

Issue: Group III Written Notice with termination (workplace violence); Hearing Date: 05/23/11; Decision Issued: 06/07/11; Agency: DBHDS; AHO: Ternon Galloway Lee, Esq.; Case No. 9589; Outcome: No Relief – Agency Upheld; **Administrative Review: AHO Reconsideration Request received 06/22/11; Reconsideration Decision issued 07/07/11; Outcome: Original decision affirmed; Administrative Review: DHRM Ruling Request received 06/22/11; DHRM form letter issued 07/13/11; Outcome: Declined to review; Judicial Review: Appealed to Williamsburg Circuit Court; Court ruling issued 10/11/11 [CL000957-00]; Outcome: AHO's decision affirmed.**

DECISION OF HEARING OFFICER

In the matter of

Case Number: 9589

Hearing Date: May 23, 2011

Decision Issued: June 7, 2011

SUMMARY OF DECISION

The Agency had found Grievant violated the Agency's work place violence policy on March 20, 2011. Thus, the Agency issued the Grievant a Group III Written Notice with termination. The Hearing Officer upheld the Agency's discipline after finding (i) the Grievant violated the Agency's work place violence policy and (ii) the Agency's discipline was consistent with law and policy and within reasonable limits

PROCEDURAL HISTORY

On March 25, 2011, the Grievant was issued a Group III Written Notice of disciplinary action with removal. The Written Notice described the nature of the offense and evidence as "Employee Due Process Statement presented on March 24, 2011, Violation of Policy 1.80 Workplace Violence."¹

On April 6, 2011, the Grievant timely filed a grievance to challenge the Agency's action. The Grievant was dissatisfied with the Second Resolution Step's outcome and requested a hearing. On May 3, 2011, the Department of Employment Dispute Resolution ("EDR") assigned a hearing officer to this appeal. The Hearing Officer held a pre-hearing conference ("PHC") on May 9, 2011, and subsequently issued a scheduling order.²

The Hearing Officer scheduled the hearing for May 23, 2011, the first date available between the parties and the Hearing Officer. During the hearing, the Hearing Officer admitted the Hearing Officer's exhibits one through six. the Agency's exhibits one through nine, and the Grievant's exhibits one through eight.³

¹ The Grievant's (employee's) March 24, 2011 statement is found on page three of Grievant's Exh. 3 and the Agency's Exh. 2.

² The Hearing Officer admitted as evidence in this matter the scheduling order mentioned here.

³ The Grievant sought to have admitted as evidence two additional exhibits: Grievant's proposed exhibit 9 which was a polygraph report and Grievant's proposed exhibit 10 which was identified as "Questions that I wanted the polygraph Examiner to ask me." The Agency objected to their admission. After hearing arguments from the parties, the Hearing Officer found that under § 8.01-418.2 of the Code of Virginia (as amended) evidence of a polygraph examination is inadmissible upon the objection of a party. Thus, the Hearing Officer excluded the polygraph report due to the Agency's objection. The Hearing Officer also excluded the Grievant's proposed exhibit that identified questions he desired the polygraph examiner to ask because those questions related to a type of examination report the hearing officer had found was inadmissible.

At the hearing both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party.

During the proceeding, the Grievant represented himself, and the Agency was represented by its advocate (“Agency’s Representative”).

APPEARANCES

Representative/Advocate for Agency
Witnesses for the Agency (5 witnesses)
Grievant
Witnesses for the Grievant, including the Grievant (5 witnesses)

ISSUE

Was the Group III Written Notice with termination warranted and appropriate under the circumstances?

BURDEN OF PROOF

In disciplinary actions, the burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. (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

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

1. Prior to March 25, 2011, the Grievant was employed at the facility as a Direct Service Associate (DSA) II providing patient care. The Grievant was assigned to work the night shift on March 19, 2011. That shift concluded on March 20, 2011, at 7:30 a.m. Even when a DSA II’s shift ends, he/she is required to remain on duty until relief staff arrives. (G Exhs. 3 and 4)
2. At approximately 7:15 a.m. on March 20, 2011, the Grievant was preparing to dress Patient C in this patient’s room. The Grievant and his night shift working partner, LH, had just bathed Patient C because he was incontinent and had discharged feces on himself. (Testimony of LH and Grievant).
3. Some time between 7:15 a.m. and 7:40 a.m. on March 20, 2011, MK - a day shift staffer - approached Patient C’s door opening it widely. The Grievant asked MK to close the door to give Patient C privacy. When MK failed to comply with the Grievant’s request, the Grievant closed the door. MK then opened the door, walked in, and hit the Grievant. The Grievant responded by hitting MK on her arm. MK then threw Patient

C's soiled bath water on the Grievant. The Grievant became angry and attempted to throw water back at MK. A physical struggle ensued between the Grievant and MK. (G Exh. 3, Attachment 2; Testimony of JW, PJ, and Grievant).

