

Issue: Group III Written Notice (falsification of State document); Hearing Date: 07/15/11; Decision Issued: 07/27/11; Agency: VDOT; AHO: Ternon Galloway Lee, Esq.; Case No. 9632; Outcome: No Relief – Agency Upheld.

DECISION OF HEARING OFFICER

In the matter of

Case Number: 9632

Hearing Date: July 15, 2011

Decision Issued: July 27, 2011

SUMMARY OF DECISION

The Agency had found Grievant violated DHRM Standards of Conduct Policy Number 1.60 when he submitted an application for a Maintenance Crew Leader position by failing to list his violations of law. The Agency then issued Grievant a Group III Written Notice for falsifying records. The Hearing Officer upholds the Agency's discipline.

PROCEDURAL HISTORY

On January 13, 2011, Grievant was issued a Group III Written Notice of disciplinary action for falsifying records.

On February 11, 2011, the Grievant timely filed a grievance to challenge the disciplinary action. The Grievant was dissatisfied with the Third Resolution Step's outcome and requested a hearing. On June 22, 2011, the Department of Employment Dispute Resolution ("EDR") assigned this appeal to the Hearing Officer. The Hearing Officer held a pre-hearing conference ("PHC") on June 30, 2011, and subsequently issued a scheduling order.¹

The Hearing Officer scheduled the hearing for July 15, 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 five, Grievant's exhibit one and the Agency's exhibits one through nine.²

At the hearing both parties were given the opportunity to make opening and closing statements,³ 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").

¹ The Hearing Officer admitted as evidence in this matter the scheduling order mentioned here.

² Grievant objected to Agency's exhibit 4, pages 1 through 16, contending they were irrelevant as the grievance was about his application submitted in August 2010, and not applications he submitted prior to that time. After hearing arguments from the parties, the Hearing Officer found those pages of Agency exhibit 4 were relevant. Thus, the Hearing Officer overruled Grievant's motion.

³ Grievant waived his opening statement. Grievant also elected not to present any witnesses.

APPEARANCES

Advocate for Agency
Agency Representative
Witnesses for the Agency (3 witnesses)
Grievant
Witnesses for the Grievant (none)⁴

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. Grievant has been employed by the Virginia Department of Transportation (“VDOT”) or “Agency” since 1986. (A Exh. 4).
2. On August 10, 2010, Grievant electronically submitted an employment application (“application”) to the Agency for the position Maintenance Crew Leader. Grievant signed the application on August 24, 2010 (“August 10, 2010 application”).⁵ (A Exhs; A Exhs. 4, 6, and 7; Testimony of KM).
3. The August 10, 2010 application contains the following conviction question:
**Have you ever been convicted for any violations of law?
including moving traffic violations?**

⁴ On the date the parties were scheduled to exchange their exhibits and witness lists, Grievant provided one exhibit and listed two possible witnesses. At the beginning of the hearing, Grievant stated he did not have any witnesses. Grievant had not previously requested the Hearing Officer issue a witness subpoena for any witness to testify on his behalf. Also, Grievant did not request a continuance so that witnesses could testify later on his behalf.

⁵ The Hearing Officer notes that all the Agency’s exhibits were admitted as evidence. They included a chronology of the events in this case. The chronology indicates Grievant submitted his application on August 10, 2010. Further, the Hearing Officer notes that the Grievant in his Form A response noted the dates of the offense were August 10, 2010, through January 13, 2011. The Hearing Officer finds Grievant submitted his application on August 10, 2010.

Grievant responded “Yes” to this question. (A Exh. 4/20).

4. Following the conviction question on the application is the Criminal History section. First this section contains the words “Description of the Offense.” Next, space is provided to describe any convictions. In this space, Grievant responded “**On File.**” Second, in the Criminal History section of the application appear the words Statute/Ordinance of the Offense; Date; and County, City, State of conviction. Space is provided for the applicant to supply information pertaining to each of these subjects about any disclosed convictions. Grievant provided no responses in these spaces. (A Exh. 4/20).

