

Issues: Group I Written Notice (disruptive behavior), and Group II Written Notice (disruptive behavior and failure to follow policy); Hearing Date: 02/27/18; Decision Issued: 03/27/18; Agency: Virginia Tech; AHO: Lorin A. Costanzo, Esq.; Case No. 11113, 11152; Outcome: No Relief – Agency Upheld.

COMMONWEALTH OF VIRGINIA
OFFICE OF EQUAL EMPLOYMENT DISPUTE RESOLUTION
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Consolidated Grievances 11113 & 11152

Hearing Date: February 28, 2018

Decision Issued: March 27, 2018

PROCEDURAL HISTORY

On August 9, 2017 Grievant was issued a Group I Written Notice for “disruptive behavior” (EEDR Case No. 11113) and on November 1, 2017 Grievant was issued a Group II Written Notice for “disruptive behavior” and “failure to follow instructions and/or policy” (EEDR Case No. 11152). EEDR consolidated these two matters for hearing and undersigned was appointed hearing officer effective January 16, 2018.¹

At the January 23, 2018 pre-hearing telephone conference the parties waived rights to a hearing being held within 35 days of the appointment of the hearing officer and confirmed such waivers by e-mails of 1/23/18. A grievance hearing was held on February 27, 2018 on the two consolidated grievances. At the conclusion of the hearing, Grievant requested to submit written closing statements. Each party was afforded the opportunity to submit a written closing statement which was due by 5:00 p.m. on March 12, 2018.

¹ A. Tab 1 and 3.

APPEARANCES

Agency Attorney

Agency Party Representative (who was also a witness)

Grievant (who was also a witness)

Witnesses

ISSUES

Whether the issuance of a Group I Written Notice was warranted and appropriate under the circumstances?

Whether the issuance of a Group II Written Notice was 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 action against Grievant was warranted and appropriate under the circumstances. A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than not; evidence that is more convincing than the opposing evidence.²

The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline.³

FINDINGS OF FACT

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

² *Grievance Procedure Manual*, Sections 5.8 and 9.

³ *Grievance Procedure Manual*, Sections 5.8 and 9.

01. On 8/09/17 Grievant was issued a Group I Written Notice for Disruptive Behavior . The Written Notice indicated:

In my meeting with you on August 2, 2017, you exhibited behavior that was not professional, collegial, or respectful. This included at a certain moment speaking to me in a significantly raised voice with noticeable angry, aggressive tone. I politely asked you to lower your voice, but you did not. With increasing volume, you argued that you were not speaking loudly but if you wanted to, you could raise your voice so that it could be heard in the other room. You stood up visibly agitated, opened my office door as if to leave, then continued to shout while standing in the open door. This was overheard by others and was disruptive to the work environment.

02. On 11/1/17 Grievant was issued a Group II Written Notice for “Disruptive Behavior” and “Failure to follow instructions and/or policy”. The Written Notice indicated:

An investigation completed by [Agency] Office of Equity and Accessibility and submitted on October 5, 2017 determined that you have made multiple comments to female staff members within ISE that were in violation of University Policy 1025 on Harassment, Discrimination, and Sexual Assault. These comments made negative reference to women and their abilities. Further, these comments were found to be ongoing and not just a one-time incident. Both the investigation process and the findings are described comprehensively in the Compliance report. Your behavior is a violation of the Virginia Department of Human Resources Management Standard of Conduct Policy 1.60 - *Disruptive behavior (37)* and *Failure to Follow Policy (13)*. The nature of these comments and the frequency which with they have occurred have caused a disruption to a productive and positive work environment within ISE.

03. Grievant is an Information Technology Specialist II and has been employed by Agency approximately 17 years. Grievant had no active Written Notices prior to issuance of the 8/9/17 Group I Written Notice. Compliance had no record of previous complaints involving Grievant.⁴

Grievant has medical conditions including insulin dependent type 2 diabetes mellitus and degenerative disc disease.⁵

⁴ A. Tab 6.

⁵ Testimony.