4. While the Grievant and MK were involved in this physical altercation, Employee PJ ("PJ"), heard noise coming from the patient's room. PJ entered and observed the Grievant pinning MK up against the wall by both her wrists. Then, PJ observed MK break loose, and the Grievant and MK began swinging at each other. PJ was unable to determine from his observations if the Grievant was trying to obstruct MK from further physical contact with him. (Testimony of PJ).

5. Concerned, in part, that the two would be fired, PJ instructed the Grievant and MK to stop their actions. At that point, the Grievant responded with words to the effect of "You don't have anything to do with this." PJ left the room and the Grievant and MK continued their physical altercation. PJ's observations took place over a two to three minute period. (Testimony of PJ).

6. Moments later while making her rounds, Nurse/Supervisor DD entered the patient's room and observed MK on the floor and the Grievant on top of her holding MK's hands down. Nurse/Supervisor DD also observed MK reach up and hit the Grievant on the chin with her hand and the Grievant hitting MK with his hand. Nurse/Supervisor DD ordered the two to "get up." She also physically positioned herself between the Grievant and MK. They then stopped their behavior. Both employees were sent home. (Testimony of Nurse/Supervisor DD).

7. During the physical altercation the Grievant's shirt was ripped by MK and he was soaked with water poured on him by MK. MK sustained visible bruises on her arm from the Grievant hitting her. Also, Patient C remained in a state of partial undress in his room as the struggle between the Grievant and MK pursued. (Testimony of HGD; A Exh. 7).

8. The Grievant acknowledged to management that he had a physical confrontation with MK. He also apologized for his behavior. (A Exh. 2; G Exh. 3).

9. The Agency terminated the Grievant on March 25, 2011, for work place violence it determined occurred on March 20, 2011. (A Exhs. 1 - 3; G Exh. 3)..

10. The Agency also terminated MK for the identical reason. (Testimony of SJ and JW).

11. Agency Policy Number 1.80 prohibits violence in the workplace. Any employee who engages in work place violence faces serious disciplinary consequences, to include termination, as the Agency maintains a zero tolerance policy for such behavior. (Testimony of JW; A Exh. 9; G Exh. 5).

12. The Agency has also adopted Policy Number 021-14 to evaluate and address potential violence in the work place. (A Exh. 8; G Exh. 6).

13. The Grievant had been employed by the Agency for at least eleven years prior to his termination. (Testimony of G).

14. During his employment with the Agency, the Grievant's work exceeded expectations and several of his recent annual evaluations indicate he was an extraordinary contributor. The Grievant had never been disciplined by the Agency. (Testimony of SJ and TD; G Exh. 8)

15. The Grievant received training regarding violence in the workplace during his initial orientation as a new employee at the facility. Also, he received annual training regarding work place violence. (Testimony of JW; Testimony of AK).

DETERMINATIONS 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/her 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).

Va. Code § 2.2-3000 (A) 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 resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the

Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards 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.

The Agency's specific Policy Number 1.80 regarding workplace violence indicates that an employee violating the policy will be subject to disciplinary action under Standards of Conduct Policy 1.60 up to and including termination, based on the situation.

Under Standards of Conduct Policy No. 1.60 misconduct of a severe nature can constitute a Group III offense warranting termination even if the misconduct is a first for the employee.

Agency management issued the Grievant a Group III Written Notice with termination on March 25, 2011. In describing the nature of the offense, the Written Notice stated the Grievant violated Policy Number 1.80 - Work Place Violence and referenced and attached the Grievant's March 24, 2011 written statement regarding a physical confrontation he had with MK on March 20, 2011. The Hearing Officer examines the evidence to determine if the Agency has met its burden.

