

Issues: Group III Written Notice (workplace harassment), Suspension, Demotion and Pay Reduction; Hearing Date: 06/27/12; Decision Issued: 07/19/12; Agency: VCCS; AHO: Lorin A. Costanzo, Esq.; Case No. 9852; Outcome: No Relief – Agency Upheld; **Administrative Review: EDR Ruling Request received 08/07/12; EDR Ruling No. 2013-3408 issued 08/10/12; Outcome: Request denied - untimely.**

**COMMONWEALTH OF VIRGINIA  
VIRGINIA COMMUNITY COLLEGE SYSTEM**

**DECISION OF HEARING OFFICER**

**In the matter of: Grievance Case No. 9852**

**Hearing Date: June 27, 2012  
Decision Issued: July 19, 2012**

**PROCEDURAL HISTORY**

Grievant filed a timely appeal from a Group III Written Notice with 10 workday suspension and demotion to lower Pay Band with 10% disciplinary pay reduction effective May 18, 2012 (and providing for a New Role Title, Position #, and New Location) issued on May 2, 2012. The *Nature of Offense and Evidence indicated*, "Violation of policy 2.30 Workplace harassment and disruptive behaviors including intimidation, unreasonable interfering in employee's work performance, inappropriate touching, making subordinate uncomfortable, embarrassing subordinate in front of other employees. This is based on a complaint received from one of [Grievant's] subordinates on April 17, 2012."

Hearing was held on June 27, 2012. By agreement of the parties written closings were submitted. Agency timely filed its closing arguments due June 29, 2012 and Grievant timely filed his closing arguments due July 5, 2012.

**APPEARANCES**

Agency Presenter  
Grievant, who was also a witness  
Inventory specialist  
Employee  
Dental Hygienist  
T.Tech. #1  
T.Tech. #2  
T.Tech. #3

**ISSUES**

Whether the issuance of a Group III Written Notice with 10 workday suspension and demotion to lower Pay Band with 10% disciplinary pay reduction (and providing for a New Role Title, Position #, and New Location) issued on May 2, 2012 to Grievant was warranted and appropriate under the circumstances?

**BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. A preponderance of the evidence is evidence which shows that what is intended to be proved is more likely than not; evidence more convincing than the opposing evidence.<sup>1</sup>

## FINDINGS OF FACT

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

Grievant is employed by Agency and has been a supervisor for over 10 1/2 years.<sup>2</sup> Grievant was issued a Group III Written Notice on May 2, 2012 (Offense date: April 17, 2012) for "Violation of policy 2.30 Workplace harassment and disruptive behaviors including intimidation, unreasonable interfering in employee's work performance, inappropriate touching, making subordinate uncomfortable, embarrassing subordinate in front of other employees".<sup>3</sup> At the time of issuance of the Group III Written Notice Grievant had no active Written Notices.

A dental hygiene clinic for student training is present on campus where Grievant works. On April 17, 2012 a client was needed for a dental hygiene student and Grievant undertook actions to secure such a client. Employee is a female Agency employee. Grievant is a male supervisor and he is Employee's supervisor.

Employee was at work taking trash off her cart when she heard Grievant yelling her name. Grievant told her that he wanted her to go to the dental hygiene clinic and be a client for a dental hygiene student. Employee did not want to go to the dental hygiene clinic nor participate as a client for a dental hygiene student. She told Grievant "four, if not more, times" she did not want to do this.<sup>4</sup> Employee's job description does not require her participation as a patient/client in the dental hygiene clinic.

Grievant was aware Employee did not want to go to the clinic. Despite her objections, Grievant continued his efforts to have Employee go to the dental hygiene clinic. On multiple occasions he ignored Employee's objections and statements about her not wanting to go to the clinic. In furtherance of his desire for her to go to the clinic he put his hand on her back and pushed getting her to go up a ramp. He also put his arm around her in the hallway coaxing her to the end of the hallway.<sup>5</sup>

Grievant told her he wanted her to get into a golf cart with him and that he was going to take her to the clinic. Grievant did not want to do this and said so to Grievant. Over Employee's objections Grievant escorted Employee to the clinic in the golf cart, escorted her into the clinic, and at the clinic initially stood at the door watching her.<sup>6</sup>

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<sup>1</sup> Dept. of Employment Dispute Resolution, *Grievance Procedure Manual*, Sections 5.8 and 9.

<sup>2</sup> Testimony of Grievant.

<sup>3</sup> Agency's Exhibits pg.1.

<sup>4</sup> Testimony of Grievant.

<sup>5</sup> Testimony of Grievant.

<sup>6</sup> Testimony.

Employee had very personal reasons for not wanting to go to the dental hygiene clinic. She had not talked to anyone about these reasons. Grievant did not know of these reasons.

At the dental hygiene clinic Employee was in contact with a group of students and two instructors. At one point, she asked if Grievant was still there watching her. Employee told the instructors and students that she was not going to get her teeth cleaned, she was not comfortable with this, and she was going to leave. Employee was very upset. She said she didn't want any procedure done and she left the clinic. When Grievant later saw employee, he call her a failure. This was said in public and in front of other employees.

### **APPLICABLE LAW 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 of Virginia. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging, and training state employees. It also provides for a grievance procedure. Code of Virginia, §2.2-3000 (A) sets forth the Virginia grievance procedure and provides, in part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints ... . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employee disputes which may arise between state agencies and those employees who have access to the procedure under §2.2-3001.

#### ***DHRM Policy 1.60 - Standards of Conduct***<sup>7</sup>

To establish procedures on the *Standards of Conduct and Performance* for employees of the Commonwealth and pursuant to § 2.2-1203 of the Code of Virginia, the Department of Human Resources Management has promulgated Policy No. 1.60, *Standards of Conduct*. The *Standards of Conduct* provide a set of rules governing the professional and personal conduct of employees and acceptable standards for work performance of employees. The *Standards of Conduct* serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct, and to provide appropriate corrective action.

DHRM Policy 1.60 - *Standards of Conduct* organizes offenses into three groups according to the severity of the behavior. Group III Offenses include acts of misconduct of such a severe nature that a first occurrence normally would warrant termination. This policy further provides that the examples of offenses set forth are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. The *Standards of Conduct* provides:

*Examples of offense, by group, are presented in Attachment A. These examples are not all-inclusive, but are intended as examples of conduct for which specific disciplinary actions may be warranted. Accordingly, any offense **not specifically enumerated**, that in*

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<sup>7</sup> Agency's Exhibits pg. 13.

*the judgment of agency heads or their designees undermines the effectiveness of agencies' activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section.*<sup>8</sup>

**Note:** under certain circumstances and offense typically associated with one offense category may be elevated to a higher level offense. Agencies may consider any unique impact that a particular offense has on the agency and the fact that the potential consequences of the performance or misconduct substantially exceeded agency norms.

DHRM Policy 1.60, Attachment A, states that, depending on the nature of the offense, workplace harassment can be a Group I, II, or III offense. Disruptive behavior is listed in Policy 1.60, Attachment A as an example of a Group I offense and Policy 1.60 further provides that for repeated violations of the same offense an agency may issue a Group II Written Notice.

Under the *Standards of Conduct* an agency has the ability to reduce the level of corrective action if there are mitigating circumstances. The *Standards of Conduct* indicates:

Agencies may reduce the level of a corrective action if there are mitigating circumstances, such as conditions that compel a reduction to promote the interests of fairness and objectivity, or based upon an employees' otherwise satisfactory work performance.

Mitigating circumstances for a Group III offense may support, as an alternative to termination, an employee's demotion or transfer to a position with reduced responsibilities *and* a disciplinary salary action with a minimum 5% reduction in salary; transfer to an equivalent position in a different work area; and/or suspension of up to 30 workdays.<sup>9</sup>

### ***DHRM Policy 2.30 - Workplace Harassment***<sup>10</sup>

Policy Number 2.30, *Workplace Harassment*, indicates in pertinent part:

It is a policy of the Commonwealth to provide its employees with a workplace free from harassment and/or retaliation against employees who either complain of harassment or aid in the investigation of such a complaint.

#### **A. Prohibited Conduct**

##### **1. Harassment**

The Commonwealth strictly forbids harassment of any employee, applicant for employment, vendor, contractor or volunteer on the basis of an individual's race, sex, color, national origin, religion, age, veteran status, lyrical affiliation or disability.

#### **C. Policy Violations**

##### **1. Engaging In Harassment**

Any employee who engages in conduct determined to be harassment or encourages such conduct by others shall be subject to corrective action, up to and including termination, under Policy 1.60, Standards of Conduct.

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<sup>8</sup> Agency's Exhibits pg. 7-8, Standards of Conduct § B.2.

<sup>9</sup> Agency's Exhibits pg. 22, Standards of Conduct § B.3(a).(b.).

<sup>10</sup> Agency's Exhibits pg. 10 and pg. 11.

Policy 2.30 defines "Workplace Harassment" as:

Any unwelcome verbal, written, or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of race, sex, color, national origin, religion, age, veteran status, political affiliation, or disability, that: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects and employee's employment opportunities or compensation.<sup>11</sup>

Agency issued a Group III Written Notice for an offense occurring on April 17, 2012 for a violation of Policy 2.30 "Workplace Harassment" and disruptive behaviors. The Written Notice indicated:

"Violation of policy 2.30 Workplace harassment and disruptive behaviors including intimidation, unreasonable interfering in employee's work performance, inappropriate touching, making subordinate uncomfortable, embarrassing subordinate in front of other employees. This is based on a complaint received from one of [Grievant's] subordinates on April 17, 2012."<sup>12</sup>

On April 17, 2012 Employee was working and Grievant wanted her to assist a student dental hygienist by being a patient in the campus dental hygiene clinic. Employee very clearly and consistently kept telling Grievant she did not want to go to the clinic. She indicated she had a lot to do and going to the clinic wasn't in her job description.<sup>13</sup> However, despite her objections, Grievant persisted in his efforts. Ignoring her objections and to get her to go to the clinic, he put his hand on her back and was pushing her directing her up the ramp. He put his arm around her in the hallway coaxing her to the end of the hallway. Additionally, he insisted she get in the golf cart with him and be escorted to the clinic after she said she really did not want to do this.

Employee testified that, to make it go away, she said she would walk over to the clinic by herself, hoping Grievant would get in the golf cart and leave. She wanted then to be able to walk back into the building, get back to work, and go about her day. This did not occur as Grievant insisted and did take Employee to the clinic in the golf cart. She hoped Grievant would walk out of the clinic and she could leave but he walked with her into the clinic and she even observed him watching her.

At the clinic Employee met with students and instructors. In the presence of the students and instructors she asked if Grievant was still there and said she really did not want to be there. She observed Grievant peeking over at her, with his coffee in his hand, looking to see if she was still in the chair. He had made the comment that he was almost certain that she was going to not follow through and would check out of there. Employee said she was not getting her teeth cleaned, she was not comfortable with this, and she was going to leave. She said she was very upset with Grievant and this was not something she wanted to do. She then left.

Employee described this whole incident as being very upsetting and very frustrating to her. She indicated she was so upset that she was shaking. She did not want to go to the clinic and she did not want re-live something in her life that was traumatic to her. She said no to Grievant and did not want to be forced to do something she didn't want to do. Employee testified that she had a very personal and

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<sup>11</sup> Agency's Exhibits pg. 12.

<sup>12</sup> Agency's Exhibits pg. 1, Written Notice.

<sup>13</sup> Testimony of Employee.

strong reason as to why she did not want to go to the dental hygiene clinic. She had not talked to anyone about her reasons and Grievant did not know of these reasons.

After she left the clinic, Grievant called Employee a failure in front of other Agency employees. When she went to Grievant's office to speak to him, she told him she didn't like what happened and was not happy. She indicated she was upset, didn't appreciate it, and didn't want him to ever do it again. He said she wasn't really bothered by it and she could say to her family she wasn't a good enough candidate for the girl to use for the class. She said no and left his office. Half way out of shop Grievant yelled he was sorry.

