

Issue: Group III Written Notice with Termination (sleeping while on duty);  
Hearing Date: 06/28/11; Decision Issued: 07/12/11; Agency: DBHDS;  
AHO: Ternon Galloway Lee, Esq.; Case No. 9624; Outcome: No Relief –  
Agency Upheld.

## **DECISION OF HEARING OFFICER**

**In the matter of**  
**Case Number: 9624**  
**Hearing Date: June 28, 2011, and July 8, 2011**  
**Decision Issued: July 12, 2011**

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### **SUMMARY OF DECISION**

The Agency had found Grievant was sleeping while on duty and falsified documentation in violation of DHRM 1.60 Standards of Conduct. Thus, the Agency issued Grievant a Group III Written Notice with termination. The Hearing Officer found Grievant was not sleeping while on duty but did falsify documentation. The Hearing Officer also found the termination was consistent with law and policy and within reasonable limits. Thus, she upheld the Agency's issuance of the Group Three Written Notice with termination.

### **PROCEDURAL HISTORY**

On April 27, 2011, 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 "VIOLATION OF DHRM 1.60 STANDARDS OF CONDUCT FOR SLEEPING DURING WORK HOURS AND FALSIFYING DOCUMENTATION."

On May 3 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 June 7, 2011, the Department of Employment Dispute Resolution ("EDR") assigned a hearing officer to this appeal. The Hearing Officer scheduled a telephonic pre-hearing conference ("PHC") for June 7, 2011, at 9:00 a.m., a time agreed to by the Agency's advocate/representative and Grievant. At the scheduled time for the PHC, the Agency's advocate and the Hearing Officer were prepared to participate; however, for reasons then unknown to the Hearing Officer, the Grievant did not avail herself for the conference call. The Hearing Officer made several attempts during the scheduled time of the PHC to contact the Grievant so that the PHC could take place. All efforts were unsuccessful. Thus, the PHC was not held on June 7, 2011.<sup>1</sup> On June 7, 2011, the Hearing Officer issued a scheduling order, which among other things,

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<sup>1</sup> Prior to the commencement of the hearing on June 28, 2011, Grievant stated she was unable to participate in the planned PHC because her telephone had been disconnected subsequent to her agreeing to the PHC being held on June 7, 2011.

scheduled the hearing for June 28, 2011.<sup>2</sup> The Hearing Officer's order did note that if either party sought a continuance of the scheduled hearing, the party could request one in writing with the stated reason. By telephone on the afternoon of June 27, 2011, Grievant requested a continuance.

Prior to the commencement of the hearing on June 28, 2011, the Hearing Officer held a pre-hearing conference (PHC) to address Grievant's motion for a continuance. She stated the continuance was necessary to allow RR and CM, employees of the Agency, to testify on her behalf. Grievant had not previously identified any witnesses she desired to testify.

While the Agency did not object to these witnesses testifying, it was opposed to any continuance. The Agency noted all of its witnesses were present at the hearing location for the hearing and at least one of them was on short term disability and had made a special trip to give testimony at the hearing.

During the PHC discussions, the Hearing Officer determined that RR, an individual that the Grievant had identified as one of the witnesses she desired to testify on her behalf, could testify first and by telephone. Neither party opposed this arrangement and RR did testify. Efforts, without success, were made to locate the second individual, CM, the Grievant identified as a witness. Thus, the Grievant renewed her request for a continuance to permit testimony from this witness at a later date.

After hearing arguments of the parties/representatives, the Hearing Officer found based on proffers by the Grievant that in the interest of justice good cause existed to permit CM to testify on the Grievant's behalf. However, to avoid requiring the Agency's witnesses to make repeated trips for the hearing, the Hearing Officer commenced the hearing allowing the Agency to present its case.<sup>3</sup> After receiving testimony from all available witnesses on June 28, 2011, the Hearing Officer continued the matter to July 8, 2011, at 10:00 a.m. to allow CM to testify and to give the parties an opportunity to make closing statements.

Over the two day hearing, the Hearing Officer admitted without objection her exhibits one through nine and Agency exhibits one through fourteen. Grievant offered no exhibits as evidence.

During 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.<sup>4</sup>

During the proceeding, the Grievant represented herself, and the Agency was represented by its advocate ("Agency's Representative").

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

<sup>3</sup> As noted previously, the Hearing Officer also allowed telephonic testimony from one of Grievant's witnesses.

<sup>4</sup> Grievant waived her opening statement.

