COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT
DIVISION OF HEARINGS
DECISION OF HEARING OFFICER
In Re: Case No: 11433

Hearing Date: December 3, 2019
Decision Issued: December 20, 2019

PROCEDURAL HISTORY

The Grievant filed a grievance with the Agency on or about May 8, 2019. [1] On or about June 28, 2019, the Agency did not qualify this grievance. The Grievant requested that the Office of Employment Dispute Resolution [EDR], issue a ruling regarding whether or not her grievance should qualify for a hearing. On September 27, 2019, the Director of EDR issued Qualification Ruling No. 2020-4956. On October 8, 2019, I was appointed as the Hearing Officer. Inasmuch as that September 27th Ruling sets forth the law and regulations that I, as Hearing Officer, must follow, and as I will be quoting from it significantly, that Ruling is attached to this Decision and hereafter referred to as "DQR."

The DQR set forth the following:

> ...In mid-2018, the grievant began reporting to a new immediate supervisor with whom she initially felt she had a good working relationship. However, in November 2018, the grievant brought up to the new supervisor her discovery that her two male coworkers out-earned her by over 35 percent of her annual salary. Following her inquiry, the grievant perceived that her new supervisor became much less approachable, often seeming bothered by her questions.
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> In January 2019, pursuant to medical advice, the grievant began a period of short-term disability leave that coincided with Virginia's legislative session, a busy time for her division. While on leave, the grievant apprised her supervisor by monthly emails as to her status; he did not respond to these updates. The grievant alleges that, when she returned to work in March 2019, her work environment declined significantly, in that her duties shifted to unfamiliar assignments for which she did not receive training, and she felt constantly criticized by her supervisor and the director. The director allegedly began a practice of attending the supervisor's discussions with the grievant even about routine matters; during these meetings, the director would allegedly interrupt the grievant and belittle her contributions.
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> In April 2019, at the agency's invitation, the grievant sought her supervisor's permission to represent the agency at an event for women veterans. The

[1] Agency Exhibit 1, Tab 1, Pages 1-4

supervisor advised the grievant that she would have to use personal leave during her absence. The grievant discovered that other agency attendees were not being required to use personal leave. Ultimately, the supervisor and director elected not to require the grievant to use her personal leave, but they allegedly did not inform the grievant of their decision until she confronted them about the issue.

On May 3, 2019, the supervisor invited the grievant to a meeting with the director to discuss "training and assignments." The grievant was excited about this discussion because she had been seeking development opportunities. However, when she arrived at the director's office, the director closed the door and, instead of returning to her desk, sat in a position that placed the grievant between the two managers. They then presented her with a performance improvement plan. The grievant felt deceived about the purpose of the meeting and physically closed in by the director. She experienced a panic attack and ended the meeting.

On or about May 8, 2019, the grievant filed a grievance alleging: (1) retaliation and intimidation, (2) discrimination based on disability, (3) gender inequality, and (4) veteran status. She requested that the agency investigate her allegations, transfer her to a different division, end the retaliation against her, and ensure that she is treated with respect and civility. The third step-respondent concluded that the grievant's allegations neither constituted any tangible employment action nor were discriminatory, retaliatory, or otherwise related to a protected status. The third step-response did not address the grievant's claims with respect to civility in the workplace, *i.e.* unprofessional and/or intimidating behavior. The agency head declined to qualify the grievance for hearing. The grievant now appeals that determination to EDR. [2]

The DQR acknowledged that:

> ...the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government. Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied...[3]

The DQR also acknowledged that grievances that allege retaliation or other misapplication of policy may qualify for a hearing but are generally limited to grievances that involve and "adverse employment action." The DQR states that an adverse employment action is a:

> ...tangible employment action constituting a significant change in employment status, such as hiring, firing, failing to promote, reassignment

[2] Qualification Ruling 2020-4956, Pages 1-3

[3] Qualification Ruling 2020-4956, Page 3

> with significantly different responsibilities, or a decision causing a significant change in benefits." Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment. Workplace harassment rises to this level if it includes conduct that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. [4]

