

Issues: Five Group II Written Notices (failure to follow policy), One Group I Written Notice (disruptive behavior) and Termination (due to accumulation); Hearing Date: 11/04/13; Decision Issued: 11/06/13; Agency: DMV; AHO: William S. Davidson, Esq.; Case No. 10174; Outcome: Partial Relief; **Administrative Review: EDR Ruling Request received 11/20/13; EDR Ruling No. 2014-3770 issued 12/30/13; Outcome: AHO's decision affirmed; Administrative Review: DHRM Ruling Request received 11/20/13; DHRM form letter issued 01/08/14; Outcome: Declined to review. No policy violation identified.**

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT  
DIVISION OF HEARINGS  
DECISION OF HEARING OFFICER  
In Re: Case No: 10174

Hearing Date: November 4, 2013  
Decision Issued: November 6, 2013

**PROCEDURAL HISTORY**

Five (5) Group II Written Notices and one (1) Group I Written Notice were issued to the Grievant on July 18, 2013. These Written Notices were issued for the following reasons:

1. Violation of the agency's Information Security Policy. On 9/23/2009, you accessed the record for customer AB. AB was not present and there was no legitimate official DMV business reason for you to do so. On March 14, 2011, you filed a law suit against AB. <sup>1</sup>

2. Violation of the agency's Information Security Policy. On May 13, 2011, you accessed the record for customer CD. CD was not present and there was no legitimate official DMV business reason for you to do so. Five days following access of his account, you filed suit against CD. <sup>2</sup>

3. Violation of the agency's Information Security Policy. On 11/12/2010, you accessed the record for customer EF. EF was not present and there was no legitimate official DMV business reason for you to do so. On October 4, 2012, you [filed] suit against EF. <sup>3</sup>

4. You reviewed the vehicle or driver records of the following named customers. These customers did not contact the Vehicle Branding center, and there is no legitimate business reason for you to have accessed their information. Each access is a violation of DMV policy. GH, IJ, KL, MN, OP, QR <sup>4</sup>

5. On May 7, 2013, you approached your supervisor and told her your arm was hurting. Your supervisor asked if you wanted to go home. You said you weren't going home and use your personal leave. Your supervisor told you that you could help with the lobby or work in another work center. You stated you weren't going to work elsewhere and the lobby would not take you all day.

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<sup>1</sup> Agency Exhibit 1, Tab 2, Page 1

<sup>2</sup> Agency Exhibit 1, Tab 2, Page 2

<sup>3</sup> Agency Exhibit 1, Tab 2, Page 3

<sup>4</sup> Agency Exhibit 1, Tab 2, Page 4

On June 5, 2013, you approached your supervisor and told her, “I guess I am not going to be trained on the IBR system.” You stated since the desk in the stock room wasn’t raised at the level your desk was, you could not perform that duty. Your supervisor offered to place the IBR system on your desk with the scanner. You stated the scanner/jogger would make too much noise. Your supervisor offered to move the jogger into the stock room. You said, “I’m not going to get up from my desk and walk into the stock room.”

On June 7, 2013, as the wage employees were off, your supervisor explained that the assigned full time clerk for the mail desk would be responsible for working the mail desk. You were assigned to do the mail desk. You told your supervisor you were not going to perform your assigned work regarding the mail. As she was explaining the duty to you, you turned around and walked out of the work center.<sup>5</sup>

6. See attached Hearing Officer Exhibit 1<sup>6</sup>

Pursuant to the five (5) Group II Written Notices and the one (1) Group I Written Notice, the Grievant was terminated on July 18, 2013.<sup>7</sup> On August 16, 2013, the Grievant timely filed a grievance to challenge the Agency’s actions.<sup>8</sup> On September 23, 2013, the Office of Employment Dispute Resolution (“EDR”) assigned this Appeal to a Hearing Officer. The original hearing in this matter was scheduled for October 21, 2013, however, due to conflicts on the Grievant’s calendar, it was continued until November 4, 2013. On November 4, 2013, a hearing was held at the Agency’s location.

### **APPEARANCES**

Attorney for Agency  
Agency Party  
Grievant  
Witnesses

### **ISSUE**

1. Did the Grievant violate the Agency’s Information Security Policy?
2. Was the Grievant insubordinate to her supervisors, thus violating Agency policy?
3. Did the Grievant’s actions create disruption in the workplace?

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<sup>5</sup> Agency Exhibit 1, Tab 2, Page 5

<sup>6</sup> Agency Exhibit 1, Tab 2, Page 6 (and attached Hearing Officer Exhibit 1)

<sup>7</sup> Agency Exhibit 1, Tab 2, Page 1

<sup>8</sup> Agency Exhibit 1, Tab 1, Page 1

## **AUTHORITY OF HEARING OFFICER**

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>9</sup> Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the employee's alleged conduct, if otherwise properly before the Hearing Officer, justified termination. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs.*, 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

While the Hearing Officer is not a "super personnel officer" and shall give appropriate deference to actions in Agency management that are consistent with law and policy...the Hearing Officer reviews the facts de novo...as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify the disciplinary action. Thus the Hearing Officer may make a decision as to the appropriate sanction, independent of the Agency's decision.

## **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") §5.8. The employee has the burden of proof for establishing any affirmative defenses to discipline such as retaliation, discrimination, hostile work environment and others, and any evidence of mitigating circumstances related to discipline. A preponderance of the evidence is sometimes characterized as requiring that facts to be established more probably than not occurred, or that they were more likely than not to have happened.<sup>10</sup> However, proof must go beyond conjecture.<sup>11</sup> In other words, there must be more than a possibility or a mere speculation.<sup>12</sup>

## **FINDINGS OF FACT**

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<sup>9</sup> See Va. Code § 2.2-3004(B)

<sup>10</sup> *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991

<sup>11</sup> *Southall, Adm'r v. Reams, Inc.*, 198 Va. 545, 95 S.E. 2d 145 (1956)

<sup>12</sup> *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)

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

The Agency provided the Hearing Officer with a notebook containing seventeen (17) tabs. That notebook was accepted in its entirety as Agency Exhibit 1, with the exception of Pages 16-41 of Tab 16, which were excluded.

The Grievant provided the Hearing Officer with a notebook containing fifteen (15) tabs, only thirteen (13) of which had documentation. That notebook was accepted in its entirety as Grievant Exhibit 1.

Regarding security, the Grievant's Employee Work Profile ("EWP"), sets forth an Information Security Policy. That Policy states as follows:

As a representative of the Commonwealth, you are responsible to ensure you properly follow the Rules and Regulations governing the Information Security Policy. Compliance with policy regarding access, alteration, deletion or release of any records of DMV except as necessary. Protect confidential and personal information and safeguard any information obtained while using the DMV systems.<sup>13</sup>

This policy or language substantially similar to it, has been included in all of the Grievant's EWP's.<sup>14</sup>

Each EWP also contains a Confidentiality Statement which states as follows:

I acknowledge and understand that I may have access to confidential information regarding employees and the public. In addition, I acknowledge and understand that I may have access to proprietary or other confidential business information belonging to DMV. Therefore, except as required by law, I agree that I will not:

- Access data that is unrelated to my job duties at DMV;**
- Disclose to any other person, or allow any other person access to any information related to DMV that is proprietary or confidential and/or pertains to employees or the public. Disclosure of information includes, but is not limited to verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes, and/or other transmission of sharing data.

I understand that DMV and its employees or public may suffer irreparable harm by disclosure of proprietary or confidential information

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<sup>13</sup> Agency Exhibit 1, Tab 4, Page 4

<sup>14</sup> Agency Exhibit 1, Tab 4, Pages 9 and 17

and that DMV may seek legal remedies available to it should such disclosure

occur. Further, **I understand that violations of this agreement may result in disciplinary action, up to and including, my termination of employment.**<sup>15</sup> (Emphasis added)

As a condition of being an employee at this Agency, the Grievant signed a Certification of Receipt of Information Security Policy on June 12, 2006. That policy stated in part as follows:

As an employee of the Department of Motor Vehicles (DMV), I certify that I have been informed of the Information Security Policy and I agree to adhere to its provisions as related to my position which include, but may not be limited to the following:

**I will not create, access, alter, delete, or release any DMV records except as necessary to perform assigned duties.**

**I will protect confidential and personal information, whether on paper, microfilm or computer files, by following security procedures as established by my assigned work area.**

I will not disclose customer information except when specifically allowed by the Code of Virginia, the Fair Credit Reporting Act, and DMV rules, regulations and operating procedures.

