

DECISION OF HEARING OFFICER

In the matter of

Case Number: 11665

Hearing Date: April 29, 2021

Decision Issued: May 19, 2021

SUMMARY OF DECISION

The Agency had found Grievant violated the rules of conduct due to failure to follow instructions and/or policy. The Agency then issued Grievant a Group Two Written Notice with removal due to Grievant's accumulation of written notices. The Hearing Officer found Grievant committed Group II offenses and because of an accumulation of written notices, he could be terminated. The Hearing Officer also determined the discipline was consistent with policy and law and reasonable. Accordingly, the Hearing Officer upheld the discipline.

HISTORY

Grievant timely grieved the discipline by submitting the Grievance Form A to the Office of Equal Employment Dispute Resolution ("EEDR"). In his Form A, Grievant requested reinstatement to his employment with the agency. (A Exh. 2).

EDR appointed the undersigned as the Hearing Officer in this matter effective March 1, 2021. The Hearing Officer held a pre-hearing conference ("PHC") by telephone on March 10, 2021,¹ Thereafter, by order issued March 10, 2021, the Hearing Officer scheduled the grievance hearing for April 29, 2021, to be held by telephone. The hearing was scheduled to begin at 9:00 a.m., and end no later than 2:00 p.m.² This order also noted other rulings made and matters discussed during the PHC.

On the date of the hearing and prior to commencing it, the parties were given an opportunity to present matters of concern to the Hearing Officer.

Also, during the hearing, the Hearing Officer admitted, without objection, the Agency's Exhibits 1 through 15. Grievant submitted no exhibits.

At the hearing both parties were given the opportunity to make opening and closing statements and to call witnesses. Each party was provided the opportunity to cross examine any witness presented by the opposing party.

During the proceeding, the Agency was represented by its advocate. Grievant represented himself.

¹ This was the first date the parties indicated they had mutual availability to participate in the PHC.

² The parties agreed to the scheduling and the hearing being held by telephone as the Grievant indicated he did not have sufficient internet connection to participate by Zoom or a similar platform. Further, due to the pandemic, an in-person hearing was not feasible.

APPEARANCES³

Advocate for Agency
Witnesses for the Agency (2 witnesses)
Grievant
Witness for Grievant (1)⁴

ISSUE

Was the written notice with removal warranted and appropriate under the circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against Grievant were warranted and appropriate under the circumstances. Grievance Procedure Manual (“GPM”) § 5.8(2). 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 determining the credibility of the witnesses, the Hearing Officer makes the following findings of fact:

1. Among other things, the Agency builds, preserves, and operates the state’s roads, bridges and tunnels. In addition, its work focuses on safety and enabling easy movement of people and goods. (A Exh. 13, p. 167; Testimony of Superintendent).
2. Grievant’s employment with the Agency spanned 32 years. (A Exh. 2, p. 36). Grievant worked with a crew of several other employees on transportation projects for the Agency. His core job responsibilities included having the skill to operate and maintain light medium and heavy duty equipment in order to perform maintenance and construction related tasks. (A Exh. 3, pp. 39-41). Grievant was an expert operator of equipment. When he was absent from work unexpectedly or on short notice, certain jobs his supervisor had scheduled required postponement. This was the case because the crew heavily depended on Grievant to accomplish the scheduled task due to his expertise in operating equipment. (Testimony of Superintendent).
3. By November 2020, Agency management had informed Grievant that he had exhausted his sick leave and personal leave, but Grievant did have some annual or vacation leave available. Per policy, of which management had informed Grievant of, prior approval was required to take vacation leave. (Testimony of Superintendent).

Incidents Occurring November 16, 17, 30 and December 14, 2020

4. Management had scheduled Grievant to work on November 16, 2020, starting at 7:00 a.m. On the morning of November 16, 2020, Grievant sent his immediate supervisor a text stating that he would not be reporting to work. Grievant had not been approved for vacation leave (the only

³ All witnesses testified by telephone due to the pandemic.

