Issue: Group II Written Notice (failure to follow instruction); Hearing Date: 08/26/14; Decision Issued: 09/16/14; Agency: VDH; AHO: Jane E. Schroeder, Esq.; Case No. 10417; Outcome: No Relief – Agency Upheld; **<u>Administrative Review</u>: EDR Ruling Request received 09/30/14; EDR Ruling No. 2015-4012 issued 10/28/14; Outcome: Remanded to AHO; Remand Decision issued 04/16/15; Outcome: Original decision affirmed; <u>Administrative Review</u>: DHRM Ruling Request received 09/30/14; DHRM Ruling issued 04/21/15; Outcome: AHO's decision affirmed; <u>Administrative Review</u>: EDR Ruling Request on Remand Decision received 05/01/15; EDR Ruling No. 2015-4146 issued 05/28/15; Outcome: AHO's decision affirmed.**

COMMONWEALTH OF VIRGINIA

Department of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In the matter of Case #10417	Hearing Date:	August 26, 2014
	Decision Issued:	September 16, 2014

PROCEDURAL HISTORY

The Grievant was employed by the Agency as a trainer. On March 21, 2014, the Agency issued a Group II Written Notice to the Grievant for failure to follow instructions. On April 18, 2014, the Grievant filed a grievance asking for the withdrawal of the Group II Written Notice. The case was unresolved after the three resolution steps. On June 26, 2014, the case was qualified for a hearing. On July 28, 2014, the hearing officer was assigned to hear the case.

The first pre-hearing conference was held on August 1, 2014. The hearing date was set for August 26, 2014. A second pre-hearing conference was held on August 15, 2014 at the request of the Agency regarding the Grievant's Request for Documents. After hearing arguments from both sides, the Hearing Officer ruled that the Request for Documents was denied. A third pre-hearing conference was held on August 22, 2014 at the request of the Agency. The Agency requested that the Grievant's exhibits be excluded at the hearing because the exhibits were received by the Agency one day late. After hearing arguments from both sides, the Hearing Officer ruled that the Grievant's exhibits would not be excluded at the hearing.

The hearing was held on August 26, 2014. Both parties were represented by counsel. The Agency's exhibits (Agency Exhibits 1-32) were entered into evidence without objection. The Grievant's exhibits (Grievant Exhibits 1-18) were entered into evidence without objection. Prior to the hearing, the Hearing Officer had received a correspondence from the Grievant by US Mail, which the Hearing Officer did not open. At the onset of the hearing, the Hearing Officer unsealed the envelope and passed the contents to the parties' attorneys for their review. The Hearing Officer did not consider the contents of the envelope in rendering this decision.

APPEARANCES

Grievant
Grievant's Attorney
Agency Representative
Agency's Attorney

Witnesses for Agency:	Training Supervisor at Agency
	Office Director at Agency
Witness for Grievant:	Grievant

ISSUE

Whether the Group II Written Notice given on March 21, 2014 for failure to follow instructions should be sustained, modified or revoked. On the Written Notice, the Agency alleges that the nature of the offense is as follows: "After signing a telework agreement and being counseled previously regarding her work schedule and telework agreement and her failure to correctly follow the related policy (verbally by her supervisor within the last 6 months and verbally on 2/4/13 and written email on 2/4/13 and 2/13/13 by her previous supervisor, [ ], and by the Officer Director, [ ], during team meetings on 1/5/12 and 1/13/13), [the Grievant] violated the policy on February 19, 2014 by reporting to her telework location on an unscheduled day without receiving approval from her supervisor."

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. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not (Grievance Procedure Manual).

FINDINGS OF FACT

1. The Grievant has worked for the agency for 9 years as a trainer and instructor. In February, 2013, her work site changed from County A ("old work site") to County B ("main work site"). When that occurred, the Grievant, who lives in County D, wanted to set up teleworking in County C ("telework site").[6]

2. The Grievant received an email from her supervisor at the time, explaining that she was not to be working at the telework site until there was an approved and signed telecommute agreement. [7]

3. On October 30, 2013, the Grievant had a signed an Agency Standard Telework Agreement. On page 1 of the agreement one of the terms under Section 3: Work Standards and Performance is as follows: "Employee agrees to perform telework at the agency-approved alternate work location(s) and times defined in this agreement unless they notify and receive explicit approval from a supervisor to temporarily shift telework to another alternate work location or time period. Failure to comply with this provision may result in loss of pay, termination of the telework agreement, and/or appropriate disciplinary action." The Grievant was approved to work at the telework site on

[6] Testimony of Grievant.
[7] Agency Exhibit 23

Mondays, Tuesdays, Thursdays and Fridays. On Wednesdays, she was to report to the main work site.[8]

4. Any changes to the schedule required approval from the Supervisor and were to be noted on the Grievant's Outlook Calendar, an on-line calendar that is accessible by the employee, other employees and the supervisor. A reminder of this policy was reviewed at January 14, 2014 training team meeting, which the Grievant attended.[9]

5. On February 19, 2014, a Wednesday, the Grievant decided to work from the telework site instead of the main work site. Without approval from her supervisor, the Grievant went to the telework site and worked there for the day. Since she had to be at the main work site for teleconference training on Thursday, February 20, 2014, she "swapped" days.[10]

6. In the Grievant's Response to the Due Process Memo on March 5, 2014, the Grievant explained that the reason she swapped days and reported to the telework site on Wednesday, February 19, 2014 was that "it would meet a business need" since she had to be at the main work site on February 20, 2014.[11] In the Grievant's Response to the Written Notice on April 18, 2014, the Grievant explained that the reason she went to the telework site on February 19, 2014 was that she "could get to [the telework site] faster and the roads to [the telework site] figured to be in better condition than those near [the main work site]." In addition, she reiterated that there was a business need to be in the main work site on Thursday. [12]

7. There is no evidence that the roads were better to the telework site than to the main work site. The National Weather Service data shows that the week before, on February 13, 2014 there was 11.7 inches of snow. On February 14: no snow, February 15: .3 inches, February 16: trace, February 17: .2 inches, February 18: .3 inches, February 19: no snow.[13] The majority of the 28 mile commute of the Grievant from her home to the main work site is on a multilane major interstate highway. The 20 mile commute of the Grievant from her home to the telework site involves veering off the interstate to a secondary road. The Grievant admitted that either commute is a "reverse commute." That is, that the majority of the traffic is traveling the opposite direction. When asked what would make the secondary road safer to travel on that day, the Grievant said it was because the drivers on the interstate drove too fast.[14]

8. The Grievant's Outlook Calendar showed that the Grievant and her Supervisor had a regularly scheduled (every other Wednesday) 10:00 phone conference, including the

[8] Agency Exhibit 8
[9] Agency Exhibit 21, Testimony of Supervisor
[10] Testimony of Grievant and Supervisor, Grievant Exhibit 17, Section 3
[11] Grievant Exhibit 3, page 6
[12] Grievant Exhibit 6, page 3-4
[13] Grievant Exhibit 15
[14] Testimony of the Grievant

February 19th date. On February 19, 2010, the Supervisor called the Grievant at 10:00 a.m. at the main work site. When there was no answer, she left a message, and sent the Grievant several emails. It was later in the day that the two finally spoke on the telephone. The Grievant admitted that she forgot about the 10:00 phone conference and that she never asked for approval for the change in work site for that day.[15]

9. Initially the Grievant's Outlook Calendar for February 19, 2014 showed only the 10:00 a.m. phone call with the Supervisor. The calendar was changed after that day started with the following addition: "9:00am 9:30am Work at [telework site] today. [Main work site] to[morrow]." In fact, the Grievant did not arrive at the telework site until 10:11 a.m. which was 11 minutes later than her 10:00 work start time. She did not report this late arrival to her Supervisor, as required by the Agency Hours of Work Policy.[16]

10. Once she was at the telework site, the Grievant said that she had to change her computer password and that she was on the phone with the computer department for an hour and a half, so she did not see the Supervisor's emails until after 11:30 a.m. When the Supervisor checked with the computer department, their records show that the Grievant's phone call to them was at 11:22 a.m. on that day.[17]

11. The Grievant testified that she did not believe that her being at the telework site, her late arrival, or the fact that she missed the Supervisor call had any impact on the agency. In fact, due to a late cancelation of the teleconference training scheduled for the next day and due to the Supervisor being unable to contact the Grievant at 10:00, the Supervisor had to do the Grievant's job to begin notifying the participants of the training and rescheduling the training.[18]

12. The Grievant's Supervisor testified that she had counseled the Grievant verbally and in writing on several occasions in the last year regarding the Grievant's failure to follow the Supervisor's instructions.[19] In addition, previous supervisors had counseled the Grievant for failure to follow instructions.[20] In addition, the Grievant has an active Group II Written Notice issued on May 31, 2012 for failure to follow instructions.[21]

13. The Grievant argued that there was no requirement to get approval from the Supervisor when changing the work location. She cites a "just let us know" policy that was in effect for her department. The evidence she produced was emails from other employees in which the employees let the Supervisor and others know that the employee was

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[15] Agency Exhibit 19, Testimony of Supervisor and Grievant
[16] Agency Exhibits 4 & 19, Testimony of Supervisor & Grievant
[17] Grievant Exhibit 2, Agency Exhibit 32, Testimony of Supervisor & Grievant
[18] Testimony of Supervisor and Grievant
[19] Testimony of Supervisor, Agency Exhibit 27
[20] Testimony of Supervisor, Office Director, Agency Exhibits 21-23
[21] Agency Exhibit 24

telecommuting that day.[22] However, the Supervisor and Office Director testified that each of those employees had gotten approval from the Supervisor and the emails were simply courtesy notifications to others of their whereabouts. The Supervisor said that her statement to the employees of "just let us know" was not a change in policy but an attempt to seem less dictatorial to the employees.[23] In any case, the Grievant did not even let the Supervisor know about her change to the other location until after the Supervisor was unable to locate her. She did not ask for approval for the change.[24]

APPLICABLE LAW AND OPINION

The Virginia Personnel Act, VA Code § 2.2-2900 et. seq., establishes the procedures and policies applicable to employment in Virginia It includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provisions 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 rights and to pursue legitimate grievances. These dual goals reflect a valid government interest in and responsibility to its employees and workplace. Murray v. Stokes, 237 Va. 653,656 (1989).

VA Code § 2.2-3000(A) provides:

> It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employee disputes that may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

The Department of Human Resource Management has produced a Policies and Procedures Manual which include:

Policy Number 1.60: Standards of Conduct.

Policy 1.60 provides a set of rules governing the professional 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.

Offenses are grouped by levels, from Group I to Group III. Group I Offenses generally includes offenses that have a relatively minor impact on agency business operations but still

[22] Grievant Exhibit13.
[23] Testimony of Supervisor and Office Director
[24] Testimony of Grievant and Supervisor

require management intervention. Group II Offenses include acts of misconduct of a more serious nature that significantly impact agency operations. Group III Offenses generally include acts of misconduct of a most serious nature that severely impact agency operations.[25]

The Agency issued a Group II Written Notice to the Grievant. The Agency alleges that the Grievant failed to follow instructions.

The responsibility of 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 facts de novo to determine

(i) Whether the employee engaged in the behavior described in the Written Notice;

(ii) Whether the behavior constituted misconduct,

(iii) Whether the agency's discipline was consistent with the law and policy, and finally,

(iv) Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances.[26] Using this framework, I will analyze the case.

Whether the employee engaged in the behavior described in the Written Notice

The behavior described in the Written Notice is that the Grievant reported to her telework location on an unscheduled day without receiving approval from her supervisor. The Grievant admits that this is true. She went to the telework site on the day she was scheduled to be at the main work site. She never requested or received approval from her supervisor to be working from the telework site that day.

