

Issues: Group II Written Notice (unsatisfactory performance), Group II Written Notice (other issue), and Demotion; Hearing Date: 06/01/15; Decision Issued: 06/21/15; Agency: ABC; AHO: Ternon Galloway Lee, Esq.; Case No. 10582; Outcome: No Relief – Agency Upheld.

## **DECISION OF HEARING OFFICER**

**In the matter of**

**Case Number: 10582**

**Hearing Date: June 1, 2015**

**Decision Issued: June 21, 2015**

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### **SUMMARY OF DECISION**

The Agency had found Grievant's performance was unsatisfactory and issued Grievant a Group II Written Notice. It also determined that Grievant misused a waged position and created an unauthorized position. For each of these offenses, the Agency issued Grievant a Group II Written Notice and demoted her. The Hearing Officer found Grievant engaged in the behaviors alleged and they constituted misconduct. Next, finding the Agency's discipline was reasonable and consistent with policy, the Hearing Officer upheld the discipline.

### **HISTORY**

On October 31, 2015, the Agency issued Grievant a Group II Written Notice for "misuse of a wage position and creating a position which Grievant was not authorized to create." On the same date, the Agency also issued Grievant another Group II Written Notice for unsatisfactory job performance. Grievant was also demoted. Grievant timely filed her grievance to challenge the Agency's action. The Office of Employment Dispute Resolution ("EDR") appointed the undersigned as the Hearing Officer in this matter effective April 16, 2015. A pre-hearing conference ("PHC") was held on April 30, 2015, and a scheduling order was subsequently issued setting the hearing for June 1, 2015.<sup>1</sup>

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. Grievant objected to the proposed Exhibit 11 of the Agency. After hearing the arguments of the parties, the Hearing Officer admitted Agency Exhibit 11, excluding page 15. Also, the Agency objected to Grievant's proposed chronology because it provided the names of a store manager and the head sales associate of that store. Grievant agreed to submit another version of the chronology with those names redacted. Thus, the Hearing Officer instructed the parties that the redacted version of the chronology would be admitted. Other exhibits admitted without objection were the Agency's Exhibits 1 through 10 and 12 through 14. As previously noted Agency Exhibit 11, excluding page 15 was also admitted. The Hearing Officer also admitted without objection Grievant's Exhibits 1 through 15. And as previously noted the Grievant's chronology with redacted names was admitted. Hearing Officer Exhibits 1 through 5 were also admitted without objection.

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<sup>1</sup> This was the first date that the parties were available for the hearing.

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/attorney and the Grievant was represented by her attorney.

### **APPEARANCES**

Advocate for Agency  
Agency's Representative  
Witnesses for the Agency (2 witnesses)  
Attorney/Advocate for Grievant  
Grievant  
Witnesses for Grievant (4, including the Grievant)

### **ISSUE**

Were the Group II Written Notices with demotion 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. 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 observing the demeanor of each witness who testified in person at the hearing, the Hearing Officer makes the following findings of fact:

1. Grievant has been employed by the Agency for 17 years. She was promoted to regional manager in 2005. Her assigned region included 16 stores. As regional manager, Grievant directly or indirectly supervised about 150 employees. (Testimony of Grievant; G's Exhibit Binder).

The regional manager's responsibilities include hiring classified employees<sup>2</sup>, monitoring the Agency stores in the region she was assigned to ensure the stores are complying with guidelines, ensuring customer service standards are upheld, conducting investigations, providing on the job training, and handling discipline. The position of regional manager is critical to the operation of the Agency's stores which make sales of alcoholic beverages. (Testimony of Director of Retail Operations; A Exh. 2, p. 3; G Exh. 3).

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<sup>2</sup> Classified jobs are fulltime jobs with benefits. Only employees of the Agency were permitted to apply for classified job openings. (Testimony of Assistant Director of Retail Operations).

## **SALES ASSOCIATION OFFENSE**

2. The Agency employs sales associates when they are needed. The primary duty of a sales associate is customer service; that is, waiting on customers in Agency stores (including operating the cash register). An employee in this position is normally hired by a store manager, not the regional manager. Sales associates are assigned to a store and perform the functions of a sales associate. The sales associate position is non-classified and part time. It is also referred to as a wage position. (Testimonies of Director and Assistant Director of Retail Operations, Store Manager of Store #ABC; G Exh. 4, p. 1).

By executive order, the Agency has been limited to scheduling part time workers to 29 hours a week. Due to the part-time nature of the sales associate job, the Agency realized that many sales associates would be working another job. This dual employment created or was prone to causing scheduling conflicts. Thus, so that store managers would know the availability of these part-time workers, sales associates were required to provide their supervisor with an availability calendar indicating the hours they could work. As referenced, these calendars were used to enable store managers to avoid scheduling conflicts and appropriately staff the stores with sales associates. The calendars also facilitated addressing staffing shortages within the region. For example, if one store was short-staffed, its manager could obtain from other store managers associates that were available to fill the staffing void. (Testimonies of Director and Assistant Director of Retail Operations).

The intent of the sales associate is to provide support in the store. Therefore, sales associates normally report directly to the store manager of their assigned store and their work hours are usually scheduled by this store manager. Only on rare occasions, such as an emergency situation, would a regional manager schedule the work hours of a sales associate. (Testimonies of Director and Assistant Director of Retail Operations, and Store Managers of Stores ## ABC and GHI).

If a sales associate did not work during a 60 day contiguous period, policy required that the employee be dropped from the payroll. As such, he/she was ineligible to apply for classified jobs within the Agency. The employee's supervisor was responsible for removing the employee from the payroll when the continuous work period was not met. (Testimonies of Director and Assistant Director of Retail Operations and Testimony of Grievant).

5. Grievant hired a sales associate (Sales Associate I) on or about February 16, 2013. The individual hired had been a store manager for the Agency. But this store manager had been disciplined and demoted to an assistant relief manager. This individual was dissatisfied with her demoted-position. Thus, after being in the position for only 10 months, she quit the job. Just 6 days later, Grievant hired this individual as a wage employee and under the title of "sales associate." Grievant treated Sales Associate I as a favorite. For example, Sales Associate I only worked for Grievant and never in a store. Further, even though she was hired under the title of "sales associate," she never performed the duties of a sales associate. Also, when Grievant hired this individual, the employee was assigned to Store DEF. However, Sales Associate I was never made available to work for the manager of store DEF. The same unavailability was true for

other store managers. In addition, Sales Associate I was a friend/reportedly a friend of Grievant. (Testimonies of Director and Assistant Director of Retail Operations; A Exh. 10, p. 1; A Exh. 11, pp. 1, 13-14; G Exh. 8, p.).

6. As referenced above, the supervisor of a part-time worker is required to remove an employee from the payroll if that employee has not worked within a 60 day period. Grievant was Sales Associate I's supervisor. Once an employee is removed from the payroll, that employee is precluded from applying for a classified position with the Agency. During the 18 month period Sales Associate I's name appeared on the Agency's payroll, she worked 12 days during this period and a total of only 64 hours. In addition, during the 18 month period, Sales Associate I had periods of four to five months without working any hours. Yet, Grievant failed to remove Sales Associate I's name from the payroll. What is more, even though Sales Associate I had two gaps of at least not working for four months, she was permitted to apply for a classified position and hired back by Grievant as a classified employee - an assistant manager - on August 25, 2014. (Testimonies of Director and Assistant Director of Retail Operations, and Grievant; A Exh. 2, p. 10; A Exh. 11, p. 15).