04. Interim Director is Grievant's Supervisor. On August 2, 2017 Grievant met with Interim Director and Coordinator in Interim Director's Office at Facility for a meeting to discuss matters relating to Agency computers.⁶

05. Grievant completed the Title IX training (Compliance Workshop) on 11/29/16.⁷

LAW AND CONCLUSIONS:

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 of Virginia. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging, and training state employees. It also provides for a grievance procedure. Code of Virginia, §2.2-3000 (A) sets forth the Virginia grievance procedure and provides, in 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 the resolution of employee disputes which may arise between state agencies and those employees who have access to the procedure under §2.2-3001."

To establish procedures on Standards of Conduct and Performance for employees pursuant to §2.2-1201 of the Code of Virginia, the Department of Human Resource Management ("DHRM") promulgated the *Standards of Conduct, Policy No. 1.60, effective April 16, 2008*.⁸ 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 of Conduct* 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.

DHRM Policy 1.60 - *Standards of Conduct* organizes offenses into three groups according to the severity of the behavior. 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

⁶ Testimony.

⁷ A. Tab 6.

⁸ A. Tab 8.

acts of misconduct of such a severe nature that a first occurrence normally would warrant termination.

Attachment A to DHRM Policy 1.60, provides *disruptive behavior* is an example of a Group I offense and *failure to follow supervisor's instructions or comply with written policy* is an example of a Group II offense.

Additionally, § B. 2. of Policy 1.60 provides the examples of offenses presented in Attachment A. are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Accordingly, any offense not specifically enumerated, that in the judgment of agency heads or their designees undermines the effectiveness of agencies' activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section.

Agency Policies:⁹

Agency has promulgated and published a *Staff Handbook* which sets forth a number of Agency policies, including Agency's prohibiting discrimination against employees, students, or applicants on the basis of race, sex, disability, age, veteran status, national origin, religion, political affiliation, or sexual orientation. Agency's *Anti-Discrimination and Harassment Prevention Policy*, Policy 1025, prohibits discrimination or harassment on any of these bases.¹⁰ Furthermore, *Policy 1025* prohibits conduct of any type that is based upon gender and which unreasonably interferes with the person's work or academic performance or participation in university activities, or creates a working or learning environment that a reasonable person would find hostile, threatening, or intimidating.¹¹

Additionally Agency has promulgated and published a *Statement of Business Conduct Standards* which provides key principles for ethical business and administrative conduct for its faculty and staff. This Statement provides, in pertinent part:

We treat all persons with courtesy, respect, and dignity in the course of university business.

We affirm the inherent dignity and value of every person and strive to maintain a climate for work and learning based on mutual respect and understanding ...

We reject all forms of prejudice and discrimination, including those based on age, color, disability, gender, national origin, political affiliation, race, religion, sexual orientation, and veteran status.

⁹ A. Tab 7 and A. Tab 9.

¹⁰ A. Tab 7 at page numbered as 4.

¹¹ A. Tab 6.

The [Agency] strives to provide a workplace where all employees, students, visitors, and volunteers are treated with dignity and respect. Thus, we will not tolerate harassment or discrimination of any kind against another person. ...

A. Group I Written Notice:

On August 9, 2017 Grievant was issued a Group I Written Notice for disruptive behavior regarding matters occurring on August 2, 2017 at a meeting with Interim Director, his Supervisor, and Coordinator. The Written Notice alleged at such meeting Grievant:

Spoke to his supervisor in a significantly raised voice with a noticeable angry aggressive tone and did not lower his voice when asked to do so.

Argued he was not speaking loudly and stated if he wanted to he could raise his voice so it could be heard in the other room.

Stood up visibly agitated, opened the Supervisor's office door and continued to shout while standing in the open door.

This was over heard by others, and was disruptive to the work environment.

Previously, after an April 11, 2017 staff meeting, Interim Director had spoken to Grievant about the tone and volume of his voice, its impact on staff, and informed him this was not acceptable behavior at work.