I. Analysis of Issue before the Hearing Officer

A. Did the employee engage in the behavior described in the Written Notice and did the behavior constitute misconduct?

1. Did the Grievant engage in the behavior described in the Written Notice?

The Grievant admitted in his statement to management dated March 24, 2011, that he engaged in the behavior described or referenced in the Written Notice. He also apologized for the behavior stating that what occurred was not meant to happen. Further, his statement shows he recognized his anger was uncontrolled during the incident as he pondered engaging in anger management therapy. What is more, two other employees observed and corroborated in testimony the physical confrontation between the Grievant and MK. The Grievant did not deny reported observations of these witnesses. The evidence clearly shows the Grievant engaged in a physical confrontation with another employee. Thus, the Hearing Officer finds the Grievant engaged in the behavior described in the Written Notice.

2. Was the behavior misconduct?

The Agency's Policy Number 1.80 prohibits violence in the work place. It defines work place violence as follows:

Any physical assault, threatening behavior or verbal abuse occurring in the workplace by employees or third parties. It includes, but is not limited to, beating, stabbing, suicide, shooting, rape, attempted suicide, psychological trauma such as threats, obscene phone calls, an intimidating presence, and harassment of any nature such as stalking, shouting or swearing.

The policy also provides a non-exhaustive list of prohibited actions. One listed is “injuring another person physically.”

As noted previously here, the Grievant admits he engaged in the physical altercation with MK. Other employees testified that they observed the Grievant pinning MK on the floor and up against the wall and hitting MK with his hand. The Hearing Officer observed the demeanor of these witnesses and find their testimony credible.

Also, as evidenced by photographs of MK’s arm, she sustained several bruises from Grievant’s physical blows. Regarding the bruises on MK’s arm, the Hearing Officer is fully cognizant that the evidence shows the photographs of the bruises were taken by the Agency’s investigating police officer five days after the physical altercation. But, the investigating officer testified that the color of the bruises was consistent with their occurring from injuries sustained five days before. Her testimony was uncontradicted. Moreover, the evidence shows the investigating officer had six years experience investigating abuse and 26 years experience as a police officer. Both employments had exposed her to the aging and coloration of bruises. Thus, the Hearing Officer assigns great weight to the investigating police officer’s assessment that MK’s bruises were sustained during the fight with the Grievant.

Thus, the Hearing Officer finds the Grievant physically injured the Grievant during the altercation on March 20, 2011. His behavior therefore was misconduct.

B. Was the Agency’s Discipline consistent with law and policy?

The Agency’s Policy Number 1.80 regarding workplace violence states that a violation of this policy may warrant termination, based on the situation. Standards of Conduct 1.60 classifies misconduct under three categories, Group I Offenses, Group II Offenses, and Group III Offenses. The most severe misconduct is classified under the latter category. Behavior falling under this category may be so severe that a first occurrence may warrant termination.

The evidence shows that under the circumstances, the Grievant’s conduct was serious. Further, the evidence shows that during the physical confrontation, the Grievant and MK were in danger of being injured. The fight reached a level that other staff was drawn to Patient C’s room from the noise of the commotion. Further, during this altercation, MK ripped the Grievant’s shirt. The Grievant pinned MK to the wall during

one moment of the fight and to the floor on another. The two were “swinging at each other.” Moreover, as previously noted here, MK sustained several bruises to the arm. What is more, Patient C (whom the Grievant had begun dressing before the fight) remained in a state of undress from his buttocks down as the fight ensued in his room. The evidence shows this patient was incontinent and wore diapers. The evidence also shows that while the Grievant did not instigate the confrontation, he had an opportunity to disengage from it, but elected to continue his misbehavior. Only when Nurse/Supervisor DD physically separated the Grievant and MK did the fight cease. The Agency terminated the Grievant because of his offense.

The evidence also shows that the Agency has adopted a zero tolerance policy to work place violence. The undisputed testimony of Agency witness JW was that any episode of violence by an employee in the work place will result in his/her termination. Also, his testimony showed that no exception was made for either of the participants as both MK and the Grievant were terminated because of the altercation. The Hearing Officer observed the demeanor of this witness and found him credible. Thus, the Hearing Officer finds the Agency’s termination of the Grievant due to his behavior is consistent with the Agency’s zero tolerance to violence in the work place.

The Agency’s emphasis on prohibiting violence in the work place is also shown by its adoption of Policy Number EC 021-14. As noted in its policy statement, this policy seeks to prevent work place violence by establishing a reporting mechanism and process that safely and effectively evaluates and deals with the potential harm to persons at the Agency or its property, and in doing so minimizes the potential of harmful threats being carried out. (A Exh. 8). The fight between the Grievant and MK was reported to the Agency’s police division and investigated. The evidence shows that consistent with its policy to prevent violence in the workplace, the Agency removed those engaged in it as a step to prevent further violence in the workplace.