7. At least one employee in the region concluded that Grievant retained Sales Associate I on the payroll so that Sales Associate I could apply for a classified job. Further, other employees' perception was that Sales Associate I was given special treatment by Grievant. The evidence is sufficient to show Grievant showed favoritism toward Sales Associate I. (Testimonies of Director, Assistant Director of Retail Operations, and Grievant).

8. Sales Associate I, in effect, worked as Grievant's sole assistant. The Agency, however, had not authorized Grievant to create such a position. (Testimony of Assistant Director of Retail Operations).

9. During an investigation of Grievant's conduct in another matter regarding comments Grievant made to an interviewee, the Agency became aware of Grievant's hiring and favored treatment of Sales Associate I as noted above. It investigated this additional matter as well and determined that Grievant had violated the standards of conduct. After notifying Grievant of its intent to discipline Grievant for her actions regarding the Sales Associated I matter, it provided Grievant an opportunity to respond. After considering Grievant's response, on October 31, 2014, the Agency issued Grievant a Group II Written Notice. The notice described the offense as follows:

**Misuse of a wage position and creating a position which you were not authorized to create** - [Sales Associate I] resigned her classified position and was rehired as a Sales Associate. Sales Associate job expectations are clearly defined and we expect our SAs to work in stores supporting the sale of our products. She was assigned to S249 but did not perform any of the Sales Associate job duties. She was never put on the schedule and the store manager was not able to make any job assignments. She worked based only on your assignments. She was employed for 18 months during which she worked 12 days totaling 64 hours. During this time she had periods of 4 & 5 five months without any hours worked. She was never use during the period to fill in as a Sales

Associate even though managers report that they needed help.

(A Exh. 1, p. 2).

## **INTERVIEW OFFENSE**

10. During the interview process to hire an assistant manager position for an Agency store, Grievant informed a relief assistant manager<sup>3</sup> whom Grievant interviewed to fill the vacancy that even if this applicant interviewed best, the applicant would not receive the job because the applicant's current relief position would be too difficult to fill. (Admission by Grievant; Testimonies of Director and Assistant Director of Retail Operations; G Exh. 1, p. 2).

Grievant had made a similar comment before. No other regional managers had made such a comment to an interviewee. (Testimony of Assistant Director of Retail Operations).

11. The Agency then received several complaints about Grievant. One was an anonymous letter asserting that Grievant played favorites and discriminated during the hiring process. In addition, the Agency received a telephone complaint that Grievant was showing favoritism, discriminating, and not treating employees fairly. Further, two other employees met with upper management and voiced the same complaints. In addition, the interviewee to whom Grievant made the comments complained to management. (Testimonies Director and Assistant Director of Retail Operations).

12. Grievant admitted during management's ensuing investigation of the situation that she had made the comments to the interviewee. Further, management's investigation revealed that because of Grievant's practices and the way she treated her subordinates and the comment she made to the applicant, there was widespread dissatisfaction among employees in the region Grievant oversaw. Many of Grievant's subordinates were of the opinion that Grievant practiced favoritism in her treatment and hiring of employees. Some subordinates believed Grievant did things for her convenience and not the stores'. Subordinates also found they could not communicate with Grievant. Others complained that Grievant failed to adequately train them. (Testimonies of Director and Assistant Director of Retail Operations; A Exh. 11).

Management then determined that Grievant had violated the standards of conduct and her conduct was a serious offense as it exposed the Agency to liability for failing to adhere to fair hiring practices. Further the Agency determined that Grievant's conduct fostered an atmosphere of mistrust among the employees. After thorough deliberations, the Agency then informed Grievant that it intended to issue her a Group II Written Notice with a demotion for the offense. After allowing Grievant to respond and considering her response, on October 31, 2014, the Agency issued Grievant the Group II Written Notice and demoted her. The notice described the nature of the offense as follows:

[Agency] received a complaint about the interview process in [Grievant's] region.

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<sup>3</sup> Relief Assistant Managers floated to various stores in the region. This was in contrast to an employee hired as an assistant manager. The latter was assigned to a particular store. The relief assistant manager position was less desirable than the assistant manager one due to transient nature of the job.