On August 2, 2017 Interim Director met with Coordinator and Grievant in Interim Director's office to discuss Graduate Student concerns of losing work on Agency computers. Some Graduate Students had programs running for a number of days on Agency computers and were concerned they were locked out of their Agency computer while a simulation was running and had lost work when computers were updated and restarted. The meeting was called to discuss the problem, develop a plan to better communicate with students, and discuss how to better notify them when matters were occurring that could affect their work on Agency computers.

Grievant was agitated during the meeting and shouted/yelled a number of times during the meeting. Grievant admitted he got loud even before his dexcom monitor went off. He indicated he was very good at projecting his voice, trained himself for this, and it is hard to turn off. During the meeting, Interim Director told Grievant she didn't want to be yelled at and, more than once, requested Grievant not to raise his voice and to calm down. Grievant acknowledges Interim Director tried to calm him down.

At one point, after being told not to raise his voice, Grievant became very loud and yelled, slammed his hands on the table, jumped up out of his chair, pushed his chair back and said he was not speaking loudly but if he wanted to he could raise his voice so that it could be heard in the other room. Grievant then opened Interim Director's office door and continue to shout while standing in the open door. Secretary and Receptionist were also exposed to his actions.

Grievant's actions at the meeting affected Agency employees and their ability to conduct Agency business in the workplace. Grievant's actions were disruptive and in violation of policy.

Grievant does not contest his actions at the meeting on August 2, 2017 but contends his actions occurred due to medical conditions. Grievant indicated he suffers from diabetes, degenerative disc disease, and other medical conditions. He presented medical encounter statements electronically signed by a nurse practitioner concerning encounters/office visits of 9/26/17 (Chief Complaint: Diabetes II) and 10/30/17 (Chief Complaint: general physical exam). Past Medical History information on such documents indicates, among other matters, insulin dependent type 2 diabetes mellitus and uncontrolled and degenerative disc disease. Both statements also reported information provided by Grievant to medical staff, concerning the meeting of August 2, 2017. In the 6/26/17 encounter statement the Nurse Practitioner indicated:

He states that he knew what was going on and tried to communicate this. He told them that he needed an ambulance needed to be called to take him to the ER and he was ignored.

In the 10/30/17 encounter statement the Nurse Practitioner indicated:

He asked for rescue to be called and states "they did nothing". He states, "my problem was that my sugar went up too fast due to the severe stress I was under."

Grievant does not remember all of the 8/2/17 meeting.¹² Grievant contends, at the 8/2/17 meeting, he asked for rescue or an ambulance to be called but was denied this by Interim Director. In Grievant's 9/9/17 written statement he wrote, "I then told her that if I do not leave you might have to call rescue." Both Interim Director and Coordinator were very clear in their testimony that at no time was there a request for an ambulance or rescue to be called. Grievant further testified that Interim Director threatened to call the police but this was also denied by Interim Director.

Grievant contends a disability was responsible for his actions at the 8/2/17 meeting and thus his Group I Written Notice should be rescinded as per provisions of the Americans with Disabilities Act ("ADA").

An individual is considered to have a disability if that individual either (1) has a physical or mental impairment which substantially limits one or more of his or her major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. A qualified individual with a disability is one who "satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who with or without reasonable accommodation, can perform the essential functions of such position." 29 CFR § 1630.2(m).

Under the ADA an employer cannot discriminate against an employee because of a disability and an employer has a duty as to the provision of reasonable accommodations. However, the ADA does not excuse an employee from meeting the same performance and conduct standards as other similarly situated employees without disabilities.

Moreover, an employer is not required to provide an accommodation if unaware of the need.¹³ Grievant has the responsibility to inform Agency if an accommodation is needed to perform essential job functions. However, there is no evidence that any accommodation has been requested by Grievant.

The ADA does not require employees to ask for an accommodation at a specific time, but the timing of a request for reasonable accommodation is important as an employer does not have to rescind discipline when no request was made prior to discipline.¹⁴

¹² Testimony of Grievant.

¹³ EEOC Technical Assistance Manual § 3.6.