I will follow all identification procedures and requirements before conducting transactions that alter an individual's records or affect an individual's eligibility status for licensing or other DMV services.

I will disclose confidential or personal information to another DMV employee only if that employee has an official need to know in connection with his or her job duties...

...I will complete an application and pay appropriate fees for personal transcripts or any other DMV services...

**...I understand that my failure to comply with this policy may result in disciplinary action or termination.** I also understand that I may incur civil penalties and/or criminal prosecution as noted in the

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<sup>15</sup> Agency Exhibit 1, Tab 4, Page 6

Virginia Computer Crimes Act of 1987 and applicable state and federal laws.<sup>16</sup> (Emphasis added)

On June 12, 2008, the Grievant signed a document that stated as follows:

1. As a DMV employee, you are entrusted with keeping any data from NDR or pointer states CONFIDENTIAL.
2. **The sensitivity of this data requires that all records checked must be as a result of official business, not random checking of family and friends.**
3. Headquarters will record inquiries and their origin.
4. Misuse of this information may result in stiff penalties:
  - \$10,000.00 fine
  - Up to 1 year in jail
  - Or both
5. **Your signature on this sheet and the roster serves as a record that you are aware of these security issues and penalties.**<sup>17</sup> (Emphasis added)

Finally  
, on  
June  
12,  
2006,  
the  
Grieva  
nt  
signed  
a  
Policy  
Statem  
ent:

**This is to certify that I have been informed and am aware of the fact that actions on my part involving falsification of any state document, theft of state property, embezzlement of moneys, misappropriation of decals or improperly dispensing information**

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<sup>16</sup> Agency Exhibit 1, Tab 5, Page 1

<sup>17</sup> Agency Exhibit 1, Tab 5, Page 2

**obtained from the automated data system (privacy act) will be grounds for dismissal.**<sup>18</sup> (Emphasis added)

The Agency's Information Security Policies as revised on February 16, 2010, in part, are as follows:

...Employees of the DMV are responsible for adhering to the following, as well as specific policy components that relate to their job duties:

1. **Do not create, access, alter, delete or release any records of the DMV except as necessary to perform your assigned duties.**
2. Protect confidential and personal information to which you have access to in paper, microfilm, or automated files by following all security procedures, such as:
  - Keeping your password secret from all others,
  - Logging off your terminal or PC, and
  - Locking up files when you are leaving the area.
3. Do not disclose customer information except when the Code of Virginia, Federal laws, and DMV rules, regulations, and operating procedures specifically allow it. This includes information from automated records as well as applications, attachments and other documents gathered or created by the department concerning specifically identifiable individuals and private companies.
4. Request sufficient identification to assure yourself of the person's identity before:
  - Releasing any customer information
  - Conducting transactions which will alter the records or affect an individual's status or eligibility for licensing or other departmental services.
5. Give confidential and personal records to another DMV employee only if that employee has an official need to know in connection with his or her duties.

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<sup>18</sup> Agency Exhibit 1, Tab 5, Page 3



6. Like any other customers, complete an application and pay fees for personal transcripts or any other services of the department.<sup>19</sup> (Emphasis added)

The Agency provided numerous training opportunities for the Grievant and it was undisputed by the Grievant that she had training on the security policies of the Agency.<sup>20</sup> The Agency has an Acceptable Use Policy and User Agreement Acknowledgment that was created February 26, 2009, and approved March 11, 2009.<sup>21</sup> That document states in part as follows:

...(ii) **Do not create, access, alter, delete or release any records that DMV maintains except as necessary to perform your assigned duties...**

...(ix) **Personal records in DMV computer systems are to be accessed by users only for the purpose of assisting customers as prescribed by Commonwealth laws and DMV policies and procedures, and shall not be accessed:**

- 1. For personal use; or**
- 2. For personal gain, or**
- 3. To avoid paying fees, or**
4. To help friends, relatives, or others learn about themselves or other individuals...