A relief assistant manager was told by [Grievant] that even if she won the interview, [Grievant] would not select her for the position as it was too difficult to fill the relief positions. This action has created an exposure to the agency by indicating that our interview and hiring practices are not fair and that pre-selection may have occurred. The relief assistant manager was denied the opportunity to fully and fairly compete for the position. [Grievant] confirmed making the statement.

(A Exh. 1, p. 1).

13. Management had recommended to Grievant that she speak to the interviewee and explain that Grievant had misspoken. The evidence shows that Grievant did not follow her supervisor's recommendation. (G Exh. 1, p. 3; Testimonies of Assistant Director of Retail Operations and Grievant).

14. Prior to Grievant receiving the two Group II Written Notices with demotion, Grievant's disciplinary history consisted of a written counseling memorandum for using a cell telephone while driving a state vehicle. (Testimonies of Assistant Director of Retail Operations and Grievant).

15. Grievant's annual performance evaluations for years 2011- 2012, 2012 – 2013, and 2013-2014 rate Grievant as contributor, high contributor, and contributor, respectively.

16. Under the standards of conduct, unsatisfactory job performance is identified as an example of a Group I Offense. (Standards of Conduct Policy 1.60, Attachment A: Examples of Offenses Grouped by Level).

17. The Agency elevated Grievant's offense of unsatisfactory job performance to a Group II Offense because the Agency considered the offense serious for several reasons:

- (i) the offense exposes the Agency to great liability such as charges of discrimination, unfair interviewing and hiring practice, and EEOC violations;
- (ii) the offense has caused loss of trust in management (particularly the regional manager) and fosters an atmosphere of favoritism and treating similarly situated employees differently;

(Testimonies of Director and Assistant Director of Retail Operations).

18. Grievant has received due process.

19. Store Manager of Store # ABC was a subordinate of Grievant when she was the regional manager. Store Manager of Store # ABC describes Grievant as fair to her employees and pleasant. (Testimony of Store Manager of Store # ABC).

20. Store Manager of Store # GHI was a subordinate of Grievant for about two years when Grievant was the regional manager. This store manager stated that Grievant did not show favoritism and followed the standard operating procedures of the Agency. (Testimony of Store Manager of Store # GHI).

21. Administrative technician has not worked for Grievant, but she worked across the hall from Grievant. She has known Grievant for eight years and describes Grievant as fair and a hard worker. (Testimony of Administrative Technician).

22. Grievant has received numerous training as a manager/regional manager, to include, but not limited training regarding fair and nondiscriminatory treatment of employees. (A Exh. 6).

### **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.

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. These offenses generally include acts of misconduct of a more serious nature that significantly impact agency operations. 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.

As referenced previously here, on October 31, 2014, management issued Grievant two Group II Written Notices and demoted Grievant. 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 employee engage in the alleged conduct? Further, if so did that behavior constitute misconduct?**

**(i) Misuse of a wage position and creating a position which Grievant was unauthorized to create.**

The Agency contends that Grievant hired Sales Associate I in a wage position, failed to employ her as such, and without authority utilized Sales Associate I as Grievant's own personal assistant.

The evidence establishes that an individual hired in a sales associate position is expected to perform the tasks of a sales associate. The evidence illustrates that those expectations are as follows:

- The employee will work in his/her assigned store as a sales associate providing support for the store;
- The primary duty is customer service; that is, working the cash register, helping customers in the store, and the like;
- The employee will report directly to the store manager of the store to which he/she is assigned. When necessary, the sales associate may report to another store manager who is short-staffed;
- The employee will maintain a scheduling calendar for purposes of determining his/her availability to work;
- The employee will be taken off the payroll if more than 60 continuous days lapse without the employee working;

Further, the evidence shows that rarely would a sales associate report to a regional manager and if so it would usually be to address an emergency situation.