⁴ Grievant testified on his behalf. Grievant did not identify any other individuals to call as witnesses on his behalf.

leave he had not exhausted as of November 16, 2020). After receiving Grievant's text, on the morning of November 16, 2020, Superintendent responded to the text by sending Grievant an email. This email explicitly reminded Grievant that vacation leave was supposed to be pre-approved. Grievant did not report for work on November 16, 2020. Management had not approved his absence. (Testimony of Superintendent).

5. On November 17, 2020, Grievant's work schedule started at 7:00 a.m. During a morning meeting, Superintendent informed the work crew of that Superintendent would be showing a mandatory video providing snow training. The video had been sent to Superintendent by Superintendent's supervisor. Superintendent started the video at 7:05 a.m. At 7:11 a.m., Grievant left the meeting and walked outside. Historically, Superintendent had instructed crew members that if a meeting was in process and a member needed to leave for a break, he could raise his hand, indicating the crew member needed a break, and then leave. (Testimony of Superintendent; A Exh. 1).

The evidence is conflicting whether Grievant raised his hand before exiting the meeting. Superintendent states Grievant did not. Grievant states he did so. Hearing Officer has determined that neither statement is any more convincing than the other. Accordingly, the Hearing Officer finds the evidence is insufficient to show, Grievant failed to follow instructions during the November 17, 2020 meeting. (Testimonies of Superintendent and Grievant).

6. Later during the month of November, 2020, management had scheduled Grievant to work starting at 7:00 a.m. on November 30, 2020. On this date, Grievant first sent a text at 6:27 a.m. stating that he would be a little late. Then at 7:50 a.m., Grievant sent another text stating that he would not be reporting to work that day. Superintendent then sent Grievant a text informing Grievant that Grievant did not have sick or personal leave and that any vacation leave required pre-approval. Superintendent also reminded Grievant in the text that failing to report to work could result in disciplinary action. Superintendent received no response from Grievant. Grievant did not report to work. Management had not approved his absence. (Testimony of Superintendent; A Exh. 1, p. 6).

7. Management had scheduled Grievant to work starting at 7:00 a.m. on December 14, 2020. On this date, Grievant first sent Superintendent a text at 5:33 a.m. stating that Grievant would not be reporting to work. Superintendent responded by text informing Grievant that Grievant did not have sick or personal leave and any vacation leave required pre-approval. Superintendent's response also informed Grievant that his pattern of failing to report for work as scheduled was a disruption to the functioning of the area's headquarters' operation. Grievant did not report to work. Management had not approved his absence. (Testimony of Superintendent; A Exh. 1, p. 6).

8. Grievant's failure to report to work on the days mentioned above interrupted the Agency's operation and affected safety. For example. Grievant had been scheduled to operate machinery on at least some of the days he was a "no show." His assigned crew relied on his expertise to complete certain jobs. Accordingly, work previously assigned to the crew could not be accomplished in Grievant's absence. Regarding safety, one of the days Grievant failed to report for work, the crew was assigned a project to address an erosion problem. That job had to be delayed in light of Grievant's absence. During this delay, the erosion worsened leading to a huge

rock being washed into the road. (Testimony of Superintendent).

Discipline rendered on January 11, 2021

9. On January 11, 2021, management issued Grievant a Group II Written Notice for failure to follow policy/instructions. Specifically, the written notice asserted that (i) Grievant failed to attend in its entirety a mandatory meeting on November 17, 2020, and (ii) Grievant was absent from work without approval on November 16 and 30, 2020, and December 14, 2020. Management also terminated Grievant due to an accumulation of active Written Notices. (A Exhibit 1, pp. 2-4).

Management made its disciplinary decision based on several factors. Management considered that other employees voiced to Superintendent that Grievant was receiving favored treatment considering Grievant's numerous attendance issues. Management also considered that Grievant was unwilling to commit to changing his behavior, that Grievant's conduct was a repeated offense and habitual, that Grievant had received warnings, and that Grievant had accumulated several written notices. (Testimonies of Manager and Superintendent; A Exhs. 1, 14).

Disciplinary History

Grievant had been disciplined for attendance problems before as noted below.

10. On April 22, 2015, Grievant received a counseling memorandum. The memorandum warned Grievant that pre-approval was required for vacation leave. He was also told that his behavior was not acceptable. The behavior referenced involved Grievant being absent from work on April 8 through 10, 2015 without approval. Specifically, Grievant sent text messages indicating he did not feel well and had a doctor's appointment. On April 10, Grievant was a "no show, no call/text." Grievant returned to work on April 13, 2015, without a doctor's note. (Testimony of Superintendent; A Exh. 14, p. 183).

11. Moreover, on November 30, 2018, management issued Grievant a written memorandum (November 30 memorandum) counseling him because of numerous incidents of tardiness occurring during the period September 10, 2018, to November 1, 2018. Grievant acknowledged receipt of this memorandum by signing it on November 30, 2018. This memorandum also counseled Grievant for missing one day of work without notice. Regarding the circumstances resulting in the November 30 memorandum, Grievant had exhausted his personal and sick leave. Yet, he called management reporting that his child was ill and he would not be in to work. Also, the November 30 memorandum reminded Grievant that his leave constituted vacation leave and policy requires such to be pre-approved. The November 30 memorandum, among other things, informed Grievant that when an employee's personal and sick leave have been exhausted, the employee is required to obtain pre-approval to use vacation leave even if that vacation leave is for the purpose of caring for a sick family member. (A Exh. 14, pp. 184-186).

12. Moreover, the November 30, 2018 Counseling Memorandum outlined corrective action for Grievant to take. Specifically, Grievant was instructed to take steps to improve his behavior to include the following:

- If Grievant was going to be late, he was instructed that he must call in before the start of his workday;
- Family/personal leave maybe taken for any purpose, provided reasonable notice is given to include reasons like for family, illness, or other personal needs
- Annual leave or vacation leave may be taken for personal use as approved by management. Must request annual leave and have it approval in advance of taking the leave
- Sick leave may be taken for the employee's own personal illness and not for a family member
- Sick leave may not be taken to care for a sick child with the exception of FMLA qualifying events.
- Grievant's supervisor could request a doctor's note should Grievant use sick leave.

(A Exh. 14, pp. 184-186).

13. On March 11, 2019, management issued Grievant a Group One Written Notice for excessive tardiness/attendance and failing to report without notice. (A Exh. 14, pp. 187-188).

Grievant's infractions resulting in this group notice were his calling in stating he would be late to work on February 4, 2019, and then not reporting to work that day. Further, on February 6, 2019, Grievant called in initially stating he would be in late. Then he called in and stated his son had a bathroom problem and he would not be in. Although, in his communications, Grievant referenced taking personal leave, at the time he had exhausted his personal leave. Neither did he have available any vacation leave. Accordingly, his leave on February 6, 2019, constituted vacation leave without prior approval. It was also leave without pay. (A Exh. 14, pp. 187-189)

14. On December 10, 2019, management issued Grievant a Group II Written Notice for failure to follow policy or comply with written directives. Specifically, Grievant's infractions involved his failure to report to work as scheduled and taking unauthorized absences without having a positive leave balance or FMLA. Grievant's absence without a leave balance resulted in Grievant being out on Leave without Pay on November 4, 5, 6, 20, 2019, and December 2, 3, 4, and 5, 2019. (A Exh. 14, pp.190-191).

Grievant's Circumstances during Covid-19 Pandemic in 2020

15. Prior to November 16, 2020, Grievant had exhausted his leave under the Family Medical Leave Act (FMLA) to include leave Grievant was entitled to under expanded medical leave in accordance with the Family First Coronavirus Response Act (FFCRA). He had also exhausted his Public Health Emergency Leave (PHEL) which consisted of 160 hours. In fact, management had

been generous with Grievant when he used PHEL. This is to say, management did not require Grievant to give a reason for PHEL even though PHEL by definition is limited to an employee attending to his own medical needs related to a declared public health threat during a pandemic illness. *See* Policy 4.52. (A Exh. 7, p. 80-100). (Testimonies of Manager and Superintendent).

16. Grievant has an eight year old son. Due to the pandemic during the relevant time period in this matter, November and December 2020, Grievant's child rarely attended school in-person. Consequently, Grievant's son required a sitter when he was not physically at school and when the son was ill. Grievant did not always have someone to care for his child during these times.

Moreover, Grievant's mother had been ill for at least two years. However, by December 2020, Grievant's mother's illness had become terminal. Grievant as referenced before, had exhausted all leave, except some vacation leave. Grievant's supervisor instructed him to discuss his situation with Human Resource. The evidence does not reflect that Grievant followed this instruction. Grievant's mother passed on December 17, 2020. (Testimonies of Grievant and Superintendent; A Exhs. 1 and 2).

Hearing Officer finds Grievant's testimony that he was taking days off to care for family because he did not have sitters credible.

Applicable Policies

17. PHEL had been activated by the state agencies on March 20, 2020 due to the COVID-19 pandemic. According to Policy 4.52 Public Health Emergency Leave (PHEL). PHEL leave "provides up to 160 hours of paid leave per leave year to eligible employees to attend to their own medical needs (and/or those of their immediate family members) related to the declared public health threat during a pandemic illness." *See* Policy 4.52 (A Exh.7, pp. 80-81). As stated in "Finding of Fact" # 15, by November 16, 2020, Grievant had exhausted his PHEL.

18. The Family and Medical Leave Act 1993, as amended (Act) is a United States labor law requiring covered employers to provide employees with job-protected and unpaid leave for up to 12 weeks per year, without losing job security or health benefits, to care for a spouse, child, or parent who has a serious health condition. 29 U.S.C. 2601. This leave is known as FMLA.

19. The Family Federal Coronavirus Response Act (FFCRA) required certain employers, like the Agency, to provide expanded FMLA; that is, up to 80 hours of paid sick leave for specified reasons related to COVID-29. *See* Public Law No: 116-127 (March 18, 2020). *See also*, A Exh. 7). Grievant had exhausted his leave under this act before November 16, 2020. (Testimony of Superintendent).

The parties do not dispute that by November 16, 2020, Grievant had exhausted all his leave, except vacation leave.

20. DHRM Policy 4.30 provides:

A. Agency approval necessary for all leaves of absence

Before taking a leave of absence from work, whether with or without pay, employees should request and receive their agencies' approval of the desired leave.

B. Employee requests for leave

1. Procedure for requests

a. Employees should request leaves of absence as far in advance of the desired leave as practicable.

b. Employees also should submit requests for leaves of absence in accordance with specific requirements set forth in the respective leave policies, and which may be set forth in their agencies' procedures for requesting leaves.

2. Special circumstances

If an employee could not have anticipated the need for a leave of absence, the employee should request approval for the leave as soon as possible after leave begins. In viewing the request for approval, the agency should consider, among other things, the circumstances necessitating leave and whether the employee could have anticipated the need.

C. Agency action on requests for leaves of absence

1. When practicable, and for as long as the agency's operations are not affected adversely, an agency should attempt to approve an employee's request for a leave of absence for the time requested by the employee, except that compensatory and overtime leave may be scheduled by the agency at a time convenient to agency operations.

2. If the time requested for a leave of absence conflicts with agency operations, the agency has the discretion to approve the employee's request for an alternative time.

D Sufficient accrued leave

1. Agencies may not approve paid leaves of absence to be taken in a pay period in which an employee does not have sufficient accrued leave to cover the absence.

2. Employees are responsible for knowing the amount of accrued leave to which they are entitled and that they have earned. Employees will be required to reimburse their agencies for time taken off from work if they did not have sufficient accrued leave to cover such time off. Reimbursement may be in the form of money or annual, sick, compensatory, or overtime leave.

E. If agency denies request for leave of absence

If an agency does not approve an employee's request for leave, but the employee still takes the requested time off from work, the employee may be subject to the actions listed below.

- The absence will be designated as unauthorized;
- The employee will not be paid for the time missed;
- Because the employee has experienced Leave Without Pay, he or she will not accrue annual or traditional sick leave for the pay period(s) when the absence occurred; and
- The agency may also take disciplinary action under Policy 1.60, Standards of conduct.

See DHRM Policy 4.30 (A Exh. 11, pp. 136-137).

21. DHRM Policy 1.25 provides, among other things, that employees must (i) adhere to their assigned work schedules; (ii) notify management as soon as possible if they are unable to adhere to their schedules, such as late arrivals or early departures; (iii) ... request leave approval in advance, if possible. *See* DHRM Policy 1.25 (A Exh. 8, p. 104).

22. DHRM Policy 4.10 defines annual leave as “paid time off accrued by employees and available for personal use **as approved by agency management**. Further, this leave must be approved in advance. (Emphasis added). *See* DHRM Policy 4.10. (A Exh. 9, pp. 110).

Moreover, Policy 4.10 addresses unapproved leave as set forth below.

Unapproved Leave: When an employee takes leave time that was requested but not approved, the employee will be subject to the following agency actions:

- The absence will be designated as unauthorized;
- The employee will not be paid for the time missed;
- Because the employee has experienced Leave Without Pay, he or she will not accrue annual or traditional sick leave for the pay period(s) when the absence occurred; and
- The agency may also take disciplinary action under Policy 1.60, Standards of Conduct.

Id. at pp. 115-116.

23. Under the Standards of Conduct, Policy 1.60 (Policy 1.60), conduct constituting a failure to report to work and or failure to follow instruction or policy is a Group II offense. (*Policy 1.60*) (A Exh. 12, p. 162).

24. The Agency’s Employee Handbook sets forth work place expectations. One of which is reporting to work as scheduled. (A Exh. 13, p. 170).

25. Grievant was knowledgeable about the Agency’s leave policies. (Testimonies Manager and Superintendent; A Exhs. 6, 14).

Other

26. Grievant failed to report to work; he took unauthorized leave. (Testimony of Superintendent).

27. Superintendent did not inform Grievant that pre-approval was unnecessary to use Grievant’s vacation leave. (Testimony of Superintendent; A Exh. 14).

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.⁵

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 (Policy 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 the Standards of Conduct, Group I offenses are categorized as those that are less severe in nature, but warrant formal discipline; Group II offenses are more than minor in nature or repeat offenses. Further, Group III offenses are the most severe and normally a first occurrence warrants termination unless there are sufficient circumstances to mitigate the discipline. *See* Standards of Conduct Policy 1.60.

On January 11, 2021, management issued Grievant a Group II Written Notice for failing to follow policy/instructions. Management also terminated Grievant based on an accumulation of written notices. The Hearing Officer examines the evidence to determine if the Agency has met its burden.

I. Analysis of Issue(s) before the Hearing Officer

Issue: Whether the discipline was warranted and appropriate under the circumstances?

A. Did the Grievant engage in the conduct? If so, was the behavior misconduct?

⁵ Grievance Procedural Manual §5.8

The Agency argues Grievant's absences on November 16, November 30, and December 14, 2020, violated policies.

DHRM Policy 4.30 requires, among other things, that an employee request leaves of absence in accordance with leave policies. Also, vacation leave is required to be approved in advance per DHRM Policy 4.10. Moreover Policy 1.25 requires an employee to report to work as scheduled. Further, the employee handbook reiterates this policy.

There is no dispute as to the incidents occurring on Nov. 16 and Nov. 30, 2020., and December 14, 2020, regarding Grievant's absences from work. On the three days mentioned, Grievant's superior had scheduled Grievant to work. At the time Grievant had only vacation leave available. He failed to report to work. Grievant had not received prior approval to take his vacation leave. Although he had been approved for FMLA, PHEL, and leave under the FFCRA, Grievant had exhausted all these leaves by November 16, 2020, as well as his sick and personal leave. Grievant's leave on the three days mentioned were not authorized. This is the case even though he telephoned or texted his boss the morning he was scheduled to work and stated he would not be in to work. His boss reminded him he had no sick or personal leave which could be taken without prior approval. Prior approval was not obtained Grievant therefore violated the policies mentioned above.

Now focusing on the alleged violation on November 17, 2020, the Agency also argued that Grievant violated policy when he left a mandatory meeting on November 17, 2020. As determined in "Finding of Fact j#5," neither the Agency's version or the Grievant's version of what occurred during the meeting is more credible. Hence, the Hearing Officer finds the Agency has failed to meet its burden regarding the alleged misconduct on November 17, 2020.

B. Was the Discipline Consistent with Policy and Law?

Failure to follow policy and or failing to report for work is a Group II offense under the Standards of Conduct, Policy 1.60. As discussed previously, the evidence demonstrates that on November 16, November 30, and December 14, 2020, Grievant did not follow several policies regarding leave or work attendance. Hence, Grievant engaged in conduct subject to a Group II offense. The Agency properly issued a Group II Written Notice.

Policy 1.60 provides that an accumulation of two Group Two Written Notices may subject an employee to termination. *See* Standards of Conduct, Attachment A. The evidence demonstrates that Grievant's disciplinary history contains an active Group II notice, as well as an active Group I notice. Grievant has accumulated enough group two notices to be terminated. Accordingly, the Hearing Officer finds Grievant's discipline consistent with policy and law. This is the case, even though the Agency was unable to meet its burden regarding the alleged offense on November 17, 2020.

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 the rules

established by the Office of Employment Dispute Resolution [“EDR”].”⁶ 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.”⁷ 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 discipline if it is within the limits of reasonableness.

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 that Grievant engaged in the conduct described in the group notice regarding failing to follow policy. And further, the Agency’s discipline was consistent with policy and law.

Next, the Hearing Officer considers whether the Agency’s discipline was unreasonably.

Hearing Officer has considered Grievant’s long tenure with the Agency, the unfortunate illness and death of his mother, the COVID-19 pandemic and its effects on child care or obtaining sitters. That said, even before the pandemic, Grievant attendance was problematic as demonstrated by his disciplinary history stretching back to 2018, two years before the onset of the pandemic. Moreover, the Agency demonstrated leniency with Grievant regarding his attendance problems. Such was the case even though Grievant’s conduct caused the Agency hardship.

Further the Hearing Officer is cognizant of Grievant’s claim that the Agency failed to issue the written notice timely. The Hearing Officer finds Grievant has received due process.

After careful consideration of all the evidence whether specifically mentioned or not, the Hearing Officer finds the Agency’s discipline reasonable.

DECISION

Hence, for the reasons stated here, the Hearing Officer upholds the agency’s discipline.

⁶ Va. Code § 2.2-3005 and (c)(6)

⁷ *Rules for Conducting Grievance Hearings* VI(A)

APPEAL RIGHTS

You may request an administrative review by EDR within 15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment and Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's decision becomes final when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.^[1]

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

Entered this 19th day of May, 2021.


Termon Galloway Lee, Hearing Officer

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

^[1] Agencies must request and receive prior approval from EEDR before filing a notice of appeal.