It would appear that the appropriate policy section governing most of this matter is DHRM Policy 2.35. [5] Policy 2.35(A)(1) prohibits harassment and bullying. [6] The DQR stated that a claim of nondiscriminatory harassment or bullying may qualify for a hearing as an adverse employment action if the grievant presents evidence that raises a sufficient question whether the conduct was (1) unwelcome; (2) sufficiently severe or persuasive that it alters the condition of employment and creates an abusive or hostile work environment; and (3) is imputable on some factual basis to the agency. [7]

Regarding the second elements listed above, the DQR pointed out that the Grievant had the burden to show that an objective reasonable person would perceive the environment to be abusive or hostile. [8] In attempting to make such a determination, the fact-finder is directed to look at frequency of the conduct; severity; whether it is physically threatening or humiliating; a mere offensive utterance; or whether it interferes with an employee's work performance. [9] The DQR then goes further, stating as follows:

> ...DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. Thus, while these terms must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed, management's discretion is not without limit. Policy 2.35 also places affirmative obligations on agency management to respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue. Accordingly, where an employee reports that corrective feedback or other interactions have taken a harassing or bullying tone, Policy 2.35 requires agencies to determine in the first instance whether such perceptions are supported by the facts. Where an agency fails to meet these obligations, such failure may constitute a misapplication or unfair

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[4] Qualification Ruling 2020-4956, Page 3

[5] Agency Exhibit 1, Tab 9, Pages 1-9

[6] Agency Exhibit 1, Tab 9, Page 2

[7] Qualification Ruling 2020-4956, Page 3

[8] Qualification Ruling 2020-4956, Pages 3-4

[9] Qualification Ruling, 2020, Page 4

application of Policy 2.35 such that the harassing or bullying behavior is imputable to the agency.

The DQR then makes several assertions. In summary, they are as follows:

> 1. The Grievant has unquestionably found her managers' conduct to be subjectively intimidating;
> 2. The managers' responses to the Grievant's legitimate request to be away from the office had been consistently negative and/or retaliatory;
> 3. The Grievant's short-term disability leave in 2019 was followed by excessive criticism to the point of hostility;
> 4. The Grievant's representation of the Agency at an outside women's veteran's event was initially considered a personal leave;
> 5. When the Grievant pointed out to her immediate supervisor a gender-correlated pay disparity, he became bothered by her work product;
> 6. When the Grievant apprised her manager of her medical leave outlook, he appeared to ignore her;
> 7. The Grievant's manger's performance feedback took the form of bullying;
> 8. The Grievant's managers mislead the Grievant about the purpose of a May 3, 2019 meeting and physically positioned themselves to surround her and were therefore insensitive, humiliating and/or intimidating. [10]

The DQR indicates that if any or all of the above are true, then there is a violation of Policy 2.35.

The DQR then goes one step further in citing DHRM Policy 2.35(D)(4), in that it states that the Agency has a duty to stop or prohibit conduct of which they are aware, whether or not a complaint has been made. [11] The DQR states specifically that the Agency's Civil Rights Investigative Report stated as follows:

> The report concluded that the atmosphere in the Grievant's section has created the appearance of a hostile environment. [12]

It will be relevant to my Decision that the DQR chose not to quote the entirety of the sentence which contained the above-language. The entirety of that sentence is as follows:

> The atmosphere in this section has created the appearance of a hostile environment **driven by a high expectation of efficiency.** [13] (Emphasis added)

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[10] Qualification Ruling 2020-4956, Pages 4-5

[11] Agency Exhibit 1, Tab 9, Page 5

[12] Qualification Ruling 2020-4956, Page 5

[13] Grievant Exhibit 1, Tab IV, Page 43

The DQR went so far as to say that the Civil Rights Division Report, to the extent that it reached different conclusions than EDR, was not binding on EDR. [14] Yet it appears that the DQR adopted so much of the Civil Rights Division Report as it felt supported the DQR.