An examination of the facts in this case shows that Grievant hired Sales Associate I in the wage/part-time position of a sales associate. Yet, by Grievant's own admission, Sales Associate I never worked in any store. Also, Grievant never represented, to the manager of the store to which Sales Associate I was assigned or any other store manager, that Sales Associate I was available to work in a store even though help was needed in the stores. Moreover, the evidence

shows that this wage employee never provided an availability calendar to a store manager/Grievant as sales associates were required to do. In addition during the 18 month period, Sales Associate I was hired in the wage position, she worked only 12 days and a total of 64 hours. All of her work performed was for Grievant and none of it involved customer service. Accordingly, in effect, Sales Associate I was hired as a personal assistant for the regional manager. The evidence shows that such a position did not exist and was not authorized by the Agency. Moreover, it was only through management's investigation of complaints about Grievant that the Agency learned of Grievant's hiring and unauthorized use of the wage employee.

Also, the evidence demonstrates that on at least two occasions during the 18 month period, Sales Associate I performed no work for the Agency for periods of four to five months. What is more, even though Grievant was in effect Sales Associate I's supervisor, Grievant failed to remove this employee from the payroll as required by agency policy. Had Grievant adhered to policy and removed Sales Associate I from the payroll due to her not working for four/five month periods, Sales Associate I would have been precluded from applying for a classified position with the Agency. Instead, Sales Associate I did apply for a classified position during her employment as a wage employee and was hired as an assistant manager by Grievant. This hiring occurred despite Sales Associate I being previously demoted by the Agency and then quitting her relief position she held as a result of the demotion.

Hence, the Hearing Officer finds Grievant engaged in the conduct alleged. It was clearly misuse of a wage employee and simultaneously the unauthorized creation of a position. Further, the Hearing Office notes that Grievant's actions substantiate (i) employees' complaints of Grievant showing favored treatment to some employees and (ii) the fostering of an atmosphere of distrust in management's ability to be fair to its subordinates.

The Hearing Officer is cognizant of Grievant's argument that Sales Associate I was performing the duties of a sales associate and Grievant did not violate any policy. Or the alternative argument that Grievant was authorized to hire Sales Associate I under the LAMP program. Of note also, the evidence establishes that Grievant's own witnesses – store managers – substantiated that Grievant did not follow procedure regarding the scheduling of Sales Associate I. Considering the totality of the evidence, the Hearing Officer is not persuaded by Grievant's assertions.

**(ii) unfair treatment during the hiring/interviewing process**

Next, the Hearing Officer considers the Agency's contention that Grievant employed unfair treatment during the interviewing or hiring process. The evidence clearly shows that Grievant stated to a subordinate who interviewed before her for a store management position that even if this subordinate won the interview, she would not be selected for the position because it was too difficult to replace relief managers. On its face, this statement illustrates unfairness to interviewees and suggests preselection of a candidate to fill a position. As recognized by upper management, such misconduct is more than a minor offense. The statements have exposed the Agency to serious allegations of an unfair hiring process and resulting liability for such actions. Accordingly, the Hearing Officer finds Grievant's comments to the manager/assistant manager

misconduct. Of note also, the evidence established that Grievant had uttered similar comments in the past. Further, the evidence shows that Grievant's subordinates were disgruntled with Grievant because she practiced favoritism, failed to adequately train employees, and showed more concern about herself than the operation of the stores.

## **B. Was the discipline consistent with policy and law?**

Grievant's misuse of a wage employee as discussed above coupled with creating an unauthorized position was more than a minor offense. The misconduct also significantly impacted agency operations several ways. First, store managers were not able to employ the services of Sales Associate I because Grievant's actions precluded them from doing so. Second, the evidence shows that Grievant's actions substantiated that Grievant showed favoritism toward Sales Associate I. By way of example, this wage employee was not required to perform the duties of a sales associate as other similarly employed workers were. Further, she was not removed from payroll after not working for at least two four month periods. Then after being demoted and quitting her relief job with the Agency, Grievant rehired her and then hired her as an assistant manager. Thus, other employees aware of Grievant's conduct grew resentful and discontent. Accordingly, the Hearing Officer finds the Group II Written Notice for the offense consistent with policy and law.