(xi) Examples for provisions for civil and/or criminal penalties for the violation of the laws governing records include, but are not limited to:

...4. Unauthorized access or disclosure of a person's employment, salary, credit, or other personal or financial information is chargeable as a misdemeanor.<sup>22</sup> (Emphasis added)

Finally, the Agency has an Employee Code of Conduct that states in part as follows:

...Employees are expected to...:

- Uphold the laws and regulations of the United States and the Commonwealth of Virginia...

- Adhere to all policies and procedures of the Department of Motor Vehicles and other state agencies...

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<sup>19</sup> Agency Exhibit 1, Tab 6, Page 1

<sup>20</sup> Agency Exhibit 1, Tab 7, Pages 1 and 2

<sup>21</sup> Agency Exhibit 1, Tab 7, Page 3

<sup>22</sup> Agency Exhibit 1, Tab 7, Pages 4 and 5

**...Respect and protect privileged information and the privacy of individuals by not accessing driver, vehicle or tax records or any other record that contains personal or confidential information unless necessary to perform your job duties...**

...Act with honesty and integrity at all times...<sup>23</sup> (Emphasis added)

Pursuant to the first Group II Written Notice, the Grievant accessed this particular record at 3:58 p.m., on September 23, 2009.<sup>24</sup> The Grievant is identified as user “DMVASC.” During the course of her testimony, the Grievant did not deny that she accessed this particular record or any of the other records set forth in the second, third, fourth or fifth Group II Written Notices. The Grievant was very careful to neither admit nor deny that she accessed any of these records. The Grievant offered a litany of excuses as to why it might have been someone else who was accessing these records; none of those excuses being even remotely persuasive. The accessed documentation clearly points out that nothing was done when this record was accessed. It is as if the customer came into the office, was randomly assigned to the Grievant, and then asked only for information which would be of a personal nature. Subsequent to this access, the Grievant filed a personal injury lawsuit against the person whose record she accessed.

Pursuant to the second Group II Written Notice, the Grievant accessed this particular record at 1:54 p.m., on May 13, 2001.<sup>25</sup> Again, subsequent to this access, indeed, five (5) days later, the Grievant filed a personal injury lawsuit against the person whose records she accessed. This person, based on the evidence presented and all of the other access of his records, lived in Montgomery County, Virginia. In order for this to have been a legitimate access of his records, this Grievant would have needed to drive from Montgomery County to Richmond, arrive at the particular location where the Grievant worked, be randomly assigned to her window, and then request information that required some action that would be noted on the Accessing Log.

Pursuant to the third Group II Written Notice, the Grievant accessed this particular record at 12:11 p.m., on November 12, 2010.<sup>26</sup> Again, subsequent to this access, the Grievant filed a personal injury lawsuit against the person whose records she accessed on October 4, 2012.<sup>27</sup>

Pursuant to the fourth Group II Written Notice, those accesses took place on June 6, 2013; January 9, 2013; March 19, 2013, January 30, 2013; May 2, 2013 and April 4, 2013.<sup>28</sup> By the time that the accesses regarding this Group II Written Notice were taking place, the Grievant had been transferred to what was known as the Salvage Unit. The Hearing Officer heard uncontested testimony that the Agency could not ascertain a legitimate reason for these accesses

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<sup>23</sup> Agency Exhibit 1, Tab 7, Page 6

<sup>24</sup> Agency Exhibit 1, Tab 8, Page 2

<sup>25</sup> Agency Exhibit 1, Tab 2, Page 2

<sup>26</sup> Agency Exhibit 1, Tab 2, Page 3

<sup>27</sup> Agency Exhibit 1, Tab 10, Page 4

<sup>28</sup> Agency Exhibit 1, Tab 11, Pages 2 through 7

to have taken place. Again, the Grievant did not deny that she did this, she offered as an excuse the fact that she may have mis-keyed the data or that somehow she received a phone call from someone requesting data from the Salvage Unit, only to determine after she had accessed the record, that they needed to be dealing with another section of the Agency. The uncontradicted testimony by several witnesses was that, after you properly inquired of the reason of the phone call and took identifying data, that it was extraordinarily unlikely that a record would be accessed in error.

