

Issue: Group III Written Notice with Suspension (writing prescriptions without DEA certification); Hearing Date: 06/02/11; Decision Issued: 06/21/11; Agency: DOC; AHO: Ternon Galloway Lee, Esq.; Case No. 9591; Outcome: No relief – Agency Upheld.

Division of Hearings

DECISION OF HEARING OFFICER

In the matter of
Case No. 9591

Hearing Date: June 2, 2011

Decision Issued: June 21, 2011

SUMMARY OF DECISION

The Agency had found the Grievant wrote seven prescriptions for offenders for schedule III drugs without certification from the Drug Enforcement Administration (“DEA”) giving authorization to prescribe such drugs. Further, the Agency had found the Grievant failed to acquire and maintain DEA certification as required by her Employee Work Profile. Thus, the Agency issued the Grievant a Group III Written Notice with suspension from February 4, 2011 through February 7, 2011. The Hearing Officer upholds the Agency’s discipline.

PROCEDURAL HISTORY

On February 3, 2011, Grievant’s supervisor issued her a Group III Written Notice of disciplinary action with suspension from February 4, 2011 through February 7, 2011. The Written Notice mentioned that Grievant (i) wrote seven prescriptions for offenders for controlled substances without DEA certification and (ii) failed to acquire and maintain DEA certification as required by the Grievant’s Employee Work Profile.

On February 6, 2011, the Grievant timely filed a grievance to challenge the Agency’s action. The Grievant was dissatisfied with the outcome at the Second Resolution Step and requested a hearing. On May 17, 2011, the Department of Employment Dispute Resolution (“EDR”) assigned a Hearing Officer to the appeal.

As agreed to by the parties, the Hearing Officer held a pre-hearing conference on May 19, 2011, and subsequently issued a scheduling order incorporated herein.

As scheduled, by agreement of the parties, the Hearing Officer held the grievance hearing on June 2, 2011, at the Agency’s office.

Also, at the hearing both parties were given the opportunity to make opening and closing statements,¹ to call witnesses and to cross-examine witnesses called by the other party.

Further, the Hearing Officer admitted the Agency’s exhibits one through five,

¹ The Agency waived its closing statement.

Grievant's exhibits one through seven, and the Hearing Officer's exhibits one through eleven. Neither party objected to the admission of these exhibits.

During the proceeding, the Grievant was represented by Attorney BH and the Agency was represented by Ms. B.

APPEARANCES

Agency's Advocate
Agency Representative
Witnesses, including Agency's Representative (2 Witnesses)
Grievant's Advocate
Grievant
Witnesses, including Grievant (2 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 Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which demonstrates what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

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

1. Grievant was employed by the Agency in 2007. In January 2008 she became the institutional dentist at the prison to provide routine and emergency dental care to the inmates. (Testimony of Chief Dentist; Testimony of Grievant; A Exh. 3).
2. Dentists are required to have certification from the Drug Enforcement Administration ("DEA") to prescribe controlled substance medications. These medications are characterized as Schedule II through Schedule V medications. (Testimony of Chief Dentist).
3. Prior to January 6, 2011, Grievant had not obtained certification from the DEA to prescribe controlled substances. (A Exh. 1, p. 12; Testimony of Grievant).
4. Percocet is a controlled substance which requires a dentist to have DEA

certification to prescribe it. (Testimony of Chief Dentist).

5. Grievant prescribed/ordered controlled substances to inmates from May 17, 2010, to January 3, 2011, without DEA certification. The physician ordering a particular medication is deemed to be the physician prescribing it. (A Exh. 1, pp. 3 - 12; Testimony of Chief Dentist).

6. Grievant's supervisor, the chief dentist, became aware of Grievant's non-certification on or about January 4, 2011, when the dental hygienist reported to the chief dentist that she believed the Grievant did not have DEA certification. Subsequently, the chief dentist questioned the Grievant regarding her certification, and the Grievant admitted having none. (Testimony of Chief Dentist).

7. Chief Dentist then issued Grievant a Group III Written Notice with a two day suspension. The Written Notice described the offense(s) as follows:

[Grievant] wrote seven prescriptions for offenders
for schedule III drugs without certification
from the Drug Enforcement Administration (DEA)
giving authorization to prescribe such drugs.
[Grievant] also failed to acquire and maintain DEA
certification as required by her Employee Work Profile

(A Exh. 1, p. 1).

