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ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2024-5608
September 29, 2023

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer's decision in Case Number 11987. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Number 11987, as found by the hearing officer, are as follows:[1]

The Group II Written Notice, issued by the Agency's warden on May 18, 2023, detailed the facts of the offense, and concluded:

> As a Corrections Lieutenant, you are expected to model the expectations and contribute to the agency's public safety mission by managing daily activities of security supervisors, Corrections Officers and inmates housed within the facility. Based on voluminous amount of information found during the investigation related to your gratuitous use of the internet, DOC IT officials determined your internet usage violated Operating Procedure 310.2.
>
> Consequently, a Group II Written Notice is warranted for unauthorized use of state (DOC) property, computer/internet misuse, and failure to follow written policy. Furthermore, based on your active Group III Written Notice, termination is warranted due to the accumulation of discipline.

Agency Exh. L. As circumstances considered, the Written Notice included:

> During the due process meeting, you deflected the purpose of the meeting and insisted if the DOC did not "negotiate" this matter, you

[1] Decision of Hearing Officer, Case No. 11987 ("Hearing Decision"), August 10, 2023, at 4-6 (footnotes omitted).

> would share confidential employee information, unrelated to this matter, but purportedly known to you, outside of a need-to-know basis. Your comments were concerning because the employees' names you mentioned had nothing to do with nor were involved in this matter and instead seemed intended as a threat.

Agency Exh. L.

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

The agency's Chief Information Officer (CIO), who oversees the Information Security Office, testified that the Grievant's internet usage data had to be requested from a separate agency, the Virginia Information Technologies Agency (VITA). See also Agency Exh. F; Agency Exh. G. The CIO testified that VITA originally pulled the raw data of the Grievant's internet usage by pulling internet logs from a proxy server, which pulls "everything" that comes into a user's browser when accessing a webpage. Thus, the CIO explained, accessing one webpage could pull multiple URLs, which, to the untrained eye, could be perceived as the user accessing all of those URLs rather than just a single webpage. The CIO's team processes that raw data by removing URLs from the logs that the CIO's team can determine were unlikely to have been accessed. The CIO explained that one method used by his team is by distinguishing regular URLs (i.e., www.google.com) from URLs with "api" in the URL string. The CIO testified that this process gives the employee the "benefit of the doubt." After the CIO's team processed that data, they provided it to the Agency's human resources department. The CIO further testified that a subsequent request was made of VITA that pulled the Grievant's internet usage data using a different tool called Hindsight. Using Hindsight, VITA was able to provide the Grievant's search engine queries. The CIO testified that his team was asked by human resources whether the Grievant's personal internet usage appeared excessive, and his team stated that it was. On cross-examination, the CIO testified that the amount of non-business traffic was "enormous."

The Agency's human resources assistant (HRA) testified that she received a batch of the Grievant's internet usage data in an Excel spreadsheet around February 2023 and was asked to review the log and provide a summary of websites associated with personal use. She reviewed the data and created a summary of access to sites unrelated to agency business. Agency Exh. O. She testified that if the same website appeared more than once in the same hour, she listed the website only once in her summary log. Once she completed that summary report, she provided it to her superiors within human resources. The HRA testified that she received the second search engine queries in multiple Excel files around late March or early April 2023 and used those files to create one master Excel file with all of

the search queries. Agency Exh. P. Once she completed that task, she provided the master Excel file to her superiors within human resources.

After the warden issued the amended due process notice, he consulted with human resources personnel, and they advised him that they had researched past discipline for conduct similar to the Grievant's and confirmed that employees disciplined for similar instances of excessive personal use of internet during work hours had received Group II offenses. Based on that precedent, it was determined that the Grievant's misconduct warranted a Group II Written Notice, not a Group III as advised in the amended due process notice. The warden issued the Group II Written Notice, Agency Exh. L, and because of the Grievant's active Group III Written Notice for his prior offense, the warden terminated the Grievant's employment for accumulated discipline.

The Grievant testified consistently with arguments in his opening brief, the contents of which are incorporated herein by this reference. In testimony, the Grievant did not specifically refute the Agency's evidence regarding excessive internet usage, but he argued that the investigation into his internet usage stemmed from an unfounded, improper disciplinary charge and investigation into his email of December 21, 2022, Agency Exh. J, described by the Grievant as a protected whistle blower communication or his protected opinion on a matter of public concern. The Grievant asserts the Agency retaliated against him for this protected communication. Thus, according to the Grievant, his discipline is a pretext. The Grievant advanced other factual defenses in his opening brief, such as misconduct by the Attorney General and a General Assembly delegate, but he failed to provide evidence of such during the grievance hearing.

On May 18, 2023, the agency issued to the grievant a Group II Written Notice with termination, based on accumulation of disciplinary actions, for the reasons described above.[2] The grievant timely grieved this disciplinary action, and a hearing was held on August 1, 2023.[3] In a decision dated August 10, 2023, the hearing officer determined that the agency had met its burden to prove the grievant's misconduct, that the disciplinary action was not the result of retaliation, and that there was no basis to mitigate.[4] Accordingly, the hearing officer upheld the Group II and the grievant's resulting termination.[5] The grievant now appeals the hearing decision to EDR.[6]

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[2] Agency Ex. L; *see* Hearing Decision at 1, 4-5.
[3] *See* Hearing Decision at 1.
[4] *Id.* at 7-10.
[5] *Id.* at 10.
[6] The grievant also objects to the agency's submission of a rebuttal brief, which the grievant argues was untimely. On administrative review, such a rebuttal brief must be received "within 10 calendar days of the conclusion of the original 15-day appeal period." *Grievance Procedure Manual* § 7.2(a). The original appeal period concluded August 25. Ten calendar days from August 25 was September 4, which was a state holiday. While there is not a provision of the grievance procedure that specifically provides for an extension of the deadline for filing a rebuttal when the deadline falls on a weekend or holiday, there are similar provisions in the grievance procedure related to other deadlines, such as the initiation of a grievance and submission of a request for administrative review. *Grievance Procedure Manual* §§ 2.2, 7.2(a). EDR has not had occasion to consider this issue in a ruling before, but we would apply the same