In her testimony, the Grievant spent substantial time and energy explaining to the Hearing Officer that her EWP's, over the time frame involved, indicated that she had been a "Contributor," and that she had received contributor status on the EWP's regarding Information Security. What the Grievant seems to not understand is that the Agency did not become aware of these violations until 2013. The Agency does not, as a matter of course, search all of the accessing records of its employees all of the time. There is a quite logical assumption that employees are complying with rules and regulations. In essence, the Grievant complains that she should have been detected in this violation of security policy earlier than she was detected. If so, she argues there would be fewer Group II Written Notices.

Through its witnesses, the Agency established that the triggering event for the records search was an email dated June 25, 2013, indicating that one of the Grievant's lawyers had withdrawn from one of her cases.<sup>29</sup> That trigger event caused the search which produced the necessary records for the improper and, quite likely, illegal accesses that the Grievant performed. The Grievant offered no credible testimony though her witnesses or herself that she did not perform these accesses of clients' records. She simply offered unpersuasive, illogical and unreasonable excuses.

Regarding the final Group II Written Notice, the Hearing Officer heard credible testimony that on May 7, 2013, the Grievant approached her supervisor and indicated that her arm was hurting. The supervisor offered the Grievant multiple options such as: going home; work in the lobby; or work in another work center. The Grievant was unresponsive or responded in a negative fashion to all of those options. On June 7, 2013, the Grievant's supervisor pointed out to the Grievant that the full-time mail clerk was not there and that the Grievant would need to cover the mail desk. The Grievant flatly refused and the Hearing Officer received credible testimony that the Grievant turned and walked away from her manager while her manager was in mid-sentence. This is clearly being insubordinate.

The Hearing Officer finds that the evidence for the first four (4) Group II Written Notices regarding improper access of clients' records is overwhelming and uncontradicted in any credible fashion. The Hearing Officer finds that, with regard to the fifth Group II Written Notice, the evidence is overwhelming and substantiated that the Grievant was in fact insubordinate to her supervisor. The Grievant's attitude appears to have been best stated by the Grievant when she testified under oath that, "When her supervisor granted her request for leave

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<sup>29</sup> Agency Exhibit 1, Tab 14, Page 1

time and for time to attend classes, that her supervisor was showing a lack of concern for the Grievant.” Somehow the Grievant perceived her manager agreeing with the Grievant’s requested leave time and agreeing with the Grievant’s request to attend classes amounted to a lack of respect and concern for the Grievant.

Regarding the Group I Written Notice, the Hearing Officer finds that the testimony was, at best, equivocal and finds that the Agency has not borne its burden of proof regarding this Written Notice.

The Grievant attempted to present a case for retaliation and/or discrimination by the Agency. The Hearing Officer was directed to the Grievant’s Exhibit 1, Tab 12 for this claim. Qualification Ruling Number 2013-3567 states in part as follows:

...For a claim of retaliation to qualify for a hearing, there must be evidence raising a sufficient question as to whether, (1) the employee engaged in a protected activity; (2) the employee suffered an adverse employment action; and (3) a causal link exists between the adverse employment action and the protected activity; in other words, whether management took an adverse action because the employee had engaged in the protected activity. If the agency presents a nonretaliatory business reason for the adverse action, the grievance does not qualify for a hearing, unless the employee’s evidence raises a sufficient question as to whether the agency’s stated reason was a mere pretext or excuse for retaliation. Evidence establishing a causal connection and inferences drawn therefrom may be considered on the issue of whether the agency’s explanation was pretextual.

