Issue: Group III Written Notice with Termination (violation of Drug/Alcohol Policy); Hearing Date: 08/20/12; Decision Issued: 08/24/12; Agency: VDOT; AHO: Lorin A. Costanzo, Esq.; Case No. 9871; Outcome: No Relief – Agency Upheld.

COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION

DECISION OF HEARING OFFICER

In the matter of: Grievance Case No. 9871

Hearing Date: August 20, 2012
Decision Issued: August 24, 2012

PROCEDURAL HISTORY

Grievant was issued a Group III Written Notice with termination on April 17, 2012 for violation of Policy 1.05 *Alcohol and Other Drugs*. On May 2, 2012 Grievant timely filed a grievance to challenge the Agency's. Matters proceeded through the resolution steps and, when matters were not resolved to his satisfaction, Grievant requested a hearing. The undersigned was appointed hearing officer on July 25, 2012. Hearing was held August 20, 2012.[1]

APPEARANCES

Grievant, who was also a witness
Agency Presenter
Agency Party Designee, who was also a witness
Additional witnesses:
Collector
Safety Compliance Manager
Sign Liaison
Regional Operations Manager

ISSUES

Whether the issuance of a Group III Written Notice with termination was warranted and appropriate under the circumstances?

BURDEN OF PROOF

[1] Agency Exhibits Tab 2.

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.[2]

FINDINGS OF FACT

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

01. Grievant has been employed by Agency as a Transportation Operator II since January of 2008 until 4/17/12, the effective date of his termination.[3]

02. Grievant is required to maintain a valid Commercial Drivers License as a condition of employment.[4]

03. On April 17, 2012 Grievant was issued a Group III Written Notice with termination for violation of Policy 1.05, Alcohol and Other Drugs. The *Nature of Offense and Evidence* stated:

> On April 10, 2010 [Grievant] had a random drug test performed at the Salem collection site. His first sample was cold, he was asked to have a seat and told he would have to provide another sample. [Grievant] advised the collector that he was going to his truck for some water. He never returned to the collection site and was later seen leaving the site in a VDOT truck.
>
> This is a violation of VDOT's Drug and Alcohol Policy and considered a refusal to test, which is treated as a Group III under the Standards of Conduct. …

The Written Notice further indicated that Grievant currently has an active Group III Written Notice.[5]

04. On May 2, 2012 Grievant timely grieved the issuance of a Group III Written Notice with termination issued to him on April 17, 2012 (Offense date 4/10/12) for violation of *Policy 1.05, Alcohol and Other Drugs*.[6]

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[2] Dept. of Employment Dispute Resolution, *Grievance Procedure Manual*, Sections 5.8 and 9.
[3] Agency Exhibits Tab 5 page 21 and Tab 1 page 1.
[4] Agency Exhibits Tab 5 page 21.
[5] Agency Exhibits Tab 1 page 1 and Tab 6 page 2.
[6] Agency Exhibits Tab 2 page 1.

05. Grievant was selected by Agency for random drug testing to be held on April 10, 2012 at a specified collection site.[7]

06. Grievant appeared for the random drug test on April 10, 2012 at the specified site. Grievant provided a urine specimen to Collector. However, Collector determined that the specimen was not within the acceptable temperature range provided by policy.[8]

07. At the testing site Collector told Grievant that Grievant's urine specimen provided was not within the acceptable temperature range, that it was "cold". Collector told Grievant that Grievant would have to provide another urine specimen under "observed collection" procedures. Grievant was told to stay in the area. Grievant stated that he was going to his truck for some water but he left and never returned to the collection site. Grievant never provided the second specimen as required.[9]

08. Grievant has one active Group III Written Notice issued on November 4, 2010 with an Inactive Date of November 4, 2014.[10]

09. Grievant was given notice and met with management on April 16, 2012 and April 17, 2012 to discuss the incident of 4/10/12, related matters, and concerns. Grievant was notified of the possible disciplinary action of a Group III with termination and evidence of agency in support of the charge. Grievant was afforded an opportunity to respond and present mitigating factors for consideration.[11]

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.

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[7] Agency Exhibits Tab 5 page 9 and 11 and testimony.
[8] Testimony and Agency Exhibits Tab 5 page 19.
[9] Agency Exhibits Tab 5 page 11 and testimony.
[10] Agency Exhibits Tab 6 page 1.
[11] Agency Exhibits Tab 1 page 3 and testimony.