## **APPEARANCES**

Representative/Advocate for Agency  
Witnesses for the Agency (4 witnesses)  
Grievant  
Witnesses for the Grievant, including the Grievant (3 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 the five witnesses who testified in person at the hearing held over two days,<sup>5</sup> the Hearing Officer makes the following findings of fact:

1. Prior to April 27, 2011, Grievant was employed at (“Agency”) as a Direct Service Associate (“DSA”) II, a nursing staffer providing patient care. (A Exhs. 7 and 9).
2. On April 15, 2011, Grievant’s shift began at 11:00 p.m. and ended the morning of April 16, 2011. Grievant had a 30 minute break from 3:30 a.m. to 4:00 a.m. and was relieved by co-worker CM during that time. (A Exhs. 12, 14; Testimony of Grievant and DP).
3. At approximately 4:00 a.m. on April 16, 2011, RNCM, the unit supervisor of Grievant’s shift, observed Grievant with her head down. RNCM then instructed Grievant’s co-worker RR to awaken Grievant. RR touched Grievant with his clipboard and she sat up immediately. RR wrote a statement indicating he touched Grievant with his

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<sup>5</sup> As noted previously here, by agreement of the parties one of Grievant’s witnesses, RR, testified telephonically.

clipboard and “she immediately woke up.” (Testimony of RNCM; A Exh. 8).

4. At approximately 4:40 a.m., Charge Nurse MS (“MS”) observed Grievant with her head down on the table. When MS pronounced Grievant’s name, Grievant “raised her head and opened her eyes.” (Testimony of MS; A Exh. 7).

5. MS then observed Grievant’s resident monitoring sheet<sup>6</sup> lacked required documentation from nursing staff for the period 3:30 a.m. to 4:30 a.m. MS then instructed Grievant in the presence of Grievant’s immediate supervisor, DP, to not fill in the missing documentation. After Grievant resumed her monitoring at 4:45 a.m. and 5:00 a.m., Charge Nurse MS obtained Grievant’s monitoring sheet, made a copy of it, and returned the original to Grievant. The original had no notations indicating monitoring by Grievant had taken place from 3:30 a.m. to 4:30 a.m. (A Exhs. 11, 12; Testimony of DP and MS).

6. Despite Charge Nurse MS’s instruction to Grievant to not fill in the missing documentation for the period 3:30 a.m. to 4:30 a.m., Grievant made entries for a portion of that time. Sometime after 5:00 a.m., Grievant inserted notations and her initials on the monitoring sheet to purport that she had observed assigned patients at 4:00 a.m., 4:15 a.m., and 4:30 a.m. and contemporaneously noted her observations. (A Exhs. 11 and 12; Testimony of MS; Testimony of Grievant).

7. The Agency determined Grievant’s notations were falsifying documentation because they were not made concurrent with monitoring. Thus, on April 20, 2011, it issued an anecdotal note which was signed by Grievant and her immediate supervisor DP. That note described the April 16, 2011 occurrence as follows:

“Falsification of documentation - Pt. monitoring sheet filled in for 0400 to 0430 when previously left blank.”

Further, the anecdotal note stated the Agency’s expectation as follows:

“Expectations/Corrective Action: Pts. Should be monitored Every 15 minutes and noted at that time as per policy.”

A statement found at the bottom of the anecdotal note reads “[e]rros (sic) documented on anecdotal note are treated as verbal counseling in progressive disciplinary action.” (A Exhs. 9, 13).

8. By letter dated April 22, 2011, the Agency informed Grievant that it was recommending that she be issued a Group III Written Notice for sleeping while on the job and falsifying documentation. On April 27, 2011, the Agency issued Grievant a Group III Written notice with termination for the reasons noted in its April 22, 2011 letter. (A Exh.

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<sup>6</sup> In subsequent statement of facts here, the resident monitoring sheet which is used by nursing staff to account for patients is described.

5).

9. Because Grievant was on break from 3:30 a.m. to 4:00 a.m. on April 16, 2011, her co-worker and relief staffer CM was responsible for monitoring patients assigned to Grievant and making simultaneous notations of the monitoring at 3:30 a.m. and 3:45 a.m. CM made notations on the monitoring sheet for the 3:30 a.m. and 3:45 a.m. time periods, but they were not made concurrent with any monitoring. (A Exhs. 11, 12, and 14; Testimony of Grievant).

10. The Agency determined CM's notations were falsifying documentation because they were not made concurrent with monitoring. Thus, it issued an anecdotal note which was signed by CM and her immediate supervisor DP.<sup>7</sup> That note described the April 16, 2011 occurrence as follows:

“Falsification of documentation - Pt. monitoring sheet filled in for 0330 to 0345 when previously left blank.”

No statement of corrective action was provided on this note. As in Grievant's anecdotal note, a statement found at the bottom of CM's anecdotal note reads “[e]rrors (sic) documented on anecdotal note are treated as verbal counseling in progressive disciplinary action.” The Agency did not terminate CM. (A Exh. 14).