8. Grievant received an Employee Work Profile ("EWP") with her job description annually, from October 31, 2008, to November 1, 2010. The EWP is divided into four sections as noted below:

Section I identifies Grievant's employment position;

Section II describes her job responsibilities and
enumerates education, experience, and licensure
requirements for the dental position;

Section III sets forth Grievant's developmental plan; and

Section IV provides signatures and dates by the
Grievant, her supervisor, and the reviewer of the
EWP to acknowledge their review of Grievant's
work description and performance plan as set
forth in the EWP. (A Exh. 3; G Exh. 2).

9. Each of Grievant's EWPs effective October 17, 2008; October 17, 2008 to October 24, 2009; and November 1, 2010, noted that Grievant was required to have DEA certification. Grievant signed and dated these EPWs on October 31, 2008, October 16,

2009, and October 21, 2010, respectively. (A Exh. 3, pp. 2, 5, 12, 14, 20, and 22; G Exh. 2, pp. 4 and 6).

11. The Agency's Operating Procedure 701.1 VI(C)1,2, and 3 provides in pertinent part the following:

C. Health Services Staff Credentials and Licensure

1. The HSU shall ensure that health care staff including, but not limited to physicians, nurses, dentists, optometrists, pharmacists, X-ray technicians, and dental hygienists provide documentation of current licensure and license renewals.
2. All licensed health care personnel (i.e. nurses, X-ray technicians, physicians, dentist, dental hygienist, and optometrist) shall provide a copy of their current license and applicable Drug Enforcement Administration (DEA) Certificate to the Health Authority at their facility. All professional staff comply with applicable state and federal licensure, certification, or registration requirements. Verification of current credentials are on file I the facility. (4-4382,4-ACRS-4C-18)
3. The Health Authority shall review the license and maintain it on file. The Health Authority shall also ensure timely renewals to keep all licenses current. (A Exh. 4, p. 6).

Grievant has had access to DOP 701.1 since on or about January 2009, when she attended supervisors' training. (Testimony of Grievant).

12. Aspiring dentists are informed they are required to have an active DEA certification to prescribe controlled substances. (Testimony of Chief Dentist).

13. An individual employed as a dentist by the military and/or Federal Bureau of Prisons, is not required to obtain his/her personal DEA Certification to prescribe controlled substances as the dentist can prescribe those medications under the institution's DEA certification. Such is not the practice in the Commonwealth of Virginia prison system. (Testimony of Chief Dentist).

14. Throughout most of her career and prior to her employment with the Commonwealth of Virginia, the Grievant had worked as a dentist in the military and was not required to have her own DEA certification. (Testimony of Grievant).

15. Grievant applied for DEA Certification on January 4, 2011, and received the certification on January 6, 2011. (A Exh. 1; G Exh. 6; Testimony of Chief Dentist; Testimony of Grievant).

16. The Agency had contracted with Dr. H to provide primary health care to the inmates at the prison. Dr. H and Grievant were independent practitioners at the prison. (Testimony of Chief Dentist).

17. Dr. H permitted Grievant to use his DEA certification number to prescribe controlled substances from May 2010, to on or about December 30, 2010. (Testimony of Chief Dentist; Testimony of Nurse H; Testimony of Grievant).

18. Grievant's annual performance evaluation rating for 2008 was exceeds contributor. (A Exh. 3, p. 9).

19. Grievant's annual performance evaluation ratings for 2009 and 2010 were contributor. (A Ex. 3, pp. 18, 26; G Exh. 2, p.10).

20. The Agency initially recommended terminating the Grievant for writing prescriptions for controlled substances without DEA certification, but because of what the Agency deemed were mitigating circumstances, it suspended the Grievant in lieu of terminating her. (Testimony of Chief Dentist).

21. When Grievant wrote the prescriptions for controlled substances without DEA certification, DOC/Agency was in violation of the law. Further, when Dr. H permitted Grievant to use his DEA number to prescribe controlled substances, DOC was in violation of the law. For those violations fines could have been levied against the DOC. (Testimony of Chief Dentist).

22. Prior to January 2, 2011, the Agency did not ask Grievant for proof of her DEA certification. (Testimony of Grievant).