Finally, the DQR seems to imply that if I find that there was a violation of DHRM Policy 2.35, then that leads to a violation of DHRM Policy 2.05, whereby there may have been an adverse employment action as a result of sex; disability (actual or perceived); veteran status; or any combination of these. [15]

Finally, in conclusion, the DQR qualified this matter for a hearing because EDR found sufficient questions and allegations regarding a DHRM Policy 2.35 misapplication, or being unfairly applied, regarding bullying and intimidation; discrimination on the basis of sex, disability and or veteran status, and retaliation after making an allegation of sexual discrimination and/or using disability-related benefits. [16]

APPEARANCES

Agency Advocate
Grievant
Counsel for Agency
Witnesses

ISSUES

Is there a violation of DHRM Policy 2.35?

AUTHORITY OF HEARING OFFICER

Code Section 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code Section 2.2-3005.1 provides that the Hearing Officer may order appropriate remedies including alteration of the Agency's disciplinary action. By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government. [17] Implicit in the Hearing Officer's statutory authority is the ability to independently determine whether the Agency's alleged conduct, if otherwise properly before the Hearing Officer, justified the Grievant's allegation of a DHRM Policy 2.35 violation. The Court of Appeals of Virginia in *Tatum v. VA Dept of Agriculture & Consumer Servs,* 41VA. App. 110, 123, 582 S.E. 2d 452, 458 (2003) held in part as follows:

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[14] Qualification Ruling 2020-4956, Page 7

[15] Qualification Ruling 2020-4956, Page 7

[16] Qualification Ruling 2020-4956, Page 10

[17] *See* Va. Code § 2.2-3004(B)

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

BURDEN OF PROOF

The burden of proof is on the Grievant to show by a preponderance of the evidence that her allegations alleging that the Agency violated Policy 2.35 are true. The Grievant has the burden of proof for establishing retaliation, discrimination, hostile work environment and others. A preponderance of the evidence is sometimes characterized as requiring that facts to be established more probably than not occurred, or that they were more likely than not to have happened. [18] However, proof must go beyond conjecture. [19] In other words, there must be more than a possibility or a mere speculation. [20]

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of the witness, I make the following findings of fact:

The Agency provided me with a notebook containing 10 tabs and that notebook was accepted in its entirety as Agency Exhibit 1, without objection.

The Grievant provided me with a notebook containing five tabs. With the exception of Tab 2, Page 10, that notebook was accepted in its entirety as Grievant Exhibit 1, without objection.

During the course of this hearing, I heard approximately 8.5 hours of testimony. The grievant testified and presented five additional witnesses on her behalf. The Agency presented three witnesses. There were certain facts on which all witnesses seemed to agree. This division of the Agency can be stressful, particularly when the General Assembly is in session. Leave is severely limited when the General Assembly is in session, usually only granted where there is a medical condition involved. Discretionary leave is rarely granted during this time frame. As this division provides Agency support to the legislators and the Governor's office, inquiries need to be answered correctly, completely and in a timely manner. The Grievant's former immediate

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[18] *Ross Laboratories v. Barbour*, 13 Va. App. 373, 377, 412 S.E. 2d 205, 208 1991

[19] *Southall, Adm'r v. Reams, Inc.*, 198 Va. 545, 95 S.E. 2d 145 (1956)

[20] *Humphries v. N.N.S.B., Etc., Co.*, 183 Va. 466, 32 S.E. 2d 689 (1945)

supervisor [AB], with whom she had a good working relationship, died on about April, 2018. He was replaced, on or about September, 2018, by her current immediate supervisor [RT], who testified before me on behalf of the Agency.

Most of the testimony before me dealt with subjective feelings and perceptions. The DQR quite correctly points out that the standard with which I must decide this matter is not subjective feelings, but rather what an "objective reasonable person would perceive" given the evidence presented to me. Using that standard, I will attempt to answer the issues the Grievant raised in approximately the same order as the DQR set them out.