11. Agency Standard Operating Procedure 280-Z (“Policy 280-Z”) addresses the accountability for patients in units/wards at [the facility]. Its purpose is to establish a system for monitoring and documenting the location of patients and to ensure a safe environment for them. This policy provides in pertinent part that the nursing staff are accountable for assigned patients at all times, and further, that patients are to be observed and their location documented every 15 minutes. (A Exh. 1).

12. Nursing staff are required to complete a Resident Monitoring Sheet (“monitoring sheet”) to fulfill their responsibility regarding Policy 280-Z. Specifically, each nursing staffer is responsible for visually assessing the presence and condition of patients he/she has been assigned and identifying each patient by his/her face. Without exception, the Agency requires the nursing staffer to complete the monitoring sheet every 15 minutes contemporaneously with the staffer's monitoring.

Notations made on the monitoring sheet are required to include, among other things, the level/location of the patient.<sup>8</sup> Also, the documentation made on the monitoring

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<sup>7</sup> CM signed the anecdotal note on April 18, 2011, and her immediate supervisor DP signed it on April 19, 2011.

<sup>8</sup> The Levels and their codes include the following:

- RTW (Restrict to Ward);
- RTB (Restrict to Building, Level 1, Level 2, Level 3, and Level 4);
- NEG - NGRI, Escorted Grounds;
- NUG -NGRI, Unescorted Grounds;
- NEC - NGRI, Escorted Community;

sheets is supposed to validate that the nursing staffer has monitored each assigned patient during the 15 minute interval specified on the monitoring sheet by visually assessing each patient's presence and condition and by identifying each patient by his/her face. Further notations made assert that the documentation was made at the time the patient was assessed and identified or within the 15 minute interval noted on the monitoring sheet. (A Exh. 1; Testimony of DB).

13. Completing the monitoring sheet for a specified 15 minute interval after the passage of that time is not permitted or condoned by the Agency. (A Exh. 1; Testimony of MS; Testimony of DB).

### **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

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and NUC - NGRI, Unescorted Community.

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.

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.

As previously noted here, Agency management issued the Grievant a Group III Written Notice with termination on April 27, 2011. In describing the nature of the offense, the Written Notice stated the Grievant violated Policy Number 1.60 by sleeping on duty and falsifying documentation. 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 sleep during working hours?**

The Agency contends Grievant was asleep while on duty on April 16, 2011 on two occasions.

First, the Agency contends the Grievant was asleep at 4:00 a.m. Regarding this allegation, the evidence shows that RNCM observed Grievant with her head down at approximately 4:00 a.m. on April 16, 2011. RNCM instructed Grievant's co-worker RR to awaken Grievant. The evidence shows that when RR touched Grievant with his clipboard, she sat up immediately. Further, RNCM testified at the hearing that she knew Grievant was not asleep because when RR touched her, she immediately arose. Considering this evidence, the Hearing Officer finds unsubstantiated the claim that Grievant was asleep.

Having made this finding the Hearing Officer is cognizant of RR's hand written statement indicating he had been asked by RNCM to awaken Grievant and he immediately pushed his clipboard against Grievant and she woke up. On testimony and under oath RR contradicts his written statement. During the hearing when RR was asked if the Grievant was asleep, he testified that he could not say she was. Thus, the Hearing Officer does not find convincing RR's claim in his written statement that he awoke the Grievant.

Second the Agency argues Grievant was asleep about 40 minutes later. The evidence shows that at approximately 4:40 a.m. Grievant's supervisor MS observed Grievant with her head down on the table. When supervisor MS pronounced Grievant's name, Grievant immediately responded by looking up. The immediacy of Grievant's

response suggests she was not asleep. Thus, the Hearing Officer finds the Agency can not support its allegation that Grievant was asleep around 4:40 a.m.

Accordingly, the Hearing Officer finds the Agency can not meet its burden and show Grievant was asleep while on duty on April 16, 2011.

## **2. Did the Grievant falsify documentation?**

Agency Standard Operating Procedure 280-Z (“Policy 280-Z”) addresses the accountability for patients in units/wards at [the facility]. This policy provides in pertinent part that the nursing staff are accountable for assigned patients at all times, and further, that patients are to be observed and their location documented every 15 minutes. To fulfill their responsibility regarding Policy 280-Z, the Agency requires each nursing staffer to complete a Resident Monitoring Sheet (“monitoring sheet”). The monitoring sheet provides space for entry of documentation confirming observations of patients by the staffer at the beginning of the hour, 15 minutes after the hour, 30 minutes after the hour, and 45 minutes after the hour. The documentation is to be done simultaneously with the monitoring. (A Exh. 1).

