a higher rate, closer to \$60,000.00, but he was limited by the GMU

pay policy to her salary of approximately \$40,000.00. The Grievant received supplemental pay through compensation for individual projects. The Grievant's supervisor allowed the Grievant to frequently work from home and take time out of the office. She was provided with a blackberry cell phone at GMU's expense to facilitate her work while out of the office.

In 2008, the Grievant's position changed significantly when the group left GMU and went to another university. The Grievant's immediate supervisor left with the group and her current supervisor, a male, took over the role of leading her department. Initially the department consisted of the Grievant and her supervisor. Her supervisor had previously worked as a professor and not as an administrator. In 2009, two additional faculty members joined the department. Additional staff hires have also occurred such that the Grievant's supervisor directly supervises six employees now. The Grievant does not have a Telework Agreement with GMU. The Grievant does not have a Flexible Work Agreement with GMU. In June 2010, the Grievant was informed that GMU would no longer pay for her blackberry cell phone.

In 2008, the department received a project grant from Battelle as part of a Department of Defense contract. The grant included a line item in the budget for \$15,000.00 in salary associated with the work to be performed on the project by the Grievant. The Grievant contends that this amount should be paid to her in addition to her regular salary from GMU as just compensation for her work. The Grievant's supervisor had included the salary line item with the intent that the Grievant would be paid additional money. The Grievant's supervisor had no authority to designate the funds as an additional payment to the Grievant. The Grievant requested the payment and was told by the financial department that she could not receive a payment from the grant in addition to her salary. The Grievant's job duties included the work she was doing on the Battelle project and she would need to receive a salary increase based upon promotion or role change to qualify for additional pay. The grant funds are used as an offset to the GMU standard payroll funds and simply provide an additional source of funding for GMU.

The Grievant contends that she performs work far in excess of the duties contained in her Employee Work Profile (hereafter EWP). The Grievant has requested her position be evaluated for a salary increase and title change on many occasions since 2008. Her supervisor has signed, in agreement to, every request she has made. The Grievant began using the title "Managing Director" and was subsequently told by her supervisor she could not use that title. GMU human resources has reviewed the Grievant's position and determined that she is financially compensated at an appropriate level for the type of work she performs. GMU has never changed her position title or reclassified her job since her promotion in 2004. Numerous proposed EWPs for the Grievant's position have been exchanged between the Grievant and GMU human resources. In August 2010, a meeting was held and the Grievant's EWP was discussed. GMU personnel thought an agreement had been reached and submitted a proposed EWP to the Grievant for review. The Grievant returned the EWP with significant changes including language which indicated she would not perform certain job duties unless she received additional compensation. The Grievant's statement in the EWP alarmed the GWU administration and the Group II Written Notice, which is the subject of this proceeding, was issued.

In August 2010, the Grievant requested one year of unconditional leave pursuant to

Department of Human Resource Management (hereafter DHRM) policy number 4.45 in order to spend time with a child she was expecting to give birth to in October 2010. Her supervisor supported her request. The Grievant had first informed her supervisor she was pregnant in April 2010. The leave request was denied by GMU administration. GMU administrators justified the denial stating that GMU did not want to create precedent for such leave; unconditional leave for one year had never been granted before by GMU. GMU further justified the denial contending, that length of leave would create a hardship for GMU because, for that length of time, GMU would have to hire a replacement which it would have to train then fire after the grievant's return. GMU's leave practices grant short periods of leave for medical reasons pursuant to the Family Medical Leave Act (hereafter FMLA) and long periods under its disability program. Extended leave is also granted for military personnel when called to duty and faculty who are governed by different leave policies because they are called upon to be absent from GMU for professional development. Pursuant to FMLA, the grievant was granted two twelve week periods of maternity leave from September 29, 2010 to March 29, 2011.