The Grievant presented evidence regarding the potential pay disparity between herself and two male colleagues in the same division. The DQR determined that there were "legitimate, non-discriminatory business reasons... for the disparity in salaries..."[21] The Grievant alleged that RT seemed "bothered by her questions..." [22] In an email dated December 11, 2018, RT directed the Grievant to the HR department of the Agency saying, "I have no authority to adjust pay." [23] That should have been considered by the Grievant as a full and complete answer. A reasonably objective person would find that this answer was in no way disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating.

Next, the Grievant was concerned that RT did not reply to her emails to him while she was on a short term leave during the General Assembly and a time after the General Assembly session. In her grievance and in her testimony, the Grievant alleged and testified that RT **never** responded. In fact, he did respond at least once. [24] On February 25, 2019, RT responded to Grievant's email of that same date. Neither the Grievant nor any of her witnesses stated that there was any policy requiring a response from management to an employee that was just the employee announcing they were still on approved leave and hoped to return sometime in the future. While in a perfect world, it would be nice if management had time to answer all such emails, the fact is that RT was at work trying to accomplish the tasks at hand, while the Grievant was at home convalescing. Failure to answer such emails does not objectively even approach being disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating. Indeed, the reasonably objective person would conclude that RT was busy doing his job.

Next, the DQR speaks to the Grievant's concerns regarding her attendance at an event for women veterans. The evidence before me was that the Grievant was told she could attend and would not need to use leave time, then was told the opposite, and then was told the first Agency position was the correct one and she could attend without needing to use any leave time. Apparently, the Grievant received an invitation to attend this event on April 12, 2019. [25] On

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[21] Qualification Ruling 2020-4956, Page 9

[22] Qualification Ruling 2020-4956, Page 2

[23] Agency Exhibit 1, Tab 7, Page 47

[24] Agency Exhibit 1, Tab 7, Page 55

[25] Agency Exhibit 1, Tab 7, Page 70

April 15, 2019, the Grievant sent an email to RT and the director of this division [PL] asking permission to attend. In this email the Grievant stated that she was a veteran and nothing more. [26] On April 22, 2019, PL sent an email to the HR department seeking guidance on Agency policy regarding such request by the Grievant. [27] On April 22, 2019, RT sent the Grievant an email stating that HR had determined that she would need to use leave in order to attend, as the topics to be presented were not related to this division's actual work. [28] The Grievant testified that she was told at a May 3, 2019, meeting that she could attend without the need to use leave time. One of Grievant's witnesses testified that there was confusion regarding whether Grievant was simply attending or whether she was a participating volunteer representing the Agency. At such time as it was determined that she would be representing the Agency as a participant, it was decided leave time was not needed. I find nothing in this determination process by the Agency to be disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating.

The next issue raised by the Grievant and the DQR dealt with a meeting on May 3, 2019, between the Grievant, RT, and PL. At approximately 11:42 AM on May 3, 2019, RT sent an email to the Grievant requesting a meeting later that afternoon. The title was " Discussion of Training/Assignments," and it indicated that PL would be attending the meeting. The meeting was held in PL's office and, rather than sit behind her desk, she came and sat next to the Grievant. In most management discourses, leaving the protection of a fortress desk and sitting with or beside an employee is considered a best practice to level the playing field between the manager and the employee.

The Grievant testified that she was surprised when she was presented with a performance improvement plan and that she was frightened to be sitting between RT and PL. There was no testimony of raised voices, physical threats, use of vulgar words or anything to indicate that this meeting was other than one to address an employee whose work performance needed improvement. Ultimately, the Grievant left the room with a "panic attack" and subsequently filed her grievance.

We now are at the basis for this matter. The Agency felt and so testified, both orally and in its documentary evidence that the Grievant had work performance issues. I find nothing in the title to the May 3, 2019, email to be disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating.