5. Grievant became a finalist for the position for which he applied. (Testimony of KM).

6. For applicants who become finalist, the Agency conducts a criminal history background check under its policy DPM 1.25 known as the Fingerprint Based Criminal History Record Check. The Agency implemented this policy on January 1, 2009. The criminal check once performed compares its reported results of identified convictions with those disclosed by the applicant on his/her application. (Testimony of KM; A Exh. 2/23-27).

7 Grievant’s criminal history background check (“criminal history report”) accurately revealed Grievant received on the dates noted below the following misdemeanor convictions:

	Convictions	Date
(i)	Use of Profane Language	April 12, 1985
(ii)	Solicitation	April 29, 1994
(iii)	Indecent Exposure	February 20, 1998

Grievant listed none of them on his August 10, 2010 application. (A Exhs. 4, and 8).

8 The Agency reviewed Grievant’s criminal history report and compared it to Grievant’s “On File” response on the application. To determine if the Agency had on file a record of Grievant’s convictions, it reviewed all other employment applications in Grievant’s personnel file and recruitment file.⁶ That review indicated Grievant had submitted four prior employment applications to the Agency. The earliest ones were dated May 28, 1986; August 20, 1992; and April 10, 2003 (“May 28, 1986 application” ; “August 20, 1992 application” ; “April 10, 2003 application”) respectively. The latest application submitted prior to the August 10, 2010 application, was presented by Grievant

⁶ The evidence showed that Grievant’s personnel file consisted of prior applications submitted by Grievant that resulted in Grievant receiving the job for which he applied. Further, his recruitment file contained two applications that Grievant submitted and the Agency was currently considering to fill vacant positions. (Testimony of LF).

for the Agency's consideration by February 23, 2007 ("the February 23, 2007 application").⁷ The evidence was insufficient to establish Grievant had any other applications on file with the Agency. (Testimony of LF).

9. Grievant was asked the following "conviction question" on the May 28, 1986 application:

Have you ever been convicted of a law violation(s) including moving traffic violations but excluding offenses committed before your eighteenth birthday which were finally adjudicated in a Juvenile Court or under a youth offender law?

Yes No. If yes, list all and explain_____.

To this question, Grievant responded "Yes." "speeding 65 IN 55." (A Exh. 4/2).

10. On the August 20, 1992 application, Grievant was asked the identical question regarding convictions. He provided no response. (A Exh. 4/4).

11. Grievant was asked the following "conviction question" on the April 10, 2003 application,

Have you been convicted for any violation(s) of law, including Moving violations Yes No If yes, please provide the following:

Description of Offense:

Statute or ordinance (if known) County, City, State of Conviction:	Date of Charge	Date of Conviction
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Grievant's only response to this question was he typed the words "On File" immediately below the words "Description of offense." (A Exh. 4/8).

12. On the February 23, 2007 application, Grievant was asked the following question about convictions:

Have you ever been convicted for any violations of law, including moving traffic violations?

Grievant responded "yes." In the following section requesting his criminal history, Grievant responded with the words "On File." Grievant provided no further information. (A Exh. 4/13).

⁷ The application does not show when Grievant signed it; however, notations at the bottom of each page of the application indicate it was printed on February 23, 2007.

13. All employment applications Grievant signed contained a certification or agreement which contained in pertinent part the following statement:

I hereby certify that all entries on both sides and all attachments are true and complete, and I agree and understand that any falsification of information herein, regardless of time of discovery, may cause forfeiture on my part to any employment in the service of the State⁸ of Virginia.

Grievant certified that his August 10, 2010 application was true and correct when he electronically submitted it on August 10, 2010. Grievant signed the application's certification/agreement on August 24, 2010. (A Exhs.; A Exhs. 4 and 7/3)

14. Grievant also agreed to a criminal history background check when he signed the certification/agreement on the April 10, 2003, February 23, 2007, and August 10, 2010 applications. (A Exh. 4/8, 13, and 21).

15. After reviewing Grievant's prior applications and not finding a listing of the convictions disclosed on his criminal history report, the Agency held a telephonic conference call on September 21, 2010, to determine what "On File" meant. Human Resource Manager SP, Human Resource Consultant LF, and Grievant participated.

When Human Resource Manager SP informed Grievant during the conference call that she had reviewed all prior applications the Grievant had submitted and that Grievant's only listing regarding the conviction question was "speeding 65 in 55" on his May 28, 1986 application, Grievant responded "**That's because I don't remember the dates of speeding tickets, or other stuff.**" (A Exh. 5; Testimony of LF).

16. Because Grievant's response regarding his criminal history did not correlate with Grievant's criminal history report obtained by the Agency, the Agency determined Grievant's application was not true and complete and therefore falsified. The Agency contemplated disciplining Grievant. It then took steps to provide Grievant due process prior to taking any disciplinary action. Due process included Grievant meeting with his superior, JJ, on November 19, 2010/November 24, 2010, regarding pending disciplinary action for the allegation of falsifying records. Grievant did not disclose his criminal history during the meeting(s). Subsequent to the September 21, 2010 conference call and November 2010 meeting, Grievant received from the Agency a copy of his criminal history report and Grievant acknowledged it was accurate. (A Exhs. 3, 7; Testimony of KM; Testimony of JJ; G Exh. 1).

17. The Agency considered Grievant's non-disclosure of his convictions a falsification of records. Thus, the Agency issued Grievant a Group III Written Notice on January 13, 2011. The Agency described the nature of the offense in the Written Notice as follows:

⁸ The Hearing Officer notes that on the April 10, 2003, August 24, 2010, and February 23, 2007 applications, the certification substitutes "Commonwealth" for "State."

Group III Written Notice: for “**falsifying records**” in compliance with DHRM Standard of Conduct Policy 1.60. You submitted a state application for a Competitive Voluntary Transfer. The agency reviewed your criminal history record. Your application stated “on file”; however you failed to list your violation(s) of law. You concealed a criminal conviction from your state application.

(A Exh. 1; G Exh. 1).

18. On April 26, 1993, Grievant attended a Personnel Selection Class presented by VDOT. The instructor, HP, was a VDOT employee and the class name was “So You Want the Job.”⁹ Regarding revealing convictions on applications, the instructor informed the class that if they were ever charged, convicted, or had a criminal history, they must always include it on an application by stating “On File” and be able to provide documentation upon request and to explain when asked for details. Instructor HP’s rationale for this training was explained in his letter dated February 9, 2011, to the Agency where he states that he gave the above-mentioned instruction to attendees so that “information of a confidential nature that could hurt them later would not be spelled out in the application.” Class attendees were instructed that they should disclose convictions when asked about the “on file.” response on the application. (A Exhs. 6/6, 7).

19. Grievant has as active Group I Written Notice which the Agency issued on June 22, 2010.

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

⁹ HP is now retired from his employment with the Agency.

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.

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses “include acts of minor misconduct that require formal disciplinary action.” Group II offenses “include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action.” Group III offenses “include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination.”¹⁰

Agency management issued Grievant a Group III Written Notice on January 13, 2011, for falsifying records. 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 - falsification of records - described in the Written Notice?

Blacks Law Dictionary (6th Edition) defines “falsify” as follows:

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document.

¹⁰ The Department of Human Resource Management (DHRM) has issued its Policies and Procedures Manual setting forth Standards of Conduct for state employees.

New Webster's Dictionary and Thesaurus defines "falsify" as follows:

to alter with intent to defraud, to falsify accounts, to misrepresent,
to falsify an issue, to pervert, to falsify the course of justice.

On August 10, 2010, Grievant electronically submitted an application for a position with the Agency which among other things requested Grievant's criminal history and required certification that Grievant's responses on the application were true and complete. In the "Conviction Question" section of the application, Grievant responded "yes" to the question asking if he had ever been convicted for any violations of law, including moving traffic violations. Further, in the "Criminal History" section, in the space provided for Grievant to describe the offense, Grievant responded "On File." Also, the application provided space for Grievant to give details concerning the statute, date, and locality of any conviction(s). Grievant left those spaces blank.