In 2009, the Grievant's supervisor received numerous complaints about the work performance and attendance of the Grievant. The Grievant was counseled by her supervisor about these issues. The Grievant's supervisor reported the absenteeism of the Grievant to GMU human resources and also noted it on her annual evaluation. No further disciplinary action was taken at that time. These complaints continued into 2010 until a second administrative assistant was hired. The new assistant began supporting two faculty members in the department and the Grievant supported her supervisor. Her supervisor had no personal complaints about the Grievant and the other faculty had no complaints after the hire of a second assistant, as they had stopped relying on the Grievant for support. In November 2009, the Grievant was absent from the work place without leave and took a trip to Africa. At the Grievant's request, the Grievant's supervisor had granted permission for the Grievant to work from home on one of the days she was absent, when she indicated her children would be in school and she could come in as needed. The Grievant was not available to come in as she had stated because she was in Africa. In August 2010, the Grievant was absent from the work place, taking a trip to Europe. The Grievant did not claim leave for one of the days she was on the trip. The Grievant claimed 60 hours of annual leave but had used 68 hours of annual leave. The discrepancy was noticed by the administration and subsequently, leave was deducted.

On June 16, 2010, the Grievant filed a charge of discrimination. The complaint alleged disability, gender, pregnancy discrimination and retaliation. The Grievant named her supervisor as retaliating against her by taking away her job title and blackberry cell phone for requesting additional compensation. The Grievant named her supervisor as discriminating against her because he suggested she take a job reduction after she had notified him she was pregnant. Additionally, he indicated she must be in the office to fulfill her duties. She believes it is not necessary and she can work from home. The Grievant named her supervisor and one faculty member, a female, as discriminating against her because of disability for being absent frequently from work for medical appointments for one of her children who has a serious medical condition. The Grievant indicated they are intolerant with her. This complaint was investigated by GMU and found to be unsubstantiated. GMU took no further action on this complaint.

APPLICABLE LAW AND OPINION

The General assembly enacted the Virginia Personnel Act, Code of Virginia §2.2-2900 et seq., establishing the procedures and policies applicable to employment with 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 (1989).

Code of Virginia §2.2-3000 et seq. sets forth the Commonwealth's grievance procedure. State employees are covered by this procedure unless otherwise exempt. Code of Virginia §2.2-3001A. In disciplinary actions, the Agency must show by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. Department of Employment Dispute Resolution Grievance Procedure Manual, §5.8 (2).

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Code of Virginia §2.2-1201, the Department of Human Resource Management promulgated Standards of Conduct Policy number 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. GMU has adopted these standards and uses them to discipline employees.

GMU is also subject to federal discrimination laws including the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978. The Grievant has argued that the disciplinary action of GMU was in retaliation for her participation in protected personnel action. The Grievant participated in protected personnel activity when she filed a charge of discrimination in June 2010. The disciplinary action occurred in August 2010. Based solely upon timing it could be inferred that GMU acted in retaliation against the Grievant. GMU has introduced evidence that it took the disciplinary action because it was alarmed by the Grievant's statement in a proposed EWP that she would not perform her job duties if she was not granted additional compensation. This is a non-discriminatory reason for its action. The grievant presented no evidence which showed the stated reason of GMU for its action was pretextual. The Grievant carries the burden of proof to show a discriminatory motive. St. Mary's Honor Center v. Hicks, 509 US 502 (1993); McDonnell Douglas Corp. v. Green, 411 US 792 (1973). Mere timing alone is insufficient to demonstrate a discriminatory motive. The Grievant has failed to meet her burden of proof to prove discrimination through retaliation.