DISCUSSION

By statute, EDR has the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions . . . on all matters related to . . . procedural compliance with the grievance procedure."[7] If the hearing officer's exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in favor of a party; the sole remedy is that the hearing officer correct the noncompliance.[8] The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.[9] The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

Document Request Issues

The grievant argues that the agency violated (and the hearing officer allowed the agency to violate) Virginia Code Section 2.2-3003 by failing to produce any documents requested by the grievant. The grievance statutes provide that "[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party."[10] EDR's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related information *must* be provided. Further, a hearing officer has the authority to order the production of documents.[11] As long as a hearing officer's order is consistent with the document discovery provisions of the grievance procedure, the determination of what documents are ordered to be produced is within the hearing officer's discretion.[12] For example, a hearing officer has the authority to exclude irrelevant or immaterial evidence.[13] A hearing officer's decision on such a matter will be disturbed only if it appears that the hearing officer has abused their discretion or otherwise violated a grievance procedure rule.

In this case, the hearing officer issued a scheduling letter on June 28, 2023, following a pre-hearing conference.[14] The letter required both parties to submit requests for orders for

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extension of a deadline for the filing of a rebuttal brief as we would to the submission of the original administrative review request. This approach would also appear to be consistent with Virginia Code Section 1-210(E). As such, because the agency submitted its rebuttal brief on the next business day following the holiday when the deadline fell, EDR considers the brief timely. However, EDR would note that nothing in the agency's rebuttal brief altered the analysis of this ruling.

[7] Va. Code §§ 2.2-1202.1(2), (3), (5).

[8] *See Grievance Procedure Manual* § 6.4(3).

[9] Va. Code § 2.2-3006(A); Murray v. Stokes, 237 Va. 653, 378 S.E.2d 834 (1989).

[10] Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

[11] *Rules for Conducting Grievance Hearings* § III(E).

[12] *See*, *e.g.*, EDR Ruling No. 2012-3053.

[13] *See* Va. Code § 2.2-3005(C)(5). Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue. *See* Owens-Corning Fiberglas Corp. v. Watson, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) ("We have recently defined as relevant 'every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue.'" (citation and internal quotation marks omitted)); Morris v. Commonwealth, 14 Va. App. 283, 286, 416 S.E.2d 462, 463 (1992) ("Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue." (citation omitted)).

[14] Neither the grievant nor his advocate at the time appeared for the pre-hearing conference.

witnesses or documents to the hearing officer no later than July 5, 2023. Although the parties were given a short window within which to request such orders, the grievant does not appear to have sought to comply with this order, but instead requested records directly from the agency on or about July 20, 2023. The grievant began seeking the hearing officer's intervention to compel the agency to produce records in an email sent at 6:00 p.m. on Thursday, July 27, 2023, with the hearing scheduled for the following Tuesday. The hearing officer declined to issue orders to compel production of records from the agency because the grievant had not sought such orders in compliance with the deadline established in the scheduling letter.[15] Further, the hearing officer acknowledged that any such order could not be effective prior to the hearing date.[16]

In consideration of the above sequence of events, the hearing officer appears to have provided both parties a deadline to seek orders for documents and the grievant did not comply with the deadline. Holding the parties to such a deadline as was done in this case was within the hearing officer's discretion and does not violate a provision of the grievance procedure. The *Rules for Conducting Grievance Hearings* provide that "the hearing officer in their discretion may grant reasonable requests for extensions or other scheduling or deadline changes if no party objects to the request. If a party objects to the request, the hearing officer may only grant extensions of time or just cause – generally circumstances beyond a party's control."[17] The grievant has not presented any information either to the hearing officer or on appeal suggesting any circumstances of "just cause" as to why he was unable to meet the deadline established by the hearing officer. Further, there was no request prior to the deadline to seek an extension or otherwise attempt to comply until a few days before the hearing.[18] Finally, the grievant has not presented EDR with any specificity as to how documents not produced by the agency might have led the hearing officer to a different determination of the material issues in the case. Therefore, we cannot find the hearing officer's handling of this evidentiary issue to have been an abuse of discretion or non-compliant with the grievance procedure such that remand is warranted.[19]

Factual Findings of Misconduct

The grievant argues that the agency failed to produce sufficient evidence to demonstrate a violation of agency Operating Procedure 310.2 on Information Technology Security.[20] This policy provides the following as it relates to personal use of agency internet resources by employees:

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[15] *See* Hearing Decision at 6 n.4.
[16] The grievant had also been requesting a delay of the hearing date, to which the agency objected, but the hearing officer declined to delay.
[17] *Rules for Conducting Grievance Hearings* § III(B).
[18] The grievant also appears to have missed the deadline for exchanging his witness list and exhibits established in the scheduling letter. However, the hearing officer extended the deadline and accepted the grievant's submission of these items prior to the hearing.
[19] The grievant couches his arguments on this issue as a violation of law. While we have addressed this matter as a matter of compliance with the grievance procedure, to the extent the grievant wishes to address any alleged manner in which the hearing decision is contradictory to law, such matters can be addressed to the appropriate circuit court. *See* Va. Code § 2.2-3006(B). However, EDR's determinations of procedural compliance with the grievance procedure are final and not appealable. *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).
[20] Agency Ