

Issue: Group II Written Notice (failure to follow policy and safety rule violation); Hearing Date: 12/14/18; Decision Issued: 01/03/19; Agency: DOC; AHO: Lorin A. Costanzo, Esq.; Case No. 11278; Outcome: No Relief – Agency Upheld.

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

**DECISION OF HEARING OFFICER**

**In the matter of: Grievance Case No. 11278**

**Hearing Date: December 14, 2018**

**Decision Issued: January 3, 2019**

**PROCEDURAL HISTORY**

Grievant was issued a Group II Written Notice on May 30, 2018 for “Failure to follow instructions” and “Safety rule violation” (Written Notice Offence Codes 13 and 14). The Written Notice, under “Nature of Offense and Evidence”, stated, in pertinent part:

Violation of DOP 135.1 for violating safety rules where there is a threat of physical harm, and refusal to obey instructions that could result in a weakening of security. On May 9<sup>th</sup>, 2018 [**Grievant**] was on post supervising Christian Services in the visitation room when he leaves his post more than once, while at the same time leaving one door propped open with a chair and a second door not locked. Seventy-Nine offenders and volunteers were left alone. Rapid eye shows [**Grievant**] going outside the visitation room at 7:20 pm and returning at 7:22 pm and leaving his post again at 7:23 pm returning at 7:32 pm ...<sup>1</sup>

Page 3 of the Written Notice set out additional information under the title of “Violation of Security Post Orders” stating certain duties and instructions provided within the post orders. Also listed were unacceptable behaviors under OP 135.1 including, “Failure to follow a supervisor’s instructions, perform assigned work or otherwise comply with applicable established written policy”, “Violating safety rules where there is not a threat of bodily harm” and “Refusal to obey instructions that could result in weakening of security”. Additionally, leaving a security post without permission during working hours was stated to normally be a Group III offense.

An inconsistency was indicated between matters set forth on page 1 and page 3 of the Written Notice. Page 1 addressed Grievant violating safety rules where there is a threat of bodily harm and page 2 addressed Grievant violating safety rules where there is not a threat of bodily harm.

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<sup>1</sup> A. Tab 1.

Agency corrected the Written Notice inconsistency by memorandum dated June 27, 2018 which indicated there was a typographical error on page 1 of the Written Notice which should have stated a violation of safety rules where there is not a threat of bodily harm.<sup>2</sup>

On June 22, 2018 Grievant grieved issuance of the Group II Written Notice and matters proceeded through the resolution steps. When matters were not resolved to his satisfaction, Grievant requested qualification of his grievance for hearing . The grievance was qualified for hearing, in full, on September 25, 2018 and undersigned was appointed Hearing Officer effective October 29, 2018.

A pre-hearing telephone conference was held on November 2, 2018 at which Grievant requested time to secure an advocate. Both parties waived their right for a hearing to be held within 35 days of the date the hearing officer was appointed and, by e-mail of 11/2/18, each party confirmed such waiver in writing. By agreement of the parties, the grievance hearing in this cause was set for December 14, 2018 and the grievance hearing was held at Facility on December 14, 2018.

### **ISSUES**

1. Whether the Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?
3. Whether the disciplinary action taken by the Agency was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

### **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its 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 more convincing than the opposing evidence. Additionally, Grievant has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline.<sup>3</sup>

### **HEARING and EXHIBITS**

The following appeared at the December 14, 2018 grievance hearing:

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<sup>2</sup> A. Tab 2.

<sup>3</sup> Office of Employment Dispute Resolution, DHRM, *Grievance Procedure Manual*, Sections 5.8 and 9.

Grievant (who was a witness).  
Agency advocate.  
Agency Party Representative at Hearing (who was a witness).  
Witnesses.

Agency offered for admission one binder of exhibits tabbed numbered 1 through 8. No exhibits were offered by Grievant. By agreement of the parties, exhibits were admitted *en masse*. Exhibits are referenced herein as "A. Tab \_\_\_" with the tab number inserted in the "\_\_\_".

### FINDINGS OF FACT

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

01. Grievant is a Correctional Officer who has approximately 4<sup>1/2</sup> years employment with Agency. He had been employed at Facility for approximately four months as of 5/9/18, the date when the offense was alleged to have occurred.<sup>4</sup>

02. Grievant was issued a Group II Written Notice on May 30, 2018 (Offense date: 5/9/18) for violations of Written Notice Offense Codes 13 ("Failure to follow instructions") and 14 ("Safety rule violation").<sup>5</sup> The Written Notice alleged Grievant was in violation of OP 135.1 in that he violated safety rules where there is a threat of physical harm and he refused to obey instructions that could result in a weakening of security.<sup>6</sup>

03. On June 27, 2018 Agency issued a memorandum amending and correcting the Written Notice. In the memorandum Agency indicated a typographical error occurred on the Written Notice and that the Written Notice should have stated "violating safety rules where there is not a threat of bodily harm" (*emphasis added*).<sup>7</sup>

04. The Written Notice (as corrected by the 6/27/18 memorandum) raised Written Notice Offense Codes 13 and 14 ("Failure to follow instructions and/or policy" and "Safety rule violation"). It further charged Grievant violated provisions of OP 135.1 and raised:

Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy.

Violating safety rules where there is not a threat of bodily harm.

Refusal to obey instructions that could result in a weakening of security.

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<sup>4</sup> A. Tab 1 and Testimony.

<sup>5</sup> A. Tab 1.

<sup>6</sup> A. Tab 1 and Testimony.

<sup>7</sup> A. Tab 2.

In the Written Notice Agency also noted leaving a security post without permission during working hours is normally a Group III offense.<sup>8</sup>

05. Security Post Order 81 (“PO 81”) provides for one Correctional Officer at this post who is assigned the area of control of, “All spaces within the DCE-Program areas of the Support Building”.<sup>9</sup>

06. On May 9, 2018, the duty roster assigned Grievant to the programs officer’s post and he was subject to the duties, responsibilities, and instructions provided in PO 81. His duties on this date included supervising Christian Services held in the visitation room which were attended by both offenders and visitors.<sup>10</sup>

07. On January 12, 2018 Grievant signed Post Order 81 acknowledging he understood the duties as outlined in the post orders. Furthermore, he was opportunity to review any items in the post order that might be unclear with the supervisor who countersigned the post orders.<sup>11</sup>

08. On May 9, 2018 Grievant left his assigned post on two occasions without being relieved and without receiving permission from his shift commander or a supervisor to do so. On the first occasion he left his assigned post for a period of approximately 2 minutes and on the second occasion he left his assigned post for a period of approximately 9 minutes.<sup>12</sup>

09. On 5/9/18, while Grievant was on duty at his assigned post, Grievant’s assigned post had two doors not secured, one door being propped open by a chair and another door being closed but not locked/latched.<sup>13</sup>

## CONCLUSIONS

### **OP 135.1**<sup>14</sup>

The Department of Corrections (“DOC”), pursuant to Va. Code §53.1-10, has promulgated its own *Standards of Conduct* patterned on the state Standards of Conduct, but tailored to the unique needs of the Department. The *DOC Standards of Conduct* (Operating Procedure Number 135.1, Effective Date: October 1, 2015) divide unacceptable behavior into three groups according to the

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<sup>8</sup> A. Tab 1.

<sup>9</sup> A. Tab 6 and Testimony.

<sup>10</sup> A. Tab 7 and Testimony.

<sup>11</sup> A. Tab 2 and Testimony.

<sup>12</sup> Testimony.

<sup>13</sup> Testimony.

<sup>14</sup> A. Tab 3.

severity of the behavior. Group I offenses include types of behavior less severe in nature, but requiring correction in the interest of maintaining a productive and well-managed work force. Group II offenses include acts and behavior that are more severe in nature and are such that an accumulation of two Group II offenses normally would warrant termination. Group III offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination.

Examples of Group II offenses set forth in OP 135.1 include, “Failure to follow a supervisor’s instructions, perform assigned work, or otherwise comply with applicable established written policy”, “Violating safety rules where there is not a threat of bodily harm”, and “Leaving the work site during working hours without permission”.

OP 135.1 also provides that, “*Refusal to obey instructions that could result in a weakening of security*” is an example of a Group III offense.

§ IV. of OP 135.1 provides that the list of offenses contained therein is illustrative and not all-inclusive. An action or event occurring either during or outside of work hours that, in the judgment of the agency head, undermines the effectiveness of the employee or of the agency may be considered a violation of these *Standards of Conduct* and may result in disciplinary action consistent with the Operating Procedure based on the severity of the offense.

***Directive No. 401 and OP 401.1:***<sup>15</sup>

Directive No. 401 (effective March 1, 2017) entitled “Facility Staffing and Post Orders” authorizes Operating Procedure 401.1, Development and Maintenance of Post Orders.

Operating Procedure 401.1 (“OP 401.1”) entitled Development and Maintenance of Post Orders (Effective date: September 1, 2016, amended 4/11/17) was adopted and promulgated by Agency and establishes a system for the development and maintenance of effective facility post orders which delineate the duties and responsibilities of each security post in Department of Corrections facilities.

As provided in OP 401.1, Officers, prior to initially assuming duties of the post, are charged with signing and dating the Post Order Review Log indicating that have read, understood, and discussed with the supervisor all provisions of the Post Order. Subsequent signing of post orders is required no less than quarterly or when a Post Order is revised or changed.

OP 401.1 acknowledges and provides that Post Orders cannot cover every incident or eventuality and charges that employees assigned to any post shall use good judgment and pay careful attention to the general and specific issues and details related to the post of assignment.

***Security Post Order 81:***<sup>16</sup>

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<sup>15</sup> A. Tab 4 and A. Tab 5.

<sup>16</sup> A. Tab 6 and Testimony.

Security Post Order 81 (“PO 81”) provides for one Correctional Officer at this post whose assigned area of control is specified therein as, “All spaces within the DCE-Program areas of the Support Building”. On May 9, 2018 Grievant was assigned to this post and was subject to PO 81. He was also responsible to have read the Post Orders to insure understanding of his assigned duties.

PO 81 provides that an Officer may be assigned to another area to monitor offender programs such as the visiting room, mess hall, etc. PO 81 also acknowledges and states that Post Orders cannot cover every incident or eventuality, appropriate procedure should be considered when dealing with all issues. The assigned Correctional Officer is directed by PO 81, if such incident or eventuality arises, that the Correctional Officer should notify his/her Supervisor and await/follow further instructions. PO 81 sets forth, among other matters, the requirements for the assigned Correctional Officer to:

- Not leave his/her post until properly relieved or authorized by Operations Supervisor/Shift Commander or higher authority.
- Ensure that all doors are secured prior to securing the post.
- Keep all doors secured unless otherwise directed by the Shift Commander
- Be able to account for all offenders in his area of control at all times.

**Grievant:**

In his written response during the resolution steps, Grievant noted a discrepancy existed between the page 1 of the Written Notice and page 3.<sup>17</sup> Page 1 of the Written Notice, under “Nature of Offense and Evidence”, stated that Grievant was in violation of *DOP 135.1 for violating safety rules where there is a threat of physical harm and refusal to obey instructions that could result in a weakening of security.* However page 3 of the Written Notice stated there was a “*Violation of DOP 135.1 for violating safety rules where there is not a threat of physical harm and refusal to obey instructions that could result in a weakening of security*” (*emphasis added*).

By written memorandum of 6/27/18, Agency notified Grievant of a typographical error occurring on page 1 of the Written Notice and that it should state violation safety rules where there is not a threat of bodily harm. Grievant was informed of the correction by the 6/27/18 written memorandum and thereafter was aware, or should have been aware, the Written Notice charged him with violating safety rules where there is not a threat of physical harm.

OP 135.1 provides violating safety rules where there is not a threat of bodily harm is listed as an example of a Group II offense while violating safety rules where there is a threat of physical harm is an example of a Group III offense.

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<sup>17</sup> A. Tab 2.

The grievance hearing in this cause addressed the allegation Grievant violated safety rules where there is not a threat of bodily harm and Hearing Officer did not take into consideration or address any allegation of violating safety rules where there is a threat of bodily harm.

The Written Notice addressed Agency concerns as to a number matters occurring on 5/9/18 in violation of OP 135.1, including:

Failure to follow a supervisors instructions, perform assigned work or otherwise comply with applicable established written policy;

Violating safety rules where there is not a threat of physical harm;

Refusing to obey instructions that could result in weakening of security; and

Leaving his assigned post twice and leaving one door propped open with a chair and a second door not locked.

Grievant does not contest on 5/9/18 twice leaving the building where the Christian Service was being held and that he left two doors open. In his 5/24/18 rebuttal letter to Warden, Grievant stated, among other matters, this was the first time he had worked visitation while offenders were participating in outside recreation. He also stated that the activities he saw in the rec. yard and on the dog lot, to him, appeared suspicious. He stated without knowing what is considered normal behavior on the rec. yard he did not notify anyone but placed himself in a position to better observe in the event a security threat may have been occurring. Grievant also noted there was nothing tangible that he could explain that caused him to be alert and aware of what he saw.

Grievant raised a number of concerns including, but not limited to, concern he never received any direction or instruction on this assignment, there were no post orders specifically for this assignment, the safety rules violated were not specified, he did not disobey a direct order or refuse to follow a direct order or instruction as he was never given a direct order or instruction, and he was not given an opportunity to report the behavior he had seen by the supervisor that approached him.

**5/9/18:**

On 5/9/18 Grievant was assigned to duties within a Security Post by Agency. Grievant, in his assigned post, was subject to Security Post Order 81 which set out in writing certain duties, instructions, and responsibilities for the Correctional Officer at this post. His duties also included



supervising Christian Services held this date in the visitation room which were attended by both offenders and visitors. Grievant indicated visitors and 79 offenders were in the room for such services.<sup>18</sup>

The evidence, including Rapid Eye video, which was time and date stamped, indicated Grievant left his assigned post twice on 5/9/18 for periods of approximately 2 minutes and approximately 9 minutes. Additionally, two doors within Grievant's assigned post were left open. One door was held open with a chair and the other was not locked.<sup>19</sup>

Grievant had previously signed PO 81 which specifically set out post order requirements/instructions for him not to leave his assigned post until properly relieved or authorized by Operations Supervisor/Shift Commander or higher authority.<sup>20</sup> PO 81 required Grievant to not only ensure all doors were secure on assuming his post but also with keeping all doors secured unless otherwise directed by the Shift Commander. Additionally, it requires him to be able to account for all offenders in his area of control at all times and provided that his assigned area of control was, "All spaces within the DCE-Program areas of the Support Building".<sup>21</sup>

Grievant had the ability, without leaving his post, to ask questions and report any concerns or observations to his supervisor or to others. Grievant was issued a radio over which he could communicate to his chain of command and others within the Facility. Additionally, his post had a telephone for access within Facility.<sup>22</sup>

Grievant does not contest he went outside the building onto the boulevard but contends he did so due to observing what he felt was suspicious activity.<sup>23</sup> Rapid Eye provided video, which was time and date stamped, of Grievant leaving his assigned post on two occasions on 5/9/18. The evidence, including Rapid Eye video, indicated that two doors were left open at his assigned post. One door was held open with a chair and the other was not locked. Management expressed concerns as to safety and security in that two doors were not secured and this presented a breach of security that could possibly be exploited. Management also expressed safety and security concerns with Grievant leaving his assigned post to go outside the building on two occasions thus leaving visitors and offenders in a inside a room without security being present.

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<sup>18</sup> A. Tab 2.

<sup>19</sup> A. Tab 8 and Testimony.

<sup>20</sup> A. Tab 2, A.Tab 6, and Testimony.

<sup>21</sup> A. Tab 6.

<sup>22</sup> Testimony.

<sup>23</sup> A. Tab 2, Tab 7.

Grievant raised his actions were based on the training that he received at another facility and he was fairly new to Facility. However, Grievant had been at Facility for approximately 4 months and had signed the Post Order 81 setting out the duties and requirements for his post. Additionally, the evidence indicates that the correctional center where Grievant previously worked was a lower security level correctional center than Facility.<sup>24</sup>

OP 401.1 applies to all facilities operated by the Agency and provides for the development and maintenance of post orders which delineates the duties and responsibilities of each security post in Agency facilities.

Grievant raised raised that the safety rules violated were not specified and he was never given a direct order or instruction. However, the evidence indicates he was informed in the Written Notice of the safety rules and instructions violated. The rules and instructions violated were set out in PO 81. The Written Notice set out the safety rules and the instructions violated. The Written Notice addressed his being on post, leaving his post more than once, leaving one door propped open with a chair and a second door not locked, seventy-nine offenders and 4 volunteers being left alone on the two occasions, and matters were further set out in the attached page 3 of the Written Notice under the heading of "Violation of Security Post Orders".

#### ***Due Process and Non-compliance***

Grievant raised concerns as to Agency non-compliance during the period prior to his grievance being qualified for hearing and denial of due process.

§6.3 of the *Grievance Procedure Manual*, provides that, prior to a grievance being qualified for hearing, all claims of non-compliance should be raised immediately and, by proceeding with the grievance after becoming aware of a procedural violation, one generally forfeits the right to challenge the noncompliance at a later time.

§6.3 further provides that in presenting a claim, the claimant should notify the other party in writing of the noncompliance and allow the other party 5 workdays after receipt of the written notice to correct the non-compliance. If the non-compliance is corrected within the 5 workdays, the party is considered in compliance and no relief will be available from EEDR. If the non-compliance is not corrected within the 5 workdays, the party may request a ruling from EEDR. If EEDR finds that a party has failed to correct the non-compliance within the 5 workdays, EEDR may order the party to correct the non-compliance, or where a substantial procedural requirement of the grievance procedure was violated with out just cause, render a decision against the non-complying party on any qualifiable issue.

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<sup>24</sup> Testimony.

After the grievance has been qualified for hearing, a hearing officer has authority to hear any claims of party non-compliance occurring during the hearing phase.<sup>25</sup> There is no evidence Grievant raised non-compliance to EEDR prior to the grievance being qualified for hearing. Furthermore, once the grievance was qualified for hearing, no claim of a party noncompliance occurring during the hearing phase was raised with the hearing officer.

In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 545-46 (1985) the Supreme Court indicated that prior to certain disciplinary actions, the Constitution generally guarantees those with a property interest in continued employment absent cause (i) the right to oral or written notice of the charges, (ii) an explanation of the employer's evidence, and (iii) an opportunity to respond to the charges, appropriate to the nature of the case. However, the pre-disciplinary notice and opportunity to be heard need not be elaborate, need not resolve the merits of the discipline, nor provide the employee with an opportunity to correct his behavior. Rather, it need only serve as an "initial check against mistaken decisions, essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action."

*Loudermill* further provided any defect in due process was cured by the hearing process in which Grievant had the opportunity to know the allegations against him and present any defense he chooses during the hearing.

Furthermore, based upon the full post disciplinary due process provided to Grievant, the lack of pre-disciplinary due process, if any were to be found, was cured by the extensive post-disciplinary due process. As held in its Administrative Review, Ruling Number 2013-3571 (April 8, 2013), EDR (now EEDR) while noting not all jurisdictions have held that pre-disciplinary violations of due process are cured by post disciplinary actions, indicated it was persuaded by the reasoning of many jurisdictions that a full post-disciplinary hearing process can cure any pre-disciplinary deficiencies.

Grievant received oral and/or written notice of the charges, an explanation of the employer's evidence, and an opportunity to respond to the charges. The grievance procedure provides that Grievant can seek to compel the attendance of witnesses and the production of documents and other matters. A grievance hearing was held on 12/14/18 with Grievant in attendance. Grievant had a full hearing before an impartial decision-maker, an opportunity to present evidence, an opportunity to present any defenses, an opportunity to be represented by counsel, and an opportunity to confront and cross-examine the agency witnesses in the presence of the decision-maker.

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<sup>25</sup> §6.3 of the Grievance Procedure Manual.

For the reasons stated above, based upon the totality of the evidence presented in this cause, Hearing Officer does not find Grievant's due process rights were violated.

***Mitigation or Aggravation.***

§ 2.2-3005 of the Code of Virginia provides Hearing Officers shall have the power and duty to receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Human Resource Management pursuant to § 2.2-1202.1.

The hearing officer is to determine whether the agency has proven by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. To do this, the hearing officer reviews the evidence *de novo* (afresh and independently, as if no determination had yet been made) to determine (i) whether the employee engaged in the behavior described in the Written Notice; (ii) whether the behavior constituted misconduct; and (iii) whether the disciplinary action taken by the agency was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense). If the hearing officer finds that (i) through (iii) above, the agency's discipline must be upheld and may not be mitigated, unless under the record evidence, the discipline exceeds the limits of reasonableness.

If the agency prevails on all three elements, the hearing officer must then consider whether the Grievant has shown, by a preponderance of the evidence, that there were nevertheless mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether any aggravating circumstances exist which would overcome the mitigating circumstances. Furthermore, in reviewing agency-imposed discipline, the hearing officer must give due consideration to the management's right to exercise its good faith business judgment in employee matters, and the agency's right to manage its operations.

Upon review of all evidence admitted in this cause, as more fully discussed above, Hearing Officer finds that Grievant engaged in the behavior described in the Group II Written Notice, his behavior constituted misconduct, and Agency's discipline was consistent with law and policy.

The evidence further indicates Agency took into consideration mitigating circumstances. OP 135.1 provides that, for a Group II offense, discipline shall normally take the form of the notice and up to 10 workdays maximum suspension without pay (maximum of 80 hours for non-exempt employees) for the first Group II offense. However, Grievant was not suspended. Also, while OP 135.1 provides, "*Refusal to obey instructions that could result in a weakening of security*" and "*Leaving a security post without permission during working hours are examples of a Group III offense*", Agency did not issue a Group III Written Notice.

Upon consideration of all the evidence presented in this cause, including taking into consideration Grievant's length of service and otherwise satisfactory work performance (there being no evidence of any previous active disciplinary action), the Hearing Officer does not find, under the record evidence, that the discipline exceeds the limits of reasonableness and mitigation is not found to be warranted and appropriate under the circumstances.

### **DECISION**

For the reasons stated above, based upon consideration of all the evidence presented in this cause the Hearing Officer finds:

1. Grievant engaged in the behavior described in the Written Notice.
2. The behavior constituted misconduct.
3. The disciplinary action taken by the Agency was consistent with law and policy.
4. Mitigating circumstances justifying reduction or removal of the disciplinary action are not found.
5. Agency has met its burden that the action against Grievant was warranted and appropriate under the circumstances.

For the reasons stated above, based upon consideration of all the evidence presented in this cause, the Agency's issuance to Grievant of a Group II Written Notice is ***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](mailto: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*

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Lorin A. Costanzo, Hearing Officer

*copies e-mailed to:* Grievant  
Agency's Advocate  
EEDR