Similarly, for a claim of disability discrimination to qualify for hearing, there must be more than a mere allegation that discrimination has occurred. Rather, there must be facts that raise a sufficient question as to whether any adverse employment actions described within the grievance were the result of prohibited discrimination based on a protected status. If, however, the agency provides a legitimate, nondiscriminatory business reason for its action, the grievance will not be qualified for hearing, absent sufficient evidence that the agency’s professed business reason was a pretext for discrimination.<sup>30</sup>

In this case, the grievant has demonstrated that she engaged in protected activity, at a minimum, through initiating previous workers’ compensation claims, filing of an EEOC claim, writing to the Governor’s Office, and filing a prior grievance. She has also presented evidence raising sufficient question of an actual or perceived disability. However, an adverse employment action is defined as a “tangible employment action constituting a significant change in employment status, such as hiring, firing, failure to promote, reassignment with significantly different duties or a decision causing a significant change in benefits.” Adverse employment

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<sup>30</sup> Grievant Exhibit 1, Tab 12, Pages 6 through 10

actions include any agency actions that have an adverse effect on the terms, conditions or benefits of one's employment. In this matter, the Grievant has failed to offer sufficient evidence that the challenged actions were taken in retaliation for her previous workers' compensation claim, her EEOC claim, her letters to the Governor, her prior grievance filing or to discriminate against her because of her disability status. While the Grievant did suffer an adverse employment action (she was terminated), the cause was her improper accessing of customer records.

The Grievant's disability in no way caused her to make improper accesses to private customer records. Some, indeed many, of the accesses took place before her EEOC claim, her Worker's Compensation claim, her letters to the Governor and her grievance. The major thrust of the Grievant's basis for her claims is that the investigation that led to the discovery of the illegal accessing of customer records took place after she had performed many of these filings. The Grievant completely disregards that there was no reason to look for these accesses until the Agency received a letter indicating that one of her attorneys was withdrawing from one of her cases. The Hearing Officer finds it credible that this reason alone is the event that caused the Agency to commence its search.

### **MITIGATION**

*Va. Code § 2.2-3005.1* authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the Agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Employment Dispute Resolution..."<sup>31</sup> Under the Rules for Conducting Grievance Hearings, "a Hearing Officer must give deference to the Agency's consideration and assessment of any mitigating and aggravating circumstances. Thus a Hearing Officer may mitigate the Agency's discipline only if, under the record evidence, the Agency's discipline exceeds the limits of reasonableness. If the Hearing Officer mitigates the Agency's discipline, the Hearing Officer shall state in the hearing decision the basis for mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the Agency has consistently applied disciplinary action among similarly situated employees, (3) the disciplinary action was free of improper motive, (4) the length of time that the Grievant has been employed by the Agency, and (5) whether or not the Grievant has been a valued employee during the time of his/her employment at the Agency.

The Agency considered mitigation in this matter, but due to the severity and quantity of the Written Notices, it determined that mitigation was not appropriate.

### **DECISION**

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<sup>31</sup> *Va. Code § 2.2-3005*

For reasons stated herein, the Hearing Officer finds that the Agency has borne its burden of proof regarding all five (5) Group II Written Notices; that it has not borne its burden of proof regarding the Group I Written Notice; and that termination was appropriate.

### **APPEAL RIGHTS**

You may file an administrative review request 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. You may fax your request to 804-371-7401, or address your request to:

Director of the Department of Human Resource Management  
101 North 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, VA 23219

2. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. You may fax your request to 804-786-1606, or address your request to:

Office of Employment Dispute Resolution  
101 North 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, VA 23219

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 of the original hearing decision. A copy of all requests for administrative review must be provided 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 administrative requests for a review have been decided.

You may request a judicial review if you believe the decision is contradictory to law.<sup>32</sup> 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>33</sup>

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<sup>32</sup>An appeal to circuit court may be made only on the basis that the decision was contradictory to law, and must identify the specific constitutional provision, statute, regulation or judicial decision that the hearing decision purportedly contradicts. Virginia Department of State *Police v. Barton*, 39 Va. App. 439, 573 S.E.2d 319 (2002).

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

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William S. Davidson  
Hearing Officer

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<sup>33</sup>Agencies must request and receive prior approval from the Director of EDR before filing a notice of appeal.