Similarly, the Hearing Officer finds consistency in the issuance of the Group II Written Notice for unsatisfactory job performance. Grievant's comments as discussed previously have exposed the Agency to serious liability. In addition, they have fostered an atmosphere of distrust with management; that is a feeling of not being treated fairly during the interview/hiring process. Moreover, the Agency persuasively established its legitimate, material business reasons for elevating the group notice.

## **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”].”<sup>4</sup> EDR's *Rules for Conducting Grievance Hearings* provides that “a hearing officer is not a super-personnel officer” therefore, “in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.”<sup>5</sup> More specifically, the *Rules* provide that in disciplinary, grievances, if the hearing officer finds that;

- (i) the employee engaged in the behavior described in the Written Notice.
- (ii) the behavior constituted misconduct, and
- (iii) the agency's discipline was consistent with law and policy,

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<sup>4</sup> Va. Code § 2.2-3005 and (c)(6)

<sup>5</sup> *Rules for Conducting Grievance Hearings* VI(A)

the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.<sup>6</sup>

Thus, the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above. Further, if those findings are made, a hearing officer must uphold the discipline if it is within the limits of reasonableness.

The Hearing Officer has found that Grievant engaged in the conduct described in the group notices and that the behaviors constituted misconduct. Further, the Hearing Officer has found, the Agency's discipline was consistent with policy and law.

Next, the Hearing Officer considers whether the discipline was unreasonable. In her plea for mitigation Grievant presents her long work history with the Agency as well as her ratings on her annual performance evaluations. She also requests mitigation due to the demanding job responsibilities of a regional manager, and staffing inadequacies/concerns in the region. She notes the relief assistant manager had an opportunity to compete for other jobs and was not selected. Also, she notes that her only prior discipline was counseling regarding a different type offense. Further, Grievant has presented evidence from some of her former subordinates and another agency employee that Grievant was a fair supervisor.

The Hearing Officer has considered all of Grievant's arguments and all evidence whether specifically mentioned or not. Further, the Hearing Officer does note the Agency had the option of terminating Grievant. But the Agency recognized Grievant's lengthy tenure with the Agency and demoted her instead. In addition, her salary was not drastically reduced. Thus, after giving careful thought to the evidence, the Hearing Officer cannot find the Agency's discipline is unreasonable.

### **DECISION**

Hence for the reasons stated here, the Hearing Officer upholds the Agency's discipline.

### **APPEAL RIGHTS**

You may file an **administrative review** request within **15 calendar days** from the date the decision was issued, if any of the following apply:

1. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

Director  
Departmental of Human Resource Management  
101 N. 14th St., 12<sup>th</sup> Floor  
Richmond, VA 23219

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<sup>6</sup> *Rules for Conducting Grievance Hearings VI(B)*

or, send by fax to (804) 371 – 7401, or e-mail.

2. If you believe that the hearing decision does not comply with the grievance procedure or if you have new evidence that could not have been discovered before the hearing, you may request that EDR review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Office of Employment Dispute Resolution  
Department of Human Resource Management  
101 N. 14th St., 12<sup>th</sup> 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 may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must provide a copy of all of your appeals to the other party, EDR, 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.

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.<sup>7</sup>

Entered this 21<sup>st</sup> day of June, 2015.

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Ternon Galloway Lee, Hearing Officer  
cc: Agency Advocate/Agency Representative  
Grievant's Advocate/Grievant  
EDR's Hearings Program Director

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<sup>7</sup> Agencies must request and receive prior approval from EDR before filing a notice of appeal.