23. Seventy-five percent of Grievant's responsibility as institutional dentist was to provide routine and emergency dental care to inmates. (A Exh. 3, pp. 2, 12, 20; G Exh. 2, p. 4).

DETERMINATIONS AND OPINIONS

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. GPM § 5.8.

The Commonwealth of Virginia Department of Corrections Operating Procedure sets forth the Commonwealth’s Standards of Conduct and disciplinary process that the Department of Corrections (“DOC”) must employ to address unacceptable behavior, conduct, and related employment problems in the workplace.²

These standards provide that Group III offenses are the most serious acts and behavior which normally warrant removal on a first occurrence.³ When circumstances warrant it, management may mitigate discipline if in its judgment it is proper to do so. Mitigation can be suspension in lieu of termination.⁴

Agency management issued the Grievant a Group III Written Notice with suspension on February 3, 2011. That notice described the nature of the offense and evidence as previously mentioned here. The Hearing Officer examines the evidence to determine if the DOC discipline was warranted and appropriate under the circumstance.

I. Analysis of Issue before the Hearing Officer

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

1. Did the Grievant write prescriptions for controlled substances without DEA certification?

² Virginia Department of Corrections Operating Procedure 135.1 I.

³ Virginia Department of Corrections Operating Procedure 135.XII (A).

⁴ Virginia Department of Corrections Operating Procedure 135.1 IX (B).

The evidence shows that Grievant wrote seven prescriptions for controlled substances from May 17, 2010, to January 3, 2011. Controlled substances are medications that are identified as Schedule II, III, IV, or V drugs. The evidence showed that billing reports from the pharmaceutical company the Agency has contracted with to fill medications for inmates provided details regarding seven orders from the prison for controlled substances. The billing identified each controlled substance ordered, provided the name of the inmates for which the medications were ordered, identified the Grievant as the physician ordering or prescribing the medications, and provided the dates the medications were filled and billed. Those dates were May 17, 2010, August 12, 2010, September 29, 2010, December 23, 2010, January 3, 2011, and December 30, 2010.⁵ Chief Dentist testified that the drugs identified on the billings were all controlled substances. (Testimony of Chief Dentist; A Exh. 1, pp. 3 - 11). His testimony was not disputed and the Hearing Officer having observed this witness and his demeanor finds the testimony credible. Thus, considering the above, the Hearing Officer finds Grievant prescribed seven controlled substances for inmates from May 17, 2010, to January 3, 2011.

During this time period, the evidence shows that Grievant did not have DEA certification to prescribe controlled substances. When questioned in early January 2011, by her supervisor if she had DEA certification, Grievant admitted she did not and asked if she needed such certification. Further Nurse H's testimony corroborated the Grievant's non-certification. Nurse H testified that for about a year Dr. H would agree to write prescriptions for narcotics for the Grievant because Nurse H understood the Grievant could only write prescriptions for non-narcotics. Grievant's non-certification to prescribe controlled substances which include narcotic drugs during the relevant period is not disputed. Thus, the Hearing Officer finds the Grievant did not have DEA certification when she wrote or ordered seven prescriptions for controlled substances from May 17, 2010, to January 3, 2011.

B. Did the Grievant's behavior constitute misconduct?

Since 2008, paragraph 18 of the Grievant's Employee Work Profiles for her dental practitioner position have stated the following:

18. Education, Experience, Licensure, Certification required for entry into position:

Graduate of accredited school of dentistry
Licensed by the Virginia Board of Dentistry
Controlled Substance Certificate from the
Drug Enforcement Agency

The evidence shows that Grievant signed EWP's on October 31, 2008, October 16, 2009, and October 21, 2010. Each EWP noted that Grievant was required to have DEA certification. The evidence shows that at least from May 17, 2010, to January 5, 2011,

⁵ The pharmaceutical company filled the prescriptions and billed for its service on the same day. Also, two of the controlled substances were filled on December 30, 2010.

Grievant did not hold the required certification. Thus, the Hearing Officer finds the Grievant failed to follow instruction/policy set forth in her EWPs that required her to hold such certification.