During this meeting, PL said she was attending as it was now policy to have a female present when a male was meeting with another female. This was clearly a poor choice of words and PL so testified. Likely, the more accurate reason was that the Agency wanted a witness at the meeting for fear the grievant would misrepresent what was said and or done. On April 5, 2019, RT sent the Grievant an email expressing dissatisfaction with the quality of her work on a

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[26] Agency Exhibit 1, Tab 7, Page 70

[27] Agency Exhibit 1, Tab 7, Page 70

[28] Agency Exhibit 1, Tab 7, Page 65

recent assignment. [29] The Grievant, on that same day, responded to RT's email stating that "...Your email tone is offensive and abrasive..." [30] An objectively reasonable person could in no way find RT's email to be disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating.
Of particular interest here is that the Grievant chose to send a copy of this email to a third party who works at another Agency. [31] RT had been accused by the grievant of being hostile and abusive prior to the meeting of May 3, 2019, and she was apparently copying other persons outside of this Agency with her complaints. A reasonably objective person would be fully justified in wanting a witness at meetings with the Grievant and more so where her competency as an employee was being questioned, even when it was done so in an extremely gentle manner. It was uncontradicted testimony as to RT's gentle treatment of the Grievant during this meeting. While the better answer would have been to say that we want a witness as to what is said and done, I do not find that the objectively reasonable person would find the reason given to disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating. At worst it was a bad choice of words and at best it was kinder and gentler than indicating a lack of trust in Grievant.

I heard much testimony from all witness that AB was a kind and gentle manager and that, while unspoken in direct testimony, the inference was that he never demanded that the Grievant perform her duties to a high level. Further, when things were not exactly correct, the inference was that he covered for this lack of performance by extending timelines or doing the work himself. The Grievant testified to her excellent work perform, yet she was deemed only a "contributor" on her Performance Evaluation, dated October 15, 2018. [32] The Grievant expressed surprise that there were concerns regarding her performance. Yet, her evaluation stated in part: ..."should continue to work on her analysis of that research, and in particular, being thorough in analyzing every aspect of a particular issue in a timely fashion..." [33] The Supervisor's summary stated in part: "... she should apply the same confidence, thoroughness and attention to detail to the other aspects of her job duties (such as legislative analysis and policy research)..." [34] The Reviewer's comments in part were: "... I would concur with the encouragement in this evaluation for her to focus on developing her analytical skill so that she can completely fulfill the role of an analyst..." [35]

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[29] Agency Exhibit 1, Tab 5, Page 69

[30] Agency Exhibit 1, Tab 5, Page 69

[31] Agency Exhibit 1, Tab 5, Page 69

[32] Agency 1, Tab 4, Page 5

[33] Agency Exhibit 1, Tab 4, Page 5

[34] Agency Exhibit 1, Tab 4, Page 10

[35] Agency Exhibit 1, Tab 4, Page 11

The Grievant's job title is that of "Policy Analyst." [36] The Agency presented much testimony, oral and documentary, on her inability to properly analyze issues that were given to her. [37] There are other examples of a failure to properly analyze in Agency Exhibit 1. RT submitted a Performance Planning document for the grievant on January 9, 2019. [38] This plan set forth many areas in which the Grievant needed to show improvement. As the Grievant was on leave, she did not immediately receive this Plan, but upon cross examination, RT testified that he talked with the Grievant and she acknowledge receipt. This plan was created months before the Grievant returned from her approved leave and even before she went on such leave. The Grievant denied receiving the Performance Planning document in her written grievance documents and in her testimony. I find that not credible.

In her third step response, the Grievant stated that AB "trained, coached and mentored me..." [39] When RT became the Grievant's new supervisor, he was not AB. But, just because his style was different, I heard no credible evidence from which a reasonably objective person would find that any thing he did or said was disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating. Of course, criticism is nearly always unwelcome. As I find that there was no bullying in this matter and I also find there was no harassment, I find there was no violation of Policy 2.35(A)(1) as set forth in the DQR at page 3.