DHRM Policy 1.60 - Standards of Conduct

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 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 ….* [12]

Attachment A also provides if the employee is not discharged upon issuance of the Group III Written Notice, the employee should be advised that any subsequent Written Notice during the active life of the Written Notice may result in discharge. [13]

SP#1-004 [14]

VDOT has adopted and implemented a drug and alcohol testing policy (SP#1-004, effective date: September 30, 2010). The Virginia Department of Transportation, Safety and Performance Management Division's *Drug and Alcohol Testing Policy* (SP#1-004) provides that:

> This safety policy is established in accordance with 49 CFR 29, 40, 98, 382, 383, 390, 391, 392, 393, 395, 396, 397, 399, of the United States Department of Transportation (DOT), the Federal Motor Carrier Safety

[12] Agency Exhibits Tab 3 page 7.
[13] Agency Exhibits Tab 3 page 21.
[14] Agency Exhibits Tab 4, VDOT Safety Policy (SP#1-004).

Administration (FMCSA) and the Standards of Conduct Policy 1.60, and Alcohol and other Drug Policy 1.05, issued by the Department of Human Resources Management (DHRM).

1.0 Purpose

The purpose of this safety policy is for the detection and deterrence of drug and alcohol abuse. This policy also establishes responsibilities for senior management, district and division administrators, supervisors, and employees for providing a work environment free from substance abuse.

2.0 Scope and Applicability

This policy is applicable to hourly and classified employees holding a commercial driver's license for use in agency operations. This policy is also applicable to all employees, hourly or classified, if there is a reasonable suspicion to believe the employee is impaired due to drugs or alcohol.

6.2 Specific Provisions

The following types of alcohol and drug test shall be performed as outlined within this policy ….

- Random Testing

6.2.2 Drug Testing

Testing of an individual's collected urine specimen shall check for the presence of the following drugs, except as noted, by a certified laboratory:

- Amphetamines, methamphetamines, MDMA (Ecstasy)
- Cocaine
- Marijuana
- Opiates
- Phencyclidine (PCP)
- Alcohol (except pre-employment)

6.2.12 Failure to Cooperate

If the employee refuses to cooperate with the collection process (for examples of refusals see Tool 1) the collector at the collection site shall immediately inform the VDOT's DER and shall document the non-cooperation on the urine drug or alcohol testing, custody and control form. It is not required for the refusing employee/candidate to sign the Federal

Drug, Custody and Control Form or the U.S. Department of Transportation Alcohol Testing Form. A refusal shall be treated as an offense of this policy, similar to a positive (including non-negative) test result. See section entitled "Disciplinary Action".

6.3.3 Random Testing

Random testing shall apply to those individuals required to have random testing under the U.S. Department of Transportation and Virginia Motor Carrier Safety regulations.

Random drug and alcohol testing of employees covered by the section of the policy shall be performed throughout the year at an annual rate established by the Federal Department of Transportation for the FMCSA.

A lottery shall be held quarterly to determine employees to be tested during the next three months. ….

6.3.9 Refusal To Submit To Testing

Employees refusing to submit to the required tests shall have the refusal noted in the supervisor's employee performance file. Such a refusal is an offense of this policy and DOT violation. Action shall be taken (similar to a positive test) as outlined in the section entitled "Disciplinary Action".

In addition, employees who operate state owned or leased vehicles, or leased vehicles, equipment or high speed machinery that will pose a danger to themselves or to other employees, or employees who hold positions where the safety of the public may be jeopardized shall be removed from those duties until such time the employees submit to the required testing.

Commercial driver’s license holders who do not submit to testing are considered not medically qualified to operate a commercial motor vehicle under federal and state motor carrier safety regulations.

6.5 Failure to Submit to Testing

The following actions must be taken when employees fail to submit to a required test or fail to cooperate with the testing as outlined in this policy:

- A Group III Notice shall be issued for failing to comply with established policy and applicable federal and state regulations.

- An employee's refusal to comply is an offense under this policy. A covered employee's refusal to comply is an offense under this policy and a DOT violation.

- In addition, employees who operate state-owned vehicles or equipment, high-speed machinery or machinery that will pose a danger to themselves or to others, or hold positions where the safety of the public may be jeopardized, shall be removed from those duties until such time the employee submits to the required testing.

A second refusal to submit to the required testing shall result in the issuance of a Group III Notice under the Standards of Conduct and the dismissal of the employee.

(VDOT SP#1-004) … Tool 1 - Examples of Testing Refusals indicates, in pertinent part:

2 Fail to remain at the urine collection site …. If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.

3. Fail to provide a urine specimen …. If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.

4. Fail to permit a monitored or observed urine collection …. If the employer ordered an observed collection or if the collector required the collection to be monitored or observed, it is a refusal if the employee does not permit it to occur.

6 Fail or decline to take an additional drug test the employer or collector has directed …. If the employer or collector directs the employee to take an additional test, as required or permitted by the DOT, and the employee does not, it is a refusal.[15]

Grievant:

[15] Agency Exhibits Tab 4 page 20.

Grievant contends he complied with policy when he provided a urine specimen on 4/10/12 and that requiring him to provide a second specimen and requiring a second drug test was unwarranted. Grievant raises issue with how the process was handled. He indicates he was not asked for identification, the test administrator did not explain the basic collection procedures, and he felt a second specimen was unwarranted. He contends the determination that his specimen was "cold" was made improperly. [16] He also contends that he should not have been terminated and, at worst, should be placed on suspension or demoted.

Grievant does not contest that:

- He was selected by Agency for a random drug test to be conducted on 4/10/12.
- He was informed of the random drug test and appeared at the testing site.
- He provided an initial urine specimen for testing.
- Collector told him the urine specimen provided was "cold" and not within temperature limits.
- Collector indicated to him that he would have to provide an additional urine specimen.
- He left after being requested by Collector to provide an additional urine specimen.
- He did not provide the additional urine specimen requested.

Testing and SP#1- 004 :

Agency has adopted and implemented written policy providing for Random Drug Testing for those individuals required to have random testing under the U.S. Department of Transportation and Virginia Motor Carrier Safety regulations. Random testing of employees covered by the policy is performed throughout the year. Grievant is subject, by policy, to random drug testing.

Agency utilizes a computerized random drawing quarterly to determine those employees who are to be subjected to random testing. Testimony indicated a 50% rate for is currently required by the for urine drug testing and approximately 2000 such tests are conducted for the year.

SP#1 - 004 is applicable to employees holding a commercial driver's license for use in agency operations. Grievant is subject to this policy and per this policy is subject to random drug testing.

Upon being hired by Agency in 2008 Grievant was informed that it was a condition of his employment that he must maintain a valid Commercial Drivers License. Grievant's Orientation

[16] Agency Exhibits Tab 2 page 3 and testimony.

Checklist included *Drug & Alcohol Testing Policy*. Grievant also signed a *"Drug and Alcohol Testing Policy Certification Form"* in 2008, when he was hired by agency, certifying that:

> I have received a copy of the Drug and Alcohol Testing Policy of the Virginia Department of Transportation. I further certify that it is my responsibility to read and to be familiar with the policy and be governed by the Policy.[17]

The April 10, 2012 random drug testing was not the first random drug testing for Grievant. Grievant was the subject of a random urine drug test in March of 2011 which showed a "negative" test result indicating the testing did not show the presence of the drugs tested for in his provided urine specimen.

Procedure, identification, and temperature:

Grievant does not question that he appeared for the random testing on 4/10/12 and provided a urine specimen to Collector. However, he contends policy was not followed in that he did not produce an ID for Collector. Grievant further contends that he could not have provided an employee identification card as he had lost his agency identification card.

Policy provides that when a person appears for testing with no identification it is permissible to verify the identity of the employee and proceed with testing. 49 CFR Part 40 – *Procedures For Transportation Workplace Drug and Alcohol Testing Programs* provides guidance as to Urine Specimen Collections. § 40.61 (c) states that the employee is to provide positive identification. However, it also provides and states therein that positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable.

Safety Compliance Manager was present at the testing sight to assist with matters. Safety Compliance Manager testified he saw Grievant with Collector providing information to Collector. He testified he checked off individuals to be tested at the testing site including Grievant. Additionally, the *Federal Drug Testing Custody and Control Form* concerning Grievant's random drug testing was utilized and admitted into evidence. This form stated the Employer's Name, Employee's I.D. number, and was checked indicating that this was a random test. The form indicated that the specimen temperature submitted by Grievant was not within the 90-100 degree Fahrenheit range and the form had written thereon "1st test cold, refused to complete a 2nd observed test".