¹⁴ Hill v. Kansas City Area Transp. Auth., 181 F.3d 819 (8th Cir. 1999).

Additionally, the ADA generally affords employers the latitude to develop and enforce conduct rules for employees. An employer may discipline an employee with a disability for violating a conduct standard if the disability does not cause the misconduct and may hold the employee to the same conduct standards it applies to all other employees.

Even if it were to be found that Grievant's disability was to have caused or contributed to the misconduct, discipline may still be issued. An employer may discipline an employee with a disability for violating a conduct standard even if the disability causes or contributes to the misconduct if the conduct rule is job-related, the conduct rule is consistent with business necessity, and other employees are held to the same standard.¹⁵ In conduct rules that are ambiguous as to the type of behavior that's unacceptable, such as rules in this cause that prohibit disruptive behavior, consideration is also given to the specific conduct at issue, the symptom of the disability affecting an employee's conduct, and the nature of Grievant's job and work environment.

Grievant violated a job-related conduct rule, the conduct rule was consistent with business necessity, and all other Agency employees are held to the same standard. The 8/2/17 meeting was called for a valid business purpose. Grievant is a Computer Systems Engineer, with a role title of an Information Technology Specialist II. He has job responsibilities for providing software and user support, backup, system security, and network support to staff, faculty, and students.¹⁶ He doesn't contest he was agitated and doesn't contest yelling and/or shouting during the meeting and at the door. Grievant contends medical conditions, including sugar levels and disc related issues, caused or contributed to his actions in shouting, making the statements discussed above, being agitated, going to the door and shouting, and not following his supervisor's instructions when she told him to stop yelling at her and to calm down.

Policy prohibits disruptive behaviors and charges Grievant with acting in a professional manner.¹⁷ His actions disrupted the meeting and the business which was attempted to be accomplished at the meeting and disrupted Agency employees, Agency work, and the work of its employees. Additionally, Grievant was previously counseled concerning his tone of voice and volume by Interim Director and told this was not an acceptable behavior at work.

There is no credible evidence the issuance of discipline in this case is barred by Grievant's rights under the ADA and the ADA does not provide a basis to grant relief to Grievant in this cause.

For the reasons stated above, Hearing Officer finds Agency has met its burden of proof as to the Group I Written Notice.

¹⁵ 29 C.F.R. §§ 1630.10(a), 1630.15(c).

¹⁶ A. Tab 6 and Testimony.

¹⁷ A. Tabs 1, 9.

B. Group II Written Notice

On 11/1/17 Grievant was issued a Group II Written Notice for “Disruptive Behavior” and “Failure to follow instructions and/or policy”. The Written Notice was issued upon Agency investigation finding Grievant had made multiple comments to female staff members that were in violation of policy. Agency expressed concern Grievant made negative references to women and their abilities, these types of comments were of an ongoing nature, and the comments caused a disruption to a productive and positive work environment.

Coordinator filed a complaint alleging on two separate occasions on 8/3/17 Grievant made inappropriate comments to her at work, including:

Well you are a woman, so the only thing that would make you happy is an unlimited credit card at a mall.

What, you couldn't wait for the guys to come move it? Typical woman, never satisfied and always having to rearrange things.

Coordinator also stated to Investigator Grievant had made other inappropriate comments to her and to other females in the past.

On September 8, 2017 Compliance issued a notice of Intent to Investigate. An investigation was conducted and on October 5, 2017 the Equity and Access Investigator (“Investigator”) issued his Confidential Report detailing the investigation and its findings.

Two separate instances occurred on August 3, 2017 involving statements made by Grievant to Coordinator. In one instance, Grievant asked Coordinator if she was happy with her new computer and when she responded “no” Grievant replied, “Well you are a woman, so the only thing that would make you happy is an unlimited credit card at a mall.” This statement was witnessed by Adviser, a female Agency employee. Adviser, upon hearing the statement made a statement to Grievant about his being chauvinistic and Grievant laughed and walked away.