Grievant does not contest that he was trying to get Employee to go to the campus dental hygiene clinic. Grievant does not contest Employee told him she did not want to go to the clinic. He does not contest that he put his arm around Employee or that he put his hand on her back pushing her. He does contend that the touching was not done in to harass or in a sexual manner. He indicates he has no recollection of calling Employee "a failure" in front of others.

The evidence indicates that Grievant was clearly and consistently told a number of times by Employee that she did not want to go to the clinic. She told him she did not want to go with him in the golf cart.<sup>14</sup> Yet, he felt free to ignore her objections. Furthermore, the evidence indicates he felt free to and did put his hand on her back pushing her and to put his arm around her. He felt free to insist she go to the clinic and to escort her, over her objections, to the clinic. Later on April 17, 2012, in public, Grievant told Employee that she was a "failure". An eyewitness reported to management that she did not feel the statement was said in a joking manner and stated she felt "uncomfortable" about Grievant saying this to Employee.<sup>15</sup> Management indicated further that there was security tape of the incident.

The evidence indicates Grievant called Employee a failure in public that this subjected her to embarrassment in front of others. The evidence further indicates that Employee was very upset with Grievant's actions of April 17, 2012. She told Grievant she didn't like it, didn't appreciate it, and didn't want him to do that again to her. She also presented her concerns to Agency management on April 17, 2012, the day the incident occurred, and this led to matters being investigated by Agency.

In its investigation Agency found that Grievant provided names of two male employees who Grievant said he asked to get their teeth cleaned at the dental clinic. Upon follow-up, both named individuals stated to management they were not asked to get their teeth cleaned that day.<sup>16</sup> Grievant indicated at hearing he was confused and gave the wrong names. Grievant presented male witnesses who testified they were asked by him on April 17, 2012 to be a patient at the clinic and asked when had their teeth cleaned last. Both testified they didn't want to go to the dental clinic. One witness indicated he was asked to go to the dental clinic but said he didn't want to go and that was the end of it.

Grievant may have asked certain male employees about going to the dental clinic, however, the evidence indicates Employee was treated differently. The male employees were not compelled to go to the clinic or ignored when they declined to go. None had an arm placed around them, a hand on their back, or were told they failed/were a failure. The evidence indicates that Grievant felt at liberty to place his arm around Employee (who he supervised) and felt at liberty to place his hand on her back to compel

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<sup>14</sup> Testimony of Employee.

<sup>15</sup> Agency's Exhibits pg. 4.

<sup>16</sup> Agency's Exhibits pg. 4.

her to go to the clinic after receiving her clear statements that she did not want to go. As to the male employees, the evidence indicates that Grievant accepted their statements they did not want to go to the clinic and there is no evidence of touching to get them to go to the clinic over their protestations. One male witness indicated when he was asked to go to the dental clinic he told Grievant he didn't want to do it, discussed some reasons, and testified "that was the end of it". The evidence indicates that throughout the whole episode on April 17, 2012 Employee was systematically and repeatedly treated differently than the male employees in a similar situation.

On April 17, 2012, Grievant was observed and heard telling Employee in public and in a loud voice "Hey, you know what, you are a failure" and saying "You're a failure." A witness observed this and observed Employee's reaction. The witness reported that she believed Grievant's comment had been inappropriate and harmful to Employee. She described Employee as seeming "pretty shook up". The witness stated in her signed witness statement, "I felt awkward and confused because [Grievant] had just humiliated [Employee] in front of me and whoever else happened to be around". The witness further indicated Employee told her she had an awful morning and Employee stated, "What would you do if someone made you do something that you didn't want to do and they were you boss and this was something that didn't have anything to do with your job."<sup>17</sup>

The evidence does not indicate that Grievant placed his hand on Employee's back or placed his arm around her in order to seek sexual gratification.

Agency has established by a preponderance of the evidence that Grievant's conduct, including, but not limited to, ignoring Employee's repeated objections, placing his hand on her back and pushing her, putting his arm around her, compelling her to go with him in the golf cart over her objections, and calling her a failure were unwelcome verbal and/or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of sex and has the purpose or effect of creating an intimidating, hostile or offensive work environment or has the purpose or effect of unreasonably interfering with an employee's work performance.