Considering the above, the Hearing Officer finds that the termination of the Grievant was consistent with law and policy.

III. Mitigation

Under statute, hearing officers have the power and duty to “[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Employment Dispute Resolution.”⁴ EDR’s *Rules for Conducting Grievance Hearings* provides that “a hearing officer is not a ‘super-personnel officer’” therefore, “in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.”⁵ More specifically, the *Rules* provide that in disciplinary grievances, if the hearing officer finds that:

- (i) the employee engaged in the behavior described in the

⁴ Va. Code Section 2.2-3005 (c)(6)

⁵ *Rules for Conducting Grievance Hearings* VI(A)

- Written Notice,
- (ii) the behavior constituted misconduct, and
 - (iii) the agency's discipline was consistent with law and Policy, the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.⁶

Thus the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above. Further, if those findings are made, a hearing officer must uphold the discipline if it is within the limits of reasonableness.

The Hearing Officer has found the Grievant engaged in the behavior described in the Written Notice, that behavior constituted misconduct, and the Agency's discipline was consistent with law and policy.

The Grievant argues in effect that the disciplinary action should be mitigated because he did not instigate the physical altercation and the work place violence policy is not reviewed enough with employees. Although the Grievant did not instigate the fight, he failed to disengage himself. The evidence shows he had opportunities to do so, but declined them. Regarding the Grievant's claim that the work place violence policy was not reviewed often, the Hearing Officer finds it reasonable for employers to expect their employees to know at all times that work place violence includes fighting. The Hearing Officer also notes that the Agency's facility where the physical altercation took place is entrusted with the care of emotionally and physically frail adults. This increases the necessarily of a violent free work environment.

The Hearing Office also notes she has considered evidence of the Grievant's evaluations and the testimony of his supervisors indicating he was an extraordinary employee. The Hearing Officer has also considered, he has been employed by the Agency for eleven years with no disciplinary history. Having considered this evidence and the Agency's discipline, the Hearing Officer cannot find the Agency acted unreasonable.

DECISION

For the reasons stated herein, the Hearing Officer upholds the Agency's issuance to the Grievant of a Group III Written Notice disciplinary action with removal.

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.

⁶ *Rules for Conducting Grievance Hearing VI(B)*

Administrative Review: This review 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. Request 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 that the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decisions so that it complied with the grievance procedure. Requests should be sent to the EDR Director, Main Street Centre, 600 East Main, 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 final decisions, a party may appeal on the ground 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 Directory before filing a notice of appeal.

ENTERED this 7th day of June, 2011.

Ternon Galloway Lee, Hearing Officer

cc: Agency Advocate
Agency Representative
Grievant
EDR's Hearings Program Director

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of

Case Number: 9589

Reconsideration/Reopening Decision Issued: July 7, 2011

RECONSIDERATION/REOPENING DECISION

I. Procedural History

This grievance was heard on May 23, 2011. On June 7, 2011, the Hearing Officer issued her decision which upheld the Agency's issuance of a Group III Written Notice to the Grievant with termination for workplace violence, engaging in a physical altercation with another employee at work.

Grievant timely submitted a request for reconsideration/reopening to the Hearing Officer on June 22, 2011. Grievance Procedure Manual § 7.2 authorizes the Hearing Officer to reconsider or reopen a hearing. "[G]enerally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request." Below, the Hearing Officer considers Grievant's request.

II. Determination

A. Grievant's Assertions on Reconsideration/Reopening

In support of his request, Grievant makes several allegations in paragraphs numbered one through 9 of his submission. He contends that bruises found on MK were said to have been caused by Grievant grabbing MK by the right arm and taking her to the restroom. He argues the Hearing Officer erred when she noted MK sustained bruising from Grievant's physical blows. Further, the Grievant asserts that the Hearing Officer did not place enough emphasis on the Workplace Violence Policy 1.80 in her decision. He also contends that the Agency has not adopted a written or unwritten zero tolerance policy to workplace violence. He asserts that he did not pin MK to the wall. He disagrees with the finding of fact regarding when MK was "hit" by Grievant. Similarly, he disputes the finding of fact concerning the gist of what Grievant stated to PJ when PJ encouraged him to end his physical contact with MK.