A second incident occurred later that same day of August 3, 2017. Adviser and Coordinator were waiting in the hall for lab personnel to arrive and help move some heavy items. A desk had been earlier moved into the hall. Grievant ask Coordinator what she was doing and she told him. Grievant then replied, "What, you couldn't wait for the guys to come move it? Typical woman, never satisfied and always having to rearrange things." Adviser heard the statement and told him to watch his male chauvinistic comments. Adviser believed the statement was made to both Coordinator and her.

Grievant, acknowledged he made the 8/3/17 hall statement during his questioning of a witness at hearing.

The Agency investigation of Coordinator's complaint also gave rise to concerns as to past statements of Grievant. Coordinator and Grievant were interviewed by Investigator. Investigator interviewed approximately twelve witnesses. During the investigation additional comments by Grievant were addressed by a number of the witnesses interviewed by Investigator. The following was reported to Investigator:

One employee was concerned with Grievant having commented in the summer on her size during her pregnancy and Grievant stating, "in a month an half you won't be able to fit through the door". The employee indicated this upset and offended her. This statement was witnessed by a co-worker who was also interviewed and who told Investigator Grievant commented to the female employee that he could not believe she was still coming to work and then made the comment referenced above.

Witness 2 said Grievant has made comments for years however it has not become worse but people have had enough.

Witness 4 said Grievant made an inappropriate comment to her.

Witness 6 indicated Grievant has made inappropriate comments to people for several years and has become more brazen.

Witness 1, 2, 3 said Grievant creates and uncomfortable and disruptive work environment because of his behavior and comments.

There were mixed opinions expressed to Investigator from other witnesses concerning Grievant's opinion of women, ranging from believing he degrades women and lacks respect for women to not believing he has issues women.

Grievant, on 9/17/17, denied to Investigator making comments to Coordinator or having interaction with her on August 3, 2018. On a second interview, held 9/25/17, Grievant was told of a witness present on August 3, 2017 and Grievant confirmed the first statement but stated he believes she is mistaken about the second comment stating he does not remember saying the alleged comments. He stated it is possible he makes comments and does not remember them. He also said people in the department are out to get him.¹⁸

In 2016, when Coordinator was using a scooter due to a broken ankle, Grievant commented that she should be careful wearing a dress that short and also said it was not appropriate. Grievant acknowledged making the statement but indicated he did so trying to point out that underwear was visible.

Agency policy, including its Anti-Discrimination and Harassment Prevention Policy, Policy 1025, prohibits discrimination or harassment on the basis of gender.¹⁹ Policy 1025 prohibits conduct of any type that is based upon gender and which unreasonably interferes with the person's work, participation in university activities, or creates a working or learning environment that a reasonable person would find hostile, threatening, or intimidating.²⁰

The evidence indicates on 8/3/17 Grievant made the statements attributed to him by Coordinator and Grievant has made statements in the past that were based on gender. The

¹⁸ A. Tab 6.

¹⁹ A. Tab 7 at document page number 4.

²⁰ A. Tab 6.

evidence further indicates these statements, both the statements on 8/3/17 and previous statements indicated herein, were based on gender and unreasonably interfered with the person's work and/or creates a working environment that a reasonable person would find hostile, threatening, or intimidating.

For the reasons stated above, Hearing Officer finds that Agency has met its burden of proof as to the Group II Written Notice.

Due Process:

Grievant contends Agency violated due process as it did not follow policy as to the timelines in his grievance prior to this cause being qualified for hearing. As has been stated in a number of EEDR Compliance Rulings, including EEDR Compliance Ruling No. 2018-4590 issued 8/16/17, EEDR has consistently held that the extensive post-disciplinary due process provided through the grievance procedure will cure a lack of pre-disciplinary due process. While EEDR recognizes that not all jurisdictions have held that pre-disciplinary violations of due process are cured by post-disciplinary actions, EEDR has held it is persuaded by the reasoning of the many jurisdictions that have held that a full post-disciplinary hearing process can cure any pre-disciplinary deficiencies.