Whether the behavior constituted misconduct

The Grievant signed Standard Telework Agreement from the Agency. In that agreement, it states that, "Employee agrees to perform telework at the agency-approved alternate work location(s) and times defined in this agreement unless they notify and receive explicit approval from a supervisor to temporarily shift telework to another alternate work location or time period. Failure to comply with this provision may result in loss of pay, termination of the telework agreement, and/or appropriate disciplinary action." Since the Grievant did not ask for or receive explicit approval from the Supervisor to work at the telework site on a day she was scheduled to be at the main work site, she violated the terms of the telework agreement. This constitutes misconduct that is subject to disciplinary action.

Whether the agency's discipline was consistent with the law and policy

The Agency issued the Grievant a Group II Written Notice to the Grievant for follow instructions. The Grievant had signed the telework agreement. She had been counseled by her supervisors for failure to the agreement. She had a previous active Group II Written Notice for failure to follow instructions. Her failure to follow instructions was a violation of Agency policy. It had an impact on business operations. The Agency did not suspend, demote, or terminate the employee. Considering all the factors, the Agency's issuant of a Group II Written Notice was appropriate discipline and consistent with law and policy.

[25] Rules for Conducting Grievance Hearings, VDHRM, page 15

[26] Rules for Conducting Grievance Hearings, VDHRM, page 15-17

Whether there were mitigating circumstances

According to the Rules for Conducting Grievance Hearings, AA hearing officer must give deference to the agency=s consideration and assessment of any mitigating and aggravating circumstances. A hearing officer may mitigate the agency=s discipline only if, under the record evidence, the agency=s discipline exceeds the limits of reasonableness.@[27]. After review of the agency's consideration and assessment of mitigating circumstances, this Hearing Officer finds that the agency's discipline of imposing a Group II Written Notice does not exceed the limits of reasonableness.

DECISION

The Grievant=s Group II Written Notice of March 21, 2014 is upheld.

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
   Department of Human Resource Management
   101 North 14th St., 12th Floor
   Richmond, VA 23219
   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 North 14th St., 12th Floor
   Richmond, VA 23219
   or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You 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.

[27] Rules for Conducting Grievance Hearings, p. 17

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.[14]

[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].

September 16, 2014 — *Jane E. Schroeder*

Date — Jane E. Schroeder, Hearing Officer

cc: Agency, Counsel for Agency, Employee, Counsel for Employee, EDR

[14] Agencies must request and receive prior approval from EDR before filing a notice of appeal.

COMMONWEALTH OF VIRGINIA

Department of Human Resource Management
Office of Employment Dispute Resolution

RECONSIDERED DECISION OF THE HEARING OFFICER

In the matter of Case # 10417
Reconsidered Decision Issued: April 16, 2015

PROCEDURAL HISTORY

The Grievant was employed by the Agency as a trainer. The Agency issued a Group II Written Notice to the Grievant for failure to follow instructions. The Grievant filed a grievance asking for the withdrawal of the Group II Written Notice. The case was heard on August 26, 2014 with both the Agency and the Grievant represented by counsel. The Hearing Officer's decision was issued on September 16, 2014. The Grievant subsequently requested an Administrative Review by the Office of Employment Dispute Resolution (EDR). On October 28, 2014, EDR, in the Administrative Review, remanded the case to the hearing officer for a limited reopening of the hearing record and for further consideration of whether the evidence in the record may support mitigation of the issuance of the Group II Written Notice. Upon remand, the Grievant chose to appear pro se.

Two post hearing telephonic conferences were held. At the first conference, Agency's Remand Exhibits 1-6 were received into evidence without objection. The Grievant requested an affidavit from the Agency that the documents submitted by the Agency was a complete response to the documents listed in the Administrative Review. Neither party named any witnesses to be heard. Therefore, no further testimony was received.

The Agency then submitted an affidavit by the Office Director at the Agency as well as additional documents. At the second conference, the affidavit (Remand Exhibit 7) and additional documents (Remand Exhibit 8) were entered into evidence without objection. Following the conferences, the Grievant submitted a thirty-three page brief with forty-four pages of exhibits attached. The Agency did not submit a response brief.

ISSUES UPON REMAND

According to the Administrative Review, "the Agency is required to provide the grievant and the hearing officer with documents responsive to the following requests, or notify them that no responsive documents exist,

(1) "documents showing any occasion between January 1, 2013 and the present of supervisor **pre-approval** for any employee under the supervision of [Office Director] or,[Training Supervisor] of . . . a telecommute or alternate work location site shift";
(2) "documents showing any occasion between January 1, 2013 and the present of any employee under the supervision of [Office Director] or,[Training Supervisor] . . .

shifting a telecommute or alternate work location site shift"; and

(3) "documents showing any occasion between January 1, 2013 and the present where any employee under the supervision of [Office Director] or,[Training Supervisor] was disciplined or counseled for failure to follow instructions or for violation of the telecommuting policy."

As to further consideration of the mitigating factors, the remand decision must include "a discussion of the following evidence and whether it supports mitigation of the discipline:

(1) Any alleged business reasons the grievant may have had for changing her telework schedule on February 19;
(2) The grievant's decision to reset password upon arriving at the telework site on February 19 instead of contacting her supervisor;
(3) The possible effect, if any, of the previous agreement; and
(4) The grievant's prior satisfactory work performance."

"After receiving that information the hearing officer is directed to issue a remand decision taking any responsive documents and other evidence that may be submitted into account and more fully consider the mitigating evidence presented by the grievant."

ADDITIONAL FINDINGS OF FACT

1. Remand Exhibits 1 through 6 were submitted by the Agency, by counsel, on November 11, 2014 in response to the Administrative Review.
   Note: The Grievant in her brief, page 2 states that: "as an initial matter, none of the documents that [the Agency] has thus far produced in response to the EDR Ruling were copied to Grievant." However, the Grievant sent an email prior to the first post-hearing conference in which she states: "I request that all of the documents produced by [the Agency] thus far, referred to by [Hearing Officer] as Remand Exhibits 1-6, be received into the record as evidence."
2. Remand Exhibit 7 is the February 13, 215 Affidavit of the Office Director stating that, in response to the Administrative Review, the Agency "provided all of the requested documents that we were able to locate." The Office Director conducted an additional search of emails in the Outlook folders and submitted additional emails found. (Remand Exhibit 8).
3. Remand Exhibits 1 through 6 and 8 are email communications between Agency employees under the supervision of the Office Director or Training Supervisor and the Office Director or Training Supervisor.
4. In response to request #1 and #2, many of the emails are examples of employees' requests for pre-approval of changing telecommute dates and the subsequent approval given.
5. In response to request #2, there were no documents showing any occasion of any employee under the supervision of Office Director or Training Supervisor shifting a telecommute location site without approval.

6. In Remand Exhibit 8, an employee sent an email at 7:52 a.m. on October 7, 2013, to ask pre-approval to work from home due to bad weather. Approval was granted at 8:21 a.m. On January 19, 2014 and again on March 24, 2014 the same employee again asked for pre-approval to telecommute from home due to poor weather. Both requests were granted. It is unknown to the hearing officer if home was normal telecommute location for that employee.
7. In response to request three, in Remand Exhibit 6, an employee is counseled by the Office Director regarding using his lunch break for a doctor's appointment. There were no other documents showing any occasion where any employee under the supervision of Office Director or Training Supervisor was disciplined or counseled for failure to follow instructions or for violation of the telecommuting policy."

OPINION

Additional Documents

After a review of the remand exhibits submitted, this hearing officer finds that the remand documents (1-6 and 8) submitted further substantiate that other employees requested and were granted pre-approval of changes to the telework sites and schedules. The Grievant failed to follow instructions when she did not seek approval to go the telework site on February 19, 2014 instead of going to the main work site as the telework agreement required.