Grievant signed and dated the section of the *Federal Drug Testing Custody and Control Form* designated as Step 5 indicating, *"I certify that I provided my urine specimen to the collector, that I have not adulterated it in any manner, each specimen bottle used was sealed*

[17] Agency Exhibits Tab 5 pages 22 & 23.

with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct."[18]

Collector was an experienced DOT Certified Collector. Collector described the testing procedures utilized, that he consistently utilized such procedures, and did so on April 10, 2012 when Grievant was tested. He testified as to testing procedure matters presented to Grievant and to all persons being randomly tested.

Collector blued the water in the toilet and taped the faucets in preparation to the procedure. He had the person providing the sample wash his hands. At the particular site there is a sink next to the table Collector sets up and Collector asked Grievant to wash his hands there. Grievant was asks remove cigarettes, lighter, etc. from his pockets. Collector, in the presence of Grievant, broke the seal open on the specimen cup, the vials were removed, and the specimen cup was given to Grievant. Collector explained that Grievant was to provide a specimen of his urine in the cup and the volume of urine was to come to least 1/2 inch above the temperature strip on the side of the cup. Grievant was told not to run any water or to flush the toilet. He was told when finished to bring the specimen cup directly back to Collector.

When Grievant returned the specimen cup to Collector the specimen was evaluated by Collector as to quantity and temperature. The specimen cup had a temperature strip attached. Collector read the temperature strip on the specimen cup when Grievant returned the specimen cup with his urine specimen. Collector read the temperature strip on the specimen cup within the four minute limit provided by policy. Collector received the urine specimen and poured it into two vials, sealed the vials, and had Grievant initial same as required by policy. Grievant was told the urine was not within the temperature range established by policy.

The specimen cup's temperature strip color indicated a "cold" specimen and also Collector testified he was able to feel the temperature when the specimen cup was handed to him. Collector told Grievant that the urine was "cold" and Grievant would have to provide remain in the area and provide another urine specimen. He was told the second specimen would be collected under "direct observation". Collector also notified Safety Compliance Manager that Grievant's specimen was not the right temperature and that another specimen was needed.

If a urine specimen is not within the required temperature range this could raise a number of concerns, including, but not limited to, if the urine was produced in the manner required by policy by the employee or if the temperature strip was functioning properly. The Hearing Officer does not make any finding as to why the urine sample was "cold". Irrespective of the cause, the urine did not appear to Collector be within the required temperature range as per the temperature test strip. Also Collector, in holding the specimen cup, felt the specimen to be "cold".

[18] Agency Exhibits Tab 5 page 18.

As required by policy, Collector determined the urine specimen was not within the required temperature range. He indicated this in writing on the *Federal Drug Testing Custody and Control Form* and told this to Agency personnel and to Grievant. He informed Grievant of the need to conduct an "observed collection" of an additional specimen.

Grievant contends the "cold" urine specimen should have been poured into another specimen cup with a different temperature test strip to determine if the original test strip was functioning properly. Testimony indicated DOT policy does not require the specimen to be placed in another specimen cup with another temperature strip. No evidence of any policy requiring a urine specimen to be placed in another specimen cup with a different temperature test strip was presented by Grievant.

Policy requires that if the urine specimen provided is not within the temperature range set by policy that a second urine specimen be provided and that the second specimen would be an "observed collection". 49 CFR Part 40 – *Procedures For Transportation Workplace Drug And Alcohol Testing Programs, §* 40.65 provides guidance as to the collector's checking of temperature in specimen collection and provides, in pertinent part:

> (b) Temperature. You must check the temperature of the specimen no later than 4 minutes
> after the employee has given you the specimen.
> (1) The acceptable temperature range is 32 to 38°C/90-100°F
> (2) You must determine the temperature of the specimen by reading the temperature strip
> attached to the collection container.
> (5) If the specimen temperature is outside acceptable range, you must immediately
> conduct a new collection using direct observation procedures (see §40.67).

Safety Compliance Manager for Salem District was present on 4/10/12 at the testing site and checked off employees at the site. Grievant does not contest he provided a urine specimen. Grievant was told to remain and to provide a second urine specimen. Grievant knew the reason for this (i.e. the first specimen was "cold") even though he disagreed with the determination it was "cold". Grievant was told a second specimen was required to be taken under "observed collection" procedures. Grievant left the testing site and never provided a second specimen for testing.

Refusal and Policy:

§ 6.2.12 of SP# 1-004 provides that if an employee refuses to cooperate with the collection process the refusal shall be treated as an offense of this policy, similar to a positive (including non-negative) test result.

§6.3.9 of SP# 1-004 indicates refusing to submit to the required tests is offense of this policy and a DOT violation and action shall be taken (similar to a positive test) as outlined in the section entitled "Disciplinary Action".

§6.5 of SP# 1-004 provides when an employee fails to submit to a required test or fails to cooperate with testing a Group III Notice shall be issued for failing to comply with established policy and applicable federal and state regulations. An employee's refusal to comply is an offense under this policy and a DOT violation.

Grievant was selected for random drug testing in a manner consistent with policy, he appeared and submitted a urine specimen that was not in compliance with the temperature requirements set forth in policy. Collector determined, as he was charged to do by policy, that the submitted urine specimen was not within the temperature range required.

The evidence indicates that, consistent with policy, Grievant was directed to remain at the testing site and provide an additional urine specimen for testing by an "observed collection" procedure and he refused to do so. Grievant left the testing site without providing the required specimen.

There is insufficient evidence to find, as Grievant contends, that Collector's requirement for him to provide a second specimen was unwarranted or that Agency was in violation of testing policy or procedures.

The evidence indicates that Grievant failed/refused to cooperate with required drug testing and as defined in policy, Grievant actions were a refusal to test. Grievant failed to remain at the testing/collecting site. He left before the testing process was completed and before providing a required specimen. He failed to permit an "observed collection" as was required by Collector. He failed to take the additional drug test as Collector directed and as was required or permitted by the DOT.

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.

The evidence indicates that Grievant received a written notification dated April 16, 2012 and met with management on April 16, 2012 and April 17, 2012, prior to the issuance of the Group III. Grievant and management discussed matters concerning the incident of 4/10/12. Grievant was informed of matters, Agency concerns, and Agency's consideration of issuing a

Group III Written Notice with termination. These meetings provided Grievant notice and opportunity to respond to these matters.[19]

The evidence indicates that, prior to the issuance of the Group III Written Notice, Grievant was given 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.

Active Group III, mitigating or aggravating circumstances:

Agency gave consideration to Grievant's actions and to § 6.5 of SP# 1-004 which provides that when an employee fails to submit to a required test or fails to cooperate with testing a Group III Notice "shall be issued"… . Consideration was given to Grievant having an active Group III Written Notice issued on November 4, 2010.

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.

Considering the totality of the evidence, including the existence of an active Group III Written Notice, the evidence does not indicate that the agency's discipline exceeds the limits of reasonableness.

CONCLUSION

For the reasons stated above, based upon consideration of all 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.

[19] Agency Exhibits Tab 1 page 3 and testimony.

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 termination 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 termination 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:

A hearing officer's decision is subject to administrative review by both EDR and Director of DHRM based on the request of a party. Requests for review may be initiated by electronic means such as facsimile or e-mail. A copy of all requests for administrative review must be provided to the other party, EDR, and the Hearing Officer.

A challenge that the hearing decision is not in compliance with the grievance procedure and/or the *Rules for Conducting Grievance Hearings*, as well as any request to present newly discovered evidence, are made to EDR. This request must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance. EDR's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests must be sent to the Office of Employment Dispute Resolution, 101 N. 14th Street, 12th Floor, Richmond, VA 23219, faxed or e-mailed to EDR.

A challenge that the hearing decision is inconsistent with state or agency policy is made to the DHRM Director. This request must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. The director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests must be sent to the Director of the Department of Human Resources Management, 101 N. 14th Street, 12th Floor, Richmond, VA 23219 or faxed to (804) 371-7401 or e-mailed.

A party may make more than one type of request for review. All requests for administrative review must be made in writing, and received by the administrative reviewer, within **15 calendar days** of the date of the original hearing decision. "*Received by*" means delivered to, not merely postmarked or placed in the hands of a delivery service.

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:

Once an original hearing decision becomes final, either party may seek review by the circuit court on the ground that the final hearing decision is contradictory to law. Neither the hearing officer nor the Department of Human Resources Management (or any employee thereof) shall be named as a party in such an appeal. A notice of appeal must be filed with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 calendar days of the final hearing decision.

S/Lorin A. Costanzo

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Lorin A. Costanzo, Hearing Officer