Post-disciplinary due process requires employees be provided a hearing before an impartial decision-maker, an opportunity to confront and to cross-examine the accuser in the presence the decision-maker, an opportunity to present evidence, and the presence of counsel.²¹ The Grievance statutes in Virginia provide these basic post-disciplinary procedural safeguards through the establishment of an administrative hearing process. This process provides the employee and agency may be represented by counsel or by a lay advocate at the hearing, may present evidence, may call witnesses to present testimony, and the witnesses may be cross-examined. Additionally, in Virginia, an independent Hearing Officer presides over the hearing and renders an appealable decision after having heard the evidence.

The evidence indicates Grievant has received full post-disciplinary due process. Grievant had received notice of the charges against him which were set forth in the Written Notices. Grievant had a full hearing before an impartial decision-maker, an opportunity to present evidence, an opportunity to confront and cross-examine the agency witnesses in the presence of the decision maker, and had opportunity to have counsel or a lay advocate.

²¹ Reeves v. Thigpen, 879 F. Supp. 1153, 1174 (Mid. Dist. Ala. 1995)

For the reasons stated above, Hearing Officer does not find a violation of due process

Mitigation:

Va. Code § 2.2–3005.1 authorizes a hearing officer to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with the rules established by the Department of Human Resources Management ...".²² The hearing officer must receive and consider evidence in mitigation or aggravation of any offense charged by an agency.²³

The *Rules for Conducting Grievance Hearings* provide that a hearing officer is not a "super-personnel officer" and, 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. A hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness and, if the hearing officer mitigates the Agency's discipline, the hearing officer is charged with stating in the hearing decision the basis for mitigation.

Grievant has the burden to raise and establish mitigating circumstances that justify altering the disciplinary action consistent with the "exceeds the limits of reasonableness" standard. The Agency has the burden to demonstrate any aggravating circumstances that might negate any mitigating circumstances.²⁴

Consideration has been given to the totality of the evidence in this cause including Grievant's length of service and not having prior disciplinary actions. Based upon review of all the evidence in this cause, the Hearing Officer finds the issuance of the Group I Written Notice and issuance of the Group II Written Notice do not exceed the limits of reasonableness.

²² Va. Code § 2.2-3005.

²³ Va. Code § 2.2-3005 (C)(6).

²⁴ Rules for Conducting Grievance Hearings, § VI. (B.)(2.).

CONCLUSION

For the reasons stated above, based upon the evidence presented at hearing, Agency has proven, by a preponderance of the evidence, that:

A. In the matter of the Group I Written Notice:

1. Grievant engaged in the behavior described in the Written Notice.
2. The behavior constituted misconduct.
3. The Agency's discipline was consistent with law and policy.
4. There are not mitigating circumstances justifying a reduction or removal of the disciplinary action.

Furthermore, Agency has proven by a preponderance of the evidence that the disciplinary action of issuing a Group I Written Notice was warranted and appropriate under the circumstances and Agency's discipline does not exceed the limits of reasonableness.

B. In the matter of the Group II Written Notice:

1. Grievant engaged in the behavior described in the Written Notice.
2. The behavior constituted misconduct.
3. The Agency's discipline was consistent with law and policy.
4. There are not mitigating circumstances justifying a reduction or removal of the disciplinary action.

Furthermore, Agency has proven by a preponderance of the evidence that the disciplinary action of issuing a Group II Written Notice was warranted and appropriate under the circumstances and Agency's discipline does not exceed the limits of reasonableness.

DECISION

For the reasons stated above, the Agency's issuance to Grievant of a Group I Written Notice and the Agency's issuance to Grievant of a Group II Written Notice are **UPHELD**.

APPEAL RIGHTS

You may request an administrative review by EEDR within 15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EEDR within 15 calendar days of the date the decision was issued. Please address your request to:

Office of Equal 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.

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

S/Lorin A. Costanzo

Lorin A. Costanzo, Hearing Officer

copies e-mailed to: Grievant

Agency Attorney

EDR