Mitigating Circumstances

This hearing officer has been directed that the remand decision must include "a discussion of the following evidence and whether it supports mitigation of the discipline:

(1) Any alleged business reasons the grievant may have had for changing her telework schedule on February 19;

The Grievant alleged that the business reason for changing her telework schedule on February 19 was that she needed to be at the main work site on February 20, so she swapped telework days. There was no business need given for the Grievant to be at the telework site instead of the main work site on February 19. In fact, the Grievant testified that she made the decision to go to the telework site instead of the main work site after she started her commute that day, based on expected road conditions. The Grievant never requested or received permission to work at the telework site on February 19. This hearing officer does not find that the evidence supports mitigation of the discipline based on any business reason for changing her telework schedule on February 19.

(2) The grievant's decision to reset password upon arriving at the telework site on February 19 instead of contacting her supervisor;

The evidence showed that the Grievant arrived late at the telework site, missed the scheduled 10:00 teleconference with her supervisor, chatted with other employees, contacted VITA regarding resetting her password, and set out other emails before contacting her supervisor. The Grievant's decision to reset her password upon arriving at the telework site does not support mitigation of the discipline for failure to follow instructions.

(3) The possible effect, if any, of the previous agreement; and

The previous agreement cited by the Grievant is the November, 2011 "Grievance Settlement Agreement" entered into by the Grievant and the Agency after a previous Group II Written Notice was issued to the Grievant for failure to follow supervisory instructions in the Grievant's presentation of a training. In that agreement, Section II states as follows:

> Within 20 workdays of the date of this Agreement, [Grievant] and her supervisor will complete a workplan that will address the following items
>
> a. Describe the required planning and assessment prior to initiation of work required activities
> b. Articulate clear performance expectations for her position
> c. Clarify the process to assure ongoing informal feedback with opportunities for self-correction.

The workplan that would address those items was not included in the evidence, so it is not clear to this hearing officer how the "opportunities for self-correction" were addressed in the workplan.

If the Grievant believed that the Agency failed to honor the agreement, the recourse, according to Section VII of the agreement "shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Richmond, Virginia."

In any case, the present Group II Written Notice regarding failure to follow instructions relates to the Grievant's failure to follow the telework policy by getting approval for a change to the telework site. The facts showed that the Grievant was given feedback regarding following the telework policy prior to receiving the written notice. This hearing officer does not find that the evidence supports mitigation of the discipline based on the previous agreement.

(4) The grievant's prior satisfactory work performance."

The Grievant's last two performance reviews gave her an overall rating as "contributor." However, the Grievant had an active Group II Written Notice for Failure to Follow Instructions issued May 31, 2012 and an inactive revised Group I Written Notice for Failure to Follow Instructions at the time of the present Group II Written Notice. According to the Standards of Conduct, a second active Group II Written Notice should result in termination. The fact that the Agency chose to give the Grievant a Group II Written Notice with no suspension or termination shows that the Agency considered mitigating factors.

Note: In the Grievant's Brief, the Grievant stated that the Hearing Officer "discarded many or all her copies of the record before the appeals process in this case was complete." This is untrue. The Hearing Officer sent the complete record to EDR at the conclusion of the hearing.

According to the Rules for Conducting Grievance Hearings, AA hearing officer must give deference to the agency=s consideration and assessment of any mitigating and aggravating circumstances. A hearing officer may mitigate the agency=s discipline only if, under the record evidence, the agency=s discipline exceeds the limits of reasonableness.@[28]

[28] Rules for Conducting Grievance Hearings, p. 17

After review of the agency's consideration and assessment of mitigating circumstances and further review of the mitigating circumstances offered by the Grievant, this Hearing Officer finds that the agency's discipline of imposing the Group II Written Notice was appropriate and does not exceed the limits of reasonableness.

RECONSIDERED DECISION

After reviewing the additional evidence submitted into account and more fully consider the mitigating evidence presented by the grievant, the Grievant=s Group II Written Notice of March 21, 2014 is upheld.

APPEAL RIGHTS

Both parties may request administrative review of the hearing officer's reconsidered decision on any other *new matter* addressed in the reconsideration decision (i.e., any matters not previously part of the original decision). Any such requests must be **received** by the administrative reviewer **within 15 calendar days** of the date of the issuance of the reconsideration decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided. Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose. Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.

April 16, 2015

Jane E. Schroeder
Jane E. Schroeder, Hearing Officer