The Grievant also has alleged discrimination through retaliation against her supervisor for taking away her blackberry cell phone and taking away her title as Managing Director. There is no merit to these claims. The evidence showed that no one at GMU, including the grievant's

supervisor, was provided with a blackberry cell phone at agency expense and that the Grievant had never had her title officially changed to Managing Director. The title of Managing Director was adopted by the Grievant on her own and became a source of complaints from other members of the department who did not approve of her using a title she did not officially hold. She was asked to stop using the title in response to these complaints. The Grievant had received the blackberry cell phone as a privilege prior to the department's reorganization in 2008 when she worked as part of an elite group. GMU was never obligated to provide this equipment nor was it obligated to continue to provide this equipment to the Grievant after the reorganization. The Grievant presented no evidence that she was treated differently than anyone similarly situated or that her supervisor was motivated by any gender bias. This complaint does not qualify as a retaliation claim because the actions occurred before the Grievant engaged in the protected action of filing her discrimination charge with GMU.

The Grievant alleges gender and pregnancy discrimination because GMU has denied her a one year unconditional leave to be with a newborn child. The Grievant cites DHRM policy number 4.45 as granting authority for such leave. The policy does create the possibility of unconditional leave which GMU adopts in its own Human Resources and Payroll Employee Handbook. However, in both policy documents it is clear the granting of unconditional leave is purely discretionary and requires prior approval. The DHRM policy states, "an agency may grant unconditional leave..." and the GMU policy states, "classified employees may be granted periods of leave..." Thus there is no requirement that such leave be granted. GMU has not violated any policy by denying the Grievant a one year unconditional leave as it was never required to do so.

GMU has introduced evidence that it has never granted unconditional leave in the case of pregnancy before and does not want to create a precedent for doing so. GMU uses FMLA leave for such situations and granted the Grievant two periods of leave accordingly. GMU further contends that to change this policy and make an exception for the Grievant would place a hardship on the university requiring it to hire, train and fire another person to allow the Grievant to be absent for a one year period and then return to her position. These are non-discriminatory reasons for denying the unconditional leave request. The grievant presented no evidence which showed the stated reasons of GMU were pretextual. The Grievant carries the burden of proof to show a discriminatory motive. St. Mary's Honor Center v. Hicks, 509 US 502 (1993); McDonnell Douglas Corp. v. Green, 411 US 792 (1973). The Grievant presented no evidence which showed she was treated differently than anyone else similarly situated with regard to leave. Her argument is essentially that it is permissible and therefore she should be given the leave even if she is the first one to receive such a benefit. This is not discrimination but rather a refusal by GMU to change its existing leave policy. The Grievant has failed to meet her burden of proof to prove gender or pregnancy discrimination in regard to GMU's denial of unconditional leave for one year.

Since 2008, the Grievant has been seeking additional compensation, a change in job title and to have her EWP revised. The Grievant has made a claim that she is under compensated for the work she performs. She has requested a lump sum payment of \$15,000.00 and an increase in salary. DHRM policy number 3.05 establishes standards for employee compensation. This policy covers a wide range of compensation issues including having provisions for "role change" and class protections for equal employment opportunity. GMU has established a Salary

Adjustment Review Committee and has its own compensation policy which adopts the DHRM policy. GMU is required to conform to the equal pay requirements of the Civil Rights Act of 1964 and all subsequent amendments to that Act. GMU is permitted to change a position to a different "Role." This action can be an "Upward Role Change" moving the employee into a higher pay band and may result in an increase in pay to the minimum of the new pay band or up to a 10% increase in salary. A role change is made in accord with the Agency's Salary Administration Plan and considers the DHRM "Pay Factors."

The Grievant cites the Lilly Ledbetter Fair Pay Act of 2009. This does not seem particularly relevant to the case, however, this Hearing Officer interprets it to be a claim of gender discrimination for unequal pay. The Grievant presents evidence of a comparison to several employees, two males, three females, who have higher salaries. The two males are not in similar positions. One is the Grievant's supervisor and the other is a software developer. The Grievant presents no evidence that a similarly situated male employee is paid more for the same work. The Grievant has the burden of proof to show a discriminatory motive or disparity in treatment of similarly situated employees. Hicks, supra. The Grievant has failed to meet the burden of proof necessary to establish an equal pay discrimination claim.