The evidence indicates that Grievant's actions and words were disruptive behaviors and did intimidate Employee, make her uncomfortable, and embarrassed her in front of others. As discussed above, the touching was inappropriate under the circumstances. Grievant's actions unreasonably interfered in employee's work performance and subjected her to stress and anxiety.

***Prior concerns:***

Agency had concerns as to Grievant's actions as a supervisor. They were concerned that this was a third time that complaints were raised and concerned that this was a pattern of incidents. Management was concerned as to duties owed to its employees and its obligations as to the workplace. Management previously had addressed certain actions and/or statements of Grievant. The first incident was in 2005 and led to Grievant being issued a now inactive Group I Written Notice (offense date: January 4, 2005) (issuance date: January 6, 2005). The Written Notice addressed concerns as to verbal comment of Grievant "...of a sexual nature regarding the length of a cable and a part of the male anatomy- in front of your direct reports ..."<sup>18</sup> It is specifically noted that this Group I Written Notice is inactive (Inactive date is January 6, 2007).

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<sup>17</sup> Agency's Exhibits pg. 3, Witness Statement.

<sup>18</sup> Grievant's Exhibits pg. 5; Agency's Exhibits pg. 8.



Agency addressed an incident which occurred in August of 2011 in which a female Agency employee (not the same employee who was subject of the 4/17/12 incident) complained that Grievant had been making inappropriate statements to her such as "*you look sexy today*" and saying "*doesn't she look sexy*". The complaining individual was concerned over statement made by Grievant over a period of time that she felt were rude such as, "Look at that sexy thing" and "Look at that sexy girl". These statements were made at times when she walked by. Two individuals were witnesses to the 8/4/11 statements made by Grievant.

This was the first time she filed a complaint but not the first time these type comments were made. She testified to being uncomfortable in the work place and being uncomfortable a lot of times around Grievant. She expressed being uncomfortable due to Grievant's statements and feeling uncomfortable to walk over to the other side in the maintenance shop to use the restroom. She expressed concern and being uncomfortable also due to the whispering going on.

Management met with Grievant on August 8, 2011 indicating that they had received a verbal complaint from an individual of sexual harassment. Grievant was counseled that he needed to keep his conversations to "work related" communications. Additionally, management confirmed that Grievant was present for sexual harassment training approximately two years prior to the meeting.

Evidence was presented as to additional workplace issues and concerns including e-mails of a sexual nature, shouting, and profanity. One of Grievant's witnesses testified he was not aware of receiving offensive or inappropriate e-mails of matters of a sexual nature at the workplace however, management was concerned about this. Agency produced rebuttal evidence showing 8 e-mailed cartoons of a sexual nature. These cartoons were forwarded via e-mail on April 12, 2012 from Grievant to the male employee.<sup>19</sup> The hearing officer has concerns due to the nature of these cartoons.

The male witness did say he heard profanity among "us guys". Another witness of Grievant indicated he did not notice an offensive atmosphere and noted some profanity in the shop not the main building.

***Advance Notice and Reasonable Opportunity to Respond:***

Policy Number 1.60, Section E. 1. provides for an advance notice of discipline to employees prior to the issuance of a written notice and that the employee must be given oral or written notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond.

On April 24, 2012 management met with Grievant to discuss matters related to the incident of April 17, 2012. Allegations and an explanation of Agency evidence were discussed and Grievant was asked for his view of what occurred. Management expressed their concerns as to matters and as to a pattern of complaints being exhibited. A meeting was set for April 26, 2012 to further discuss matters and evidence including why Agency shouldn't follow through with termination.<sup>20</sup>

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<sup>19</sup> Agency's Exhibits.

<sup>20</sup> Agency's Exhibits pg. 5-6.

On April 26, 2012 Grievant and Agency management. Grievant raised matters and concerns with management and presented information to management concerning the events. Grievant and management reviewed the incident and discussed the agency's evidence and concerns. Grievant was given an opportunity to and did respond and present matters relating to the incident of April 17, 2012.<sup>21</sup>

The evidence indicates that, prior to the May 2, 2012 issuance of the Group III Written Notice, Grievant was given an oral notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond and present mitigating factors or denial of the charge.