Specifically, the nursing staffer is responsible for visually assessing the presence and condition of patients he/she has been assigned and identifying each patient by his/her face. Without exception, the Agency requires the nursing staffer to complete the monitoring sheet every 15 minutes. Further a nursing staffer’s notations on the monitoring sheet in effect validates that he or she made them contemporaneously with his/or her observations of the patient. (A Exh. 1; Testimony of DB).

Completing the monitoring sheet for a specified 15 minute interval after the passage of that time is not permitted and is considered falsifying documentation by the Agency. (A Exh. 1; Testimony of MS; Testimony of DB).

During her testimony, Grievant admitted she made notations on her monitoring sheet on the blanks where entries were supposed to indicate monitoring of patients at 4:00 a.m., 4:15 a.m., and 4:30 a.m. And the entries were made after those times had passed. Her testimony was corroborated by Agency Exhibits 11 and 12. Agency Exhibit 11 was a copy of Grievant’s resident monitoring sheet as it existed at approximately 5:00 a.m. It showed Grievant had not documented any monitoring for 4:00 a.m., 4:15 a.m. and 4:30 a.m.<sup>9</sup> Agency Exhibit 12 showed that sometime after Grievant’s supervisor observed the missing documentation, Grievant had added documentation indicating she monitored patients at 4:00 a.m., 4:15 a.m. and 4:30 a.m.

The evidence shows that Grievant had been instructed by Supervisor MS to not fill in the empty spaces. Further, the evidence shows MS informed Grievant that if she did,

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<sup>9</sup> The Hearing Officer notes that the exhibit also shows no documentation for 3:30 a.m. and 3:45 a.m.; however, the evidence shows Grievant was on break during that time period and was not responsible for monitoring during that period.

her actions would constitute falsifying documentation. Grievant does not deny her supervisor's instruction. Yet she filled in missing documentation anyway.

Considering the above, the Hearing Officer finds Grievant's documentation after the fact constitutes falsifying documentation.

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

Standards of Conduct Policy 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. (A Exh. 2).

While the evidence did not show Grievant slept while on duty, it did show Grievant falsified documentation as noted previously here. Under Standards of Conduct Policy 1.60, such misconduct is a Group III offense. Even the first occurrence of a Group III offense normally warrants termination. (A Exh. 2, pp. 9, 21). Grievant's misconduct was aggravated by the fact that she disobeyed her supervisor's instruction to not fill in the blanks.

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.”<sup>10</sup> 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.”<sup>11</sup> 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

<sup>10</sup> Va. Code Section 2.2-3005 (c )(6)

<sup>11</sup> *Rules for Conducting Grievance Hearings* VI(A)

reasonableness.<sup>12</sup>

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 falsifying documentation as 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. She argues that other nursing staff do not complete the monitoring sheets as the policy requires. Further she contends her co-worker/relief staffer falsified documentation, but she was not terminated. Also, she argues that her immediate supervisor DP was off the unit for about two hours and had he been on the unit, she would have documented her monitoring sheets as required.

First, the Hearing Officer considers the allegation that others falsified documentation. The Hearing Officer notes that the evidence does show that Grievant's co-worker falsified documentation from 3:30 a.m. to 3:45 a.m. on April 16, 2011. The evidence, however, does not indicate that CM disobeyed a supervisor's instruction as Grievant did. Grievant was instructed by Supervisor MS to not fill in the missing documentation and if she did it would be considered falsifying documentation. Grievant did so anyway.

Second, the Hearing Officer considers Grievant's contention that had her immediate supervisor not been absent from the unit/ward for two hours, she would have monitored the patients at 4:00 a.m., 4:15 a.m. and 4:30 a.m. Essentially, Grievant argues that a staffer does his or her job only when the supervisor is present to assure work is completed. This argument is without merit and fails to justify any mitigation.

Having considered all the evidence to include Grievant's handwritten statement dated April 26, 2011, and Grievant's arguments, the Hearing Officer cannot find the Agency acted unreasonable.

### **DECISION**

For the reasons stated herein, the Hearing Officer does not find Grievant was asleep while on duty, but she does find the Agency has shown Grievant falsified documentation. Further, the Hearing Officer finds the Agency's disciplinary action regarding Grievant falsifying documentation was reasonable and consistent with law and policy. The Hearing Officer therefore upholds the Agency's issuance to the Grievant of a Group III Written Notice for falsifying documentation and termination.

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<sup>12</sup> *Rules for Conducting Grievance Hearing VI(B)*

## **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. 14<sup>th</sup> Street, 12<sup>th</sup> 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 12<sup>th</sup> day of July, 2011

/s/

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Ternon Galloway Lee, Hearing Officer

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