The Grievant has repeatedly requested a change in her EWP, since 2008, to get an increase in salary. This would be permissible as a role change, however, GMU has consistently refused to reclassify the position with a different title and higher pay band. The Grievant contends that she performs many duties which are not part of her EWP and these duties are not compensated. The Grievant states that she had duties as a lab manager added to her job. The Grievant contends that \$15,000.00 in grant money was due to her for these services. Additionally, she was asked to organize an economics conference in the Summer of 2009 and translate a document from Spanish for two of the faculty. The Grievant contends she acts as a supervisor. GMU maintains that the position is properly classified as an administrative support job and is in the proper pay band for that type of work. GMU has justified its action. In 2008, when the elite economics group left the university, the position was actually reduced, supporting only three faculty instead of the seven that had been there. Currently the position supports only the Grievant's supervisor on the faculty as there has been another staff member hired who supports the other two faculty. The Grievant's economics lab duties are to maintain access to the lab and report problems. The maintenance duties take approximately one hour per week. The Grievant does not perform any computer technology functions in the maintenance of the lab. The Grievant's presence in the office is required to assure access to the lab but she is not required to be in the lab at all times. The grant money received by GMU was not a bonus for the Grievant but rather an alternative source of funding for the university. The Grievant did organize the 2009 economic conference. This was a project her supervisor volunteered his department to spearhead to gain recognition for the department. Her actions were in direct support of her supervisor and his objective. She had requested additional compensation. This was similar to jobs she had received additional compensation for when working for the elite group. Her request was denied as special funding was no longer available since the elite group had left in 2008 and the economy was in decline reducing available state funds. While organizing the conference was an extra task, it was well within the parameters of typical administrative support work and was a one time job. This duty did not change the nature of the Grievant's position. The Grievant is a FLSA "exempt" employee

and can be required to perform extra work without overtime pay. The translation job was beyond the normal job duties for the Grievant. One of the faculty members had requested the Grievant perform the translation as an opportunity to expand her job. The Grievant agreed to do the task. The duty had a one month deadline which the Grievant did not make. The Grievant never actually completed the work. This issue subsequently became one of the faculty's complaints against the Grievant. While an extra duty, the translation job was a one time task which did not change the nature of the Grievant's position. The Grievant does not have supervisory authority. She contacts other departments and requests that maintenance work be performed. She has no authority to formally direct or evaluate the work of these employees and they are not members of her department in subordinate positions. This does not constitute the work of a supervisor. The Grievant bares the burden of proof to establish that GMU violated policy by not granting her the change in role necessary to receive a pay increase and change in title. The evidence produced by the Grievant is largely of short term special projects and work which is typical of administrative support duties. None of her evidence demonstrates that she is working in a supervisory role or consistently required to perform duties outside the scope of her normal employment. GMU's refusal to reclassify the Grievant's position is consistent with policy and serves the need of the university to have support staff in place to assist the faculty of the Grievant's department. GMU has not violated any policy in refusing to reclassify, increase the pay of or change the title of the Grievant's position.

GMU issued a Group II Written Notice to the Grievant as disciplinary action in regard to her job performance. The agency has the burden to justify its action. GMU presented evidence that the Grievant was absent from the work place frequently. One faculty member indicated that the Grievant was almost never in the work place when her supervisor was not in the office. The agency also presented evidence that the Grievant was absent from the work place in direct conflict with a directive given to her by her supervisor around Thanksgiving 2009 when she traveled to Africa. The agency further produced evidence that the Grievant was absent from the work place without leave in August 2010 when she failed to document and claim leave for one day when she was on a European trip. A leave correction was made after the fact when the discrepancy was pointed out to her by the administration. The Grievant responds that the incident in August 2010 was simply a mistake. The Grievant contends that she was granted a flexible schedule by her supervisor prior to 2008 to allow her to care for her children, attend classes and work at other GMU sites. The Grievant contends that she was able to perform her duties off-site with a mobile phone. Her current supervisor also gave her flexibility until the complaints occurred in 2009 at which time she was counseled about the need to keep regular hours and be in the work place. GMU has a policy for flexible work time and work from off-site, however, these policies require a written agreement between the university and the employee. No such agreement exists with the Grievant and she has regularly scheduled hours when she is expected to be in her office. The weight of the evidence demonstrates that the Grievant took many liberties with her attendance at work and continued to substitute a mobile phone for her presence in the work place even after the department had reorganized. Absenteeism negatively effects the work place by reducing productivity and creating disparity with employees who fulfill their hourly requirements.