### **Group III**

Pursuant to Policy 1.60, workplace harassment can be a Group I, II, or III offense depending upon its severity. The Agency in this case contends that Grievant should receive a Group III Written Notice. Based on the nature and severity of Grievant's behavior, its impact on Employee, Grievant's prior actions, and Agency's prior efforts to address complaints which arose, the Hearing Officer finds that the Agency's decision to issue a Group III Written Notice was justified.

Virginia Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action". The hearing officer is to consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with the rules established by the Department of Dispute Resolution.<sup>22</sup>

§ VI.B.1. of the Department of Employment Dispute Resolution *Rules for Conducting Grievance Hearings* provides,

**Mitigating and Aggravating Circumstances:** The *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances," such as conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an employee's long service, or otherwise satisfactory work performance." 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. ....

The evidence indicates that Agency gave consideration to mitigating and aggravating circumstances. Group III Offenses include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination. One Group III Offense normally should result in termination. In lieu of discharge, the agency may (1) suspend without pay for up to 30 workdays, and/or (2) demote or transfer with disciplinary salary action.<sup>23</sup> Mitigating circumstances for a Group III offense may support, as an alternative to termination, an employee's demotion or transfer to a position with reduced responsibilities and a disciplinary salary action with a minimum of 5% reduction in salary; transfer to an equivalent position in a different work area; and/or suspension of up to 30 workdays.<sup>24</sup>

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<sup>21</sup> Agency's Exhibits pg. 6.

<sup>22</sup> § 2.2-3005 of the Code of Virginia.

<sup>23</sup> Agency's Exhibits pg. 21, pg. 31, and Attachment A: to Policy 1.60.

<sup>24</sup> Agency's Exhibits pg. 22.

In this case the Agency did not terminate but chose instead to initiate a 10 workday suspension with a demotion to lower Pay band with 10% disciplinary pay reduction (and providing for a New Role Title, Position #, and New Location). This level offense does provide the option of a suspension of up to 30 workdays. Based upon the evidence in this cause, the issuance of a Group III Written Notice does not exceed the limits of reasonableness.

### **CONCLUSION**

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

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

### **DECISION**

For the reasons stated above, the Agency has proven by a preponderance of the evidence that the disciplinary action of issuing a Group III Written Notice with 10 workday suspension and demotion to lower Pay Band with 10% disciplinary pay reduction (and providing for a New Role Title, Position #, and New Location) was warranted and appropriate under the circumstances and Agency's discipline does not exceed the limits of reasonableness.

The Agency's issuance to Grievant of a Group III Written Notice with 10 workday suspension and demotion to lower Pay Band with 10% disciplinary pay reduction (and providing for a New Role Title, Position #, and New Location) is **UPHELD**.

### **APPEAL RIGHTS**

As the Grievance Procedure Manual sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

**Administrative Review:** This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

**1. A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions are the basis for such a request.

**2. A challenge that the hearing decision is inconsistent with state policy or Agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a

particular mandate in state or Agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests should be sent to:

Director, Department of Human Resources Management  
101 N. 14th Street, 12th Floor  
Richmond, Virginia 23219

**3. A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests should be sent to:

Director, Office of Employment Dispute Resolution  
Department of Human Resources Management  
101 N. 14th Street, 12th Floor  
Richmond, VA 23219.

*(Please note the Department of Employment Dispute Resolution merged with the Department of Human Resource Management July 1, 2012 - EDR can also be contacted at the above address and at 1-888-232-3842 from such date)*

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar days** of the date of the original hearing decision. (Note: the 15-day period, in which the appeal must occur, begins with the date of issuance of the decision, not receipt of the decision. However, the date the decision is rendered does not count as one of the 15 day following the issuance of the decision is the first of the 15 days.) A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or,
2. All timely requests for administrative review have been decided and, if Ordered by EDR or DHRM, the hearing officer has issued a revised decision.

**Judicial Review of Final Hearing Decision:** Within **thirty days** of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. You must give a copy of your notice of appeal to the Director of the Department of Employment Dispute Resolution. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

S/ Lorin A. Costanzo

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Lorin A. Costanzo, Hearing Officer