The DQR stated that:

> 1. The Grievant found her manager's conduct to be subjectively intimidating. I find that no objectively reason person would so find;
> 2. The DQR indicates that the Grievant felt her managers response to being away from the office was negative and retaliatory. I find this factually wrong;
> 3. The DQR indicates that the grievant felt her short-term disability leave in 2019, was followed by criticism to the point of hostility. The evidence presented to me clearly proves that this is not objectively reasonable and borders on being farcical;
> 4. The DQR next questions the issue of using leave for the women's veteran event. The facts clearly show why there was confusion and that, once the Agency knew the Grievant was a presenter, leave was freely granted. This is clearly a non-issue;
> 5. The DRQ raised the issue of pay disparity. Of course, it then said this was not an issue. The Grievant complains that her manager then become bothered by her work product. The facts in this matter clearly show that concerns about her work product exists several months prior to this issue. Her manager clearly pointed her to HR, as he had not ability to adjust her pay or her pay band;
> 6. The DQR states that the manager ignored the Grievant while she was on medical leave. The facts indicate that he did not and, more importantly, neither

[36] Agency Exhibit 1, Tab 4, Page 4

[37] Agency Exhibit 1, Tab 5, Pages 35-48

[38] Agency Exhibit 1, Tab 4, Pages 12-16

[39] Agency Exhibit 1, Tab 1, Page 16

the Grievant nor the DRQ indicate that there is any policy requirement to respond to such emails;

7. The DRQ states that the Grievant thought the manager's performance feedback took the form of bullying. It did not. Also, I must note that for much of her testimony, the Grievant complained that there was no feedback from her manager; and,

8. Finally, the DQR indicates that her managers mislead the Grievant about the purpose of the May 3, 2019 meeting, positioned themselves to surround the Grievant and were therefor insensitive, humiliating and/or intimidating. The evidence was clearly to the contrary. Other than the director coming from behind her desk, which in most cases is considered leaving her intimidating fortress and coming to sit beside the Grievant, no evidence was introduced to indicate anything that was insensitive, humiliating and/or intimidating.

The Grievant testified that her work assignments were changed because of Agency actions that violated Policy 2.35. There was minimal evidence that, upon her return to work after her approved leave, some of her assignments changed. However, as the DQR stated,

> ...the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government. Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied...

In most analyst's job, issues come in a random fashion and will change on a daily basis. No reasonably objective analyst would or should assume that the parameters of what they do on a daily basis would never change. Nothing occurred in this matter that unreasonably or severely impacted the terms, conditions, or benefits of the Grievant's employment.

In summary, I find nothing in the evidence presented to me that would rise to the level of a violation of Policy 2.35. This division of the Agency requires analysts to be able to analyze quickly, thoroughly, and without constant instruction or direction from management. The Grievant testified that she had two college degrees and that she had been at the division for approximately four years. She is clearly intelligent, well-educated, and she is not a new employee. The areas of faulty analyses that were presented to me are not overly complex and should have easily been within her ability to perform. While there may have been an appearance of a hostile environment driven by a high expectation of efficiency, at least based on the facts in from of me, I find that there was just an appearance based on a single, unreasonable, subjective analysis. I find that the Agency simply demanded that its analysts analyze without great hand-holding and do so on a timely basis. There was no credible evidence that the Agency was... disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, unwelcome, bullying, or intimidating toward the Grievant other than the Agency's requirement that she perform her duties quickly, thoroughly and without constant hand-holding.

DECISION

For reasons stated herein, I find that the Grievant has not bourne her burden of proof that the Agency violated Policy 2.35, and therefore this matter is dismissed.

APPEAL RIGHTS

You may request an administrative review by EEDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EEDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Equal Employment and 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 must also provide a copy of your appeal to the other party 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.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

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.[1]

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

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

William S. Davidson
Hearing Officer