The catalyst for the issuance of the Group II Written Notice was a statement in a proposed EWP by the Grievant that she would not perform certain duties unless she received additional

compensation, in August 2010. Refusing to do assigned job duties is clear insubordination and merits disciplinary action. The Grievant's situation on this issue is not so clear, however. For approximately two years the Grievant and the agency administration had gone back and forth in debate over the Grievant's requests for increased pay and the duties which were appropriate in her EWP. The shock and surprise of the administration to receive the statement of the Grievant is understandable in the light of a meeting and apparent agreement to resolve the issue but no evidence was put forth which showed the Grievant acted upon the statement and failed to perform the duties in her EWP after August 2010. The Grievant contends she did do all the listed EWP duties. The agency had submitted the proposed EWP to the Grievant and asked her to review it for her approval. Thus the agency had solicited the Grievant's input on the proposed EWP. The Grievant complied with the request of the agency but surprised the administration by returning to her previous position which she had been negotiating for years. The agency's alarm at the tenacious pursuit of and dogmatic belief in an entitlement to more pay by the Grievant caused it to issue the Group II Written Notice to try and get her to recognize the agency's position and communicate that it was not going to change her job title or offer more compensation. This is an important message to communicate to the Grievant to help her retain her employment and perform in a cooperative manner but it does not establish a refusal to perform assigned work. The second issue for the disciplinary action is refusal to perform duties and that did not actually occur. The statement in the EWP is just one more round of the Grievant attempting to obtain additional compensation which does not violate the insubordination policy.

The third issue raised in the Group II Written Notice is the general attitude of the Grievant. GMU has repeatedly tried to convey to the Grievant that her role at the university is to provide administrative support to the members of her department. The Grievant has developed an attitude that her role is larger than what the position calls for and appears to view herself in a managerial role. The hostility towards a faculty member who testified at the hearing was obvious and observed during the hearing. The email traffic documents in evidence demonstrate support for the allegation in the Group II Written Notice by showing the Grievant setting her own priorities rather than responding to the priorities of the people she is assigned to support. The many complaints about the Grievant also support the allegation of an attitude problem because the complaints come from many sources and thus can not simply be attributed to an individual vendetta or personal disagreement. The Grievant's attitude is further demonstrated by her use of the title Managing Director which she never formally had and her insistence that she should be allowed flextime and provided with a cell phone even though these privilege are inconsistent with the nature of her job assignment. The Grievant's attitude has resulted in a negative effect on the department which is revealed in the testimony of a faculty member who indicated working with the Grievant was so unpleasant she now just avoids the Grievant and would rather perform the Grievant's job duties herself than ask the Grievant to help. The Grievant's attitude issue effected the department by requiring work time be used to deal with the many complaints against the Grievant. Thus the agency has met its burden to justify its action to discipline the Grievant with a Group II Written Notice on this issue.

This matter does present an extraordinary mitigating circumstance. The Grievant was provided with special privileges and promises of additional compensation by both of her supervisors. Both supervisors also encouraged the Grievant to believe her position was greater

than it is and that it could develop into more than a administrative support role. It follows that the Grievant developed expectations of greater compensation and of higher rank in the university. These false expectations, having been created by GMU supervisors, provide an explanation for the Grievant's unrelenting pursuit of additional compensation and recognition. As such it is a mitigating factor to the submission of the proposed EWP containing the language where the Grievant indicates she will not perform certain duties without additional compensation. On this issue the agency did not justify its action and in congruence with mitigation this Hearing Officer finds that the refusal to perform duties issue is not an appropriate basis to discipline the Grievant.