B. Hearing Officer's Examination of Those Assertions

When examined Grievant's disagreements with the Hearing Officer's decision contest the findings of facts, the weight and credibility the Hearing Officer accorded to the testimony of various witnesses at the hearing as well as other evidence presented, the

resulting inferences that she drew, the degree to which she considered certain evidence,⁷ and the characterizations that she made. These determinations are all entirely within the Hearing Officer's authority and are not a basis to reopen or reconsider the Hearing Officer's decision.⁸

III. Decision

After careful consideration of Grievant's allegations, the Hearing Officer denies his request to reopen or reconsider her decision.

APPEAL RIGHTS

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

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

Judicial Review of Final Hearing Decision: Within thirty days of final decisions, a party may appeal on the ground 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.

Entered this 7th day of July 2011.

/s/

Ternon Galloway Lee, Hearing Officer

cc: Grievant

Agency Representative/Advocate

EDR Hearing Programs' Manager

⁷ The Hearing Officer has noted the Grievant's contention that she failed to give due emphasis to the Workplace Violence Policy 1.80. Also, she has noted the three reasons provided by Grievant as support for his argument. The Hearing Officer considered all the evidence in her deliberations prior to issuing her decision, to include the forenamed policy and finds she appropriately addressed it in her decision.

⁸ As noted above, the basis to grant a request for reconsideration or reopening is usually newly discovered evidence or evidence that the Hearing Officer made an incorrect legal conclusion. Grievant's contentions are based on neither viewpoint.

July 13, 2011

[Grievant]

RE: **Grievance of [Grievant] v. Department of Behavioral Health and
Developmental Services**
Case No. 9589

Dear [Grievant]:

The agency head of the Department of Human Resource Management, Ms. Sara Redding Wilson, has directed that I respond to the grievant's 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 either party believes it has new evidence that could not have been discovered before the hearing or if either party believes the decision contains an incorrect legal conclusion, the requesting party may ask the hearing officer either to reopen the hearing or to reconsider the decision.
2. If either party believes the hearing decision is inconsistent with either state or agency policy, that party may request the Director of the Department of Human Resource Management (DHRM) to review the decision. The requesting party must refer to the specific policy and explain why the decision is inconsistent with that policy.
3. If either party believes that the hearing decision does not comply with the grievance procedure, that party may request the Director of the Department of Employment Dispute Resolution (EDR) to review the decision. The requesting party must state the specific portion of the grievance procedure with which it is believed the decision does not comply.

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

Sincerely,

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

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY WILLIAMSBURG/
JAMES CITY COUNTY

Appellant/Employee,

v.

Case No. : CL000957-00

DEPARTMENT OF EMPLOYMENT DISPUTE
RESOLUTION

and

DEPARTMENT OF BEHAVIORAL HEALTH &
DEVELOPMENTAL SERVICES, EASTERN STATE
HOSPITAL,

Appellees/Agencies.

FINAL ORDER

This matter came before the Court on September 12, 2011, at or about 1:00 p.m., as an appeal of a decision of a hearing officer under the Grievance Procedure for State Employees pursuant to Virginia Code § 2.2-3006(B). At the hearing, the Appellant/Employee, _____ was pro se and the Appellees/Agencies (the Department of Employment Dispute Resolution and the Department of Behavioral Health & Developmental Services _____) were represented by counsel.

Having reviewed the record and considered the arguments of the parties and/or their counsel, the Court cannot find that the decision of the hearing officer is

"contradictory to law" – as required by Virginia Code § 2.2-3006(B) for the reversal of that decision.

Accordingly, it is hereby ADJUDGED, ORDERED and DECREED that this appeal is DISMISSED WITH PREJUDICE and that the decision of the hearing officer in Grievance Case Number 9589 (issued June 7, 2011) is AFFIRMED.

The Clerk is hereby directed to send a certified copy of this Final Order to all pro se parties and counsel of record upon entry hereof.

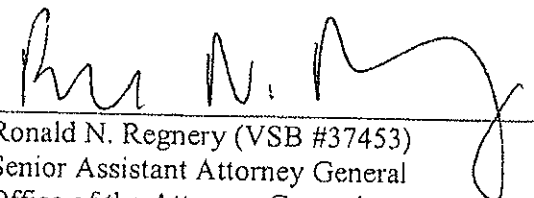
October 11, 2011

ENTERED: / /



Judge

I ask for this:



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