Regarding the certification, Grievant signed and dated the following agreement.

I hereby certify that all entries on both sides and attachments are true and complete, and I agree and understand that any falsification of information herein, regardless of time of discovery, may cause forfeiture on my part of any employment in the Service of the Commonwealth of Virginia. I understand that all information on this application is subject to verification and I consent to criminal history background checks. I also consent that you may contact references, former employers and educational institutions listed regarding this application. I further authorize the Commonwealth to rely upon and use, as it sees fit, any information received from such contacts. Information contained on this application may be disseminated to other agencies, nongovernmental organizations or systems on a need-to-know basis for good cause shown as determined by the agency head or designee.

The evidence shows that Grievant's response to the application's request for his criminal history prompted the Agency to seek clarification. Because Grievant was considered a finalist for the position he applied, the Agency interviewed him. Next, consistent with its policy DPM 1.25 which the Agency implemented on January 1, 2009, the Agency conducted a criminal history background check on Grievant. The resulting report revealed Grievant had obtained three misdemeanor criminal convictions for which he had not listed on the August 10, 2010 application. A telephone conference initiated by the human resource manager ensued amongst Human Resource Manager SP, Human Resource Consultant LF, and Grievant to obtain more information regarding Grievant's "on file" response to the criminal history inquiry. When asked by Human Resource Manager SP what "on file" meant, Grievant stated that his response was consistent with training he received from Instructor HP when he attended a 1993 class called "So You Want the Job." Further, he stated that the instructor, a VDOT training manager in 1993, had

informed the class attendees to give the Agency an opportunity to look up the criminal history.

Upon further inquiry by the Agency during the conference call the evidence shows Grievant failed to provide any information regarding his convictions. After Grievant's comments regarding the 1993 instructor's directions, Human Resource Manager SP stated to Grievant that she had reviewed all applications submitted by Grievant and that with the exception of one where Grievant had listed a speeding conviction of 65 in 55 there was no other information on file. Grievant responded with "That's because I don't remember the dates of speeding tickets or other stuff." Grievant provided nothing more to the Agency during that conference call, and during his November 2010 meeting with his superior JJ, regarding his criminal history.

Grievant contends he did not falsify any information on the application and was only following instructions provided during the 1993 class mentioned previously here. The Hearing Officer finds Grievant's argument unconvincing.

Grievant's assertion is not in whole supported by the instructor's recollection of his teaching. The Hearing Officer notes that by letter dated February 9, 2011 from Instructor HP, the instructor states that he told the class if they had ever been charged, convicted or had criminal history that they must include it on the application by stating "on file" and then be able to provide documentation upon request and to explain when asked for details. Further, the evidence shows that the instructor also informed class attendees that when asked about "On File" they should disclose all conviction information.

The Hearing Officer notes that Grievant did follow Instructor HP's directive to state "On File" indicating Grievant had a criminal history, but Grievant failed to obey the instructor's directive to provide documentation upon request and/or provide details when asked. During the September 21, 2010 conference call, Human Resource Manager SP asked what "On File" meant and in effect asked for details regarding Grievant's criminal history. Grievant provided none and in fact stated at one point that he did not remember.

The Hearing Officer finds that by stating "On File" as a response to the criminal history inquiry on the August 10, 2010 application, Grievant represented that he had a criminal history, that he would follow Instructor HP's directive and that upon request he would provide documentation and the details of his criminal history. Upon inquiry as noted above, he failed to provide any documentation or details. In fact, the evidence shows that subsequent to the conference call, the Agency provided the details to Grievant as the Agency mailed him a copy of his criminal history. Grievant then confirmed his history. The Hearing Officer finds Grievant's confirmation does not constitute disclosing his criminal history as required by the application or by Instructor HP's teaching.¹¹

In addition, the evidence shows as previously mentioned that Grievant noted on his

¹¹ The Hearing Officer also notes that Grievant's superior, JJ, testified that had Grievant been forthright, he would not have been disciplined. His testimony was not contradicted and the Hearing Officer finds it credible.

April 10, 2003, February 23, 2007, and August 10, 2010 applications that his criminal history was “On File.” Yet Grievant had furnished nothing to the Agency about his criminal misdemeanor convictions on those applications or by other means.¹² Grievant certified on those applications that his responses were true and complete. The Hearing Officer finds that the absence of any documentation regarding his criminal history makes them incomplete. For this reason also, the Hearing Officer finds Grievant made a misrepresentation and misled the Agency on his August 10, 2010 application.

Considering the above, the Hearing Officer finds the Grievant falsified a record because he misrepresented and misled the Agency on his application.

2. Was the behavior misconduct?

The Agency’s Policy Number 1.60 lists falsification of records as a Group III offense. (A Exh. 2/21). The Hearing Officer has found that Grievant did falsify his application by failing to provide documentation or details about his criminal history. Thus, Grievant’s conduct constitutes misconduct.

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

The Agency implemented DPM 1.25 on January 1, 2009. It requires all finalist for an employment position for which they have applied to undergo a criminal history background check. Grievant electronically submitted an application on August 10, 2010 for a position, became a finalist, and was subjected to a criminal history background check. The resulting report disclosed convictions Grievant failed to list on his application or clarify when the Agency asked about his criminal history. As previously noted here, Grievant’s conduct was a misrepresentation and misled the Agency. Thus, it establishes falsification.

As noted previously, 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. Falsification of records is identified as a Group III offense. The evidence therefore shows the agency’s issuance of a Group III Written Notice for the offense was consistent with policy.

¹² Grievant argues there were other applications the Agency did not review and suggests that those other applications could have listed his criminal history. The Hearing Officer finds insufficient evidence to establish that there were other applications. However, the Hearing Officer notes that it is reasonable to conclude even if there were other applications, based on Grievant’s history of responding “On file” to the criminal history inquiry he would have responded likewise on any other applications that post dated the 1993 class “So You Want the Job.” Further, the Hearing Officer notes the dialogue between Human Resource Manager SP and Grievant on September 21, 2010. That conversation shows Grievant did not disclose his criminal history on any applications he submitted to the Agency. Particularly, when Human Resource Manager SP informed Grievant that she had reviewed **all prior applications [Grievant] had submitted** and with the exception of the May 28, 1986 application where [Grievant] listed “speeding 65 in 55” there was no other information on file, Grievant responded “that’s because I don’t remember the dates of speeding tickets, or other stuff.” The Hearing Officer finds Grievant’s response during this dialogue acknowledges that on **all** applications he submitted, he did not disclose any criminal convictions. (emphasis added).

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.”¹³ 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.”¹⁴ 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.¹⁵

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 Hearing Officer does not find the Agency’s discipline unreasonable. She notes when Grievant was issued the Group III Written Notice, he had an active Group I Written Notice in his file which had been issued less than seven months before he received the Group III Written Notice. Further, the Hearing Officer notes that a Group III Written Notice alone is grounds for dismissal under the Standards of Conduct 1.60. The evidence shows the Agency did not terminate Grievant nor suspend him, but the Agency mitigated Grievant’s discipline because of his long employment history with the Agency and his response of “On File” on the application.

The Hearing Officer has considered all the evidence and Grievant’s arguments that he was taught to respond to the criminal history question with the phrase “On File”; that he has been employed with the Agency for 25 years and the Agency did not consider all his applications; that when he was provided a copy of the convictions he confirmed they were accurate; and that the application’s date and date of the Group III Written Notice are inconsistent. Having given careful thought to all the evidence and arguments, the Hearing

¹³ Va. Code Section 2.2-3005 (c)(6)

¹⁴ *Rules for Conducting Grievance Hearings* VI(A)

¹⁵ *Rules for Conducting Grievance Hearing* VI(B)12

Officer finds the Agency's action reasonable and upholds the discipline issued.

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.

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 27th day of July, 2011.

/s/

Ternon Galloway Lee, Hearing Officer

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