DECISION AND ORDER

1. The agency failed to meet its burden on the second issue raised in the Group II Written Notice. The agency met its burden to justify its action to issue a Group II Written Notice on the first and third issues raised in the Group II Written Notice. The first and third issues are sufficient to justify a single Group II Written Notice. Mitigating factors were considered and found insufficient to alter the disciplinary action. The disciplinary action of the agency to issue the Grievant a Group II Written Notice is affirmed.

2. For the reasons stated above, it is held that the agency did not fail to properly compensate the Grievant for work performed. The Grievant failed to produce sufficient evidence that she was denied proper compensation. The grievance seeking additional compensation is denied and dismissed.

3. For the reasons stated above, it is held that the agency did not improperly deny the Grievant a one year unconditional leave. The Grievant failed to produce sufficient evidence that she was improperly denied unconditional leave for one year. The grievance regarding denial of unconditional leave is denied and dismissed.

APPEAL RIGHTS

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

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

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

2. A challenge that the hearing decision is inconsistent with state or agency policy is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests should be sent to the Director of the Department of Human Resources Management, 101 N. 14th Street, 12th Floor, Richmond, VA 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) 786-0100.

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 contrary 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.

Frank G. Aschmann
Hearing Officer

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

DIVISION OF HEARINGS
DECISION OF HEARING OFFICER

In the matter of: Case No. 9550

Hearing Officer's Decision on Motion to Reconsider

The Grievant has filed a request for administrative review of the Hearing Officer's decision in the above style case. The document is directed at the Hearing Officer as well as other administrative reviewers, therefore, the Hearing Officer will consider the filing as a motion to reconsider and finds as follows:

1. The Grievant presents no new evidence and simply argues the material previously presented.
2. The Grievant's arguments are unpersuasive and present no new insight.
3. The Grievant simply disagrees with the Hearing Officer's previous findings and the evidence presented by the agency.
4. This Hearing Officer finds no basis to alter the previous findings.
5. The Grievant was given a due process hearing with an opportunity to present evidence and argue her case.
6. The Grievant chose to represent herself and was responsible for the presentation of her evidence.
7. The Grievant's evidence was insufficient to prove her case or rebut the evidence of the agency.
8. This Hearing Officer finds no basis to reopen the case.

Wherefore, the Grievant's motion to reconsider is hereby denied.

Date

Frank G. Aschmann, Hearing Officer

August 11, 2011

[Grievant]

RE: **Grievance of [Grievant] v. George Mason University**
Case No. 9550

Dear [Grievant]:

The agency head of the Department of Human Resource Management, Ms. Sara Redding Wilson, has directed that I respond to your request for an administrative review of the hearing officer's decision in the above referenced case. Please note that, pursuant to the Grievance Procedure Manual, §7.2(a), either party to the grievance may request an administrative review within 15 calendar days from the date the decision was issued if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing or if you believe the decision contains an incorrect legal conclusion, you may ask the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with either state or agency policy, you may request the Director of the Department of Human Resource Management (DHRM) to review the decision. You must refer to the specific policy and explain why the decision is inconsistent with that policy.
3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of the Department of Employment Dispute Resolution (EDR) to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply.

Concerning where any request is made to this Agency for an administrative review, the request must identify with which human resource policy, either state or agency, the hearing decision is inconsistent. In our opinion, your request does not identify any such policy. Rather, it appears that you are disagreeing with how the hearing officer assessed the evidence and with the resulting decision. We must therefore respectfully decline to honor your request to conduct the review.

Sincerely,

Ernest G. Spratley
Assistant Director,
Office of Equal Employment Services