The Hearing Officer is cognizant of Grievant's contentions. She asserts that she only signed the EWPs and did not read paragraph 18, that the Agency never asked for her DEA certification, and that her prior employment did not require her to obtain her own DEA Certification. Further, Grievant contends that Dr. H knew for eight months that she did not have DEA certification and allowed her to use his DEA certification number when ordering narcotics. Having considered Grievant's arguments, the Hearing Officer finds none of them excuse Grievant from her responsibility to have DEA certification. Moreover, part of providing care is determining and ordering appropriate medication for the inmates. When Grievant was without her DEA certification, if she had determined a controlled substance was an appropriate medication for an inmate, her non-certification could have or did preclude her from providing care to the inmate. Thus, the Hearing Officer finds the Grievant's lack of certification inhibited or had the potential of inhibiting her from providing routine and emergency dental care to the inmates. Such was a crucial requirement of her job.

The Hearing Officer also notes that DOP 701.1 also required Grievant to maintain DEA certification. DOP 701.1VI(C)1,2, and 3 provides in pertinent part the following:

C. Health Services Staff Credentials and Licensure

1. The HSU shall ensure that health care staff including, but not limited to physicians, nurses, dentists, optometrists, pharmacists, X-ray technicians, and dental hygienists provide documentation of current licensure and license renewals.
2. All licensed health care personnel (i.e. nurses, X-ray technicians, physicians, dentist, dental hygienist, and optometrist) shall provide a copy of their current license and applicable Drug Enforcement Administration (DEA) Certificate to the Health Authority at their facility. All professional staff comply with applicable state and federal licensure, certification, or registration requirements. Verification of current credentials are on file I the facility. (4-4382,4-ACRS-4C-18)
3. The Health Authority shall review the license and maintain it on file. The Health Authority shall also ensure timely renewals to keep all licenses current.

As noted above, this policy required Grievant to comply with applicable state and federal licensure requirements. One such requirement was for the Grievant to obtain DEA certification prior to ordering or prescribing controlled substances. The Grievant had a need as institutional dentist to prescribe controlled substances. The evidence shows, she had access to DOP 701.1 requiring the certification by late 2008 or early 2009, the time she received supervisory training. She failed to obtain certification until January 6, 2011. Thus, she violated the policy.⁶

Having made this finding, the Hearing Officer is mindful of Grievant's claim that rarely was three a need to order controlled substances. The rarity of the need for this certification does not excuse the Grievant from fulfilling her primary job responsibility, which included prescribing controlled substances to inmates when needed.

The Hearing Officer is also mindful of Grievant's argument that provisions under 21 U.S.C. § 1301.22 permitted her, as an agent of Dr. H, to use Dr. H's DEA number and prescribe controlled substances. Chief Dentist testified as a rebuttal witness that the Grievant has misinterpreted the law. The Hearing Officer has reviewed the cited law and finds the Grievant was not an agent of Dr. H at the prison and the cited law does not authorize Grievant to use Dr. H's DEA's number to prescribe controlled substances to prison inmates. Thus, the Hearing Officer rejects this argument of the Grievant.

As noted above, Grievant did not obtain DEA certification until January 6, 2011. Thus, she also was in violation of DOP 701.1 until her certification date.

II. Was the Agency's Discipline consistent with law and policy?

Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant removal.⁷

Grievant's non-certification was serious. The evidence shows that Grievant's use of another physician's DEA number to order narcotics due to her non-certification put the Agency in violation of the law and had the potential of causing fines to be imposed against the Agency for the violation. Moreover, the Hearing Officer notes that the Grievant's EWP's which were presented as evidence indicate that seventy-five percent of Grievant's responsibility as institutional dentist was to provide routine and emergency dental care to inmates. Without DEA certification, Grievant potentially was unable to fulfill her responsibility. For example, if an inmate after examination by Grievant was determined to be in need of narcotic drugs/controlled substances, Grievant's non-certification disabled her from providing adequate care. This is so because unless Grievant violated policy requiring use of her DEA certification to prescribe controlled substances, Grievant could

⁶ The Hearing Officer notes the policy presented as evidence notes an effective date of August 1, 2010 and that it had superseded a prior DOP 701.1; however, the Hearing Officer notes that the parties did not disagree that the provisions of the policy pertaining to maintaining DEA certification were effective during the Grievant's employment with the agency

⁷ Virginia Department of Corrections Operating Procedure 135.1 XII (A).

not prescribe the medication needed by the inmate. The evidence shows that Grievant was the sole dentist at the prison, making her responsibility as prison dentist paramount and her non-certification a substantial infraction.

Thus, the Hearing Officer finds that Grievant's actions were severe enough that they warranted removal. The evidence shows that initially the Agency decided to terminate Grievant; however, Grievant submitted mitigating information and the Agency upon reviewing it decided to suspend the Grievant for two days without pay instead of terminating her. The mitigating evidence included personal information involving the Grievant,⁸ Grievant's long career as a dentist, and Grievant's good work performance at the prison.

Thus, the Hearing Officer finds the Agency's discipline was consistent with policy.

II. 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.”⁹ 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.”¹⁰ 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 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.¹¹

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

⁸ At the hearing neither Chief Dentist nor the Grievant divulged the specifics of this information due to the personal nature of it. Thus, Hearing Officer is not able to consider in mitigation the specifics of this personal information.

⁹ Va. Code §2.2-3005 (c)(6)

¹⁰ *Rules for Conducting Grievance Hearings* VI(A)

¹¹ *Rules for Conducting Grievance Hearing* VI(B)

consistent with law and policy.

Next, the Hearing Officer considers whether the discipline exceeded reasonableness and thus warrants mitigation by the Hearing Officer.

Mitigation by a hearing officer under the *Rules for Conducting Grievance Hearings* requires that the hearing officer, based on the record evidence, make findings of fact that clearly support the conclusion that the agency's discipline, though issued for founded misconduct described in the Written Notice, and though consistent with law and policy, nevertheless meets the *Rules* "exceeds the limits of reasonableness" standard. To exceed the limits of reasonableness, management's discipline must be unconscionably disproportionate, abusive, or totally unwarranted.¹²

Grievant contends there was confusion about whether she needed DEA certification. She contends at her initial hiring she was not told she needed DEA certification. She also contends that her previous employers - the military and Federal Bureau of Prisons - did not require her to have her own DEA certification and she thought the state operated similarly. She also asserts her first EWP was not provided until 2008, approximately a year after her initial hire. Moreover, Grievant contends that for eight months she used Dr. H's Certification number to order controlled substances without incident. As previously noted here, the evidence does show that as early as October 31, 2008, Grievant signed her EWP which required her to obtain DEA certification. Although Grievant contends she did not read the EWP and did not know she needed DEA certification, she should have read it and as a professional she can reasonably be imputed to have read and understood it. Further, regarding the use of Dr. H's DEA certification, the evidence does not establish that the Agency condoned Grievant's use of Dr. H's certification. Evidence shows that Dr. H's superior at some point became aware that Dr. H was permitting the Grievant to use his DEA number.¹³ But, it is not clear when Dr. H's superior learned this. Evidence does show that Grievant's supervisor learned of it January 2011 and did not approve of it. If there was confusion, Grievant could have asked for clarification.¹⁴ Thus, the Hearing Officer can not find Agency's discipline unreasonable.

The Hearing Officer has considered the Grievant's performance evaluations including her initial evaluation which rated her "exceeds contributor." The Hearing Officer has also considered that Grievant had been employed with the Agency since 2008, at the time she received the Written Notice and that Grievant received her certification on January 6, 2011.

¹² See *Parker v. U.S. Postal Service*, 819 F.2d 1113, 1116 (Fed. Cir. 1987); See also *Lachance v. Devall*, 178 F. 3d 1246, 1258 (Fed. Cir. 1999); See also *Mings v. Department of Justice*, 813 F. 2d 384, 390 (Fed. Cir. 1987).

¹³ The Hearing Officer does not address the actions of Dr. H because his actions are not before the Hearing Officer to adjudicate.

¹⁴ The Hearing Officer also notes that DOP 701.1 also required Grievant to maintain DEA certification. The Hearing Officer notes the policy presented as evidence notes an effective date of August 1, 2010 and that it had superseded a prior DOP 701.1; however, parties did not disagree that the provisions of the policy pertaining to maintaining DEA certification were effective during the Grievant's employment with the agency.

Having considered this evidence and the Agency's discipline, the Hearing Officer finds the discipline was reasonable.

DECISION

For the reasons stated here, the Hearing Officer upholds the Agency's discipline.

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 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 21st day of June, 2011.

/s/ Ternon Galloway Lee

Ternon Galloway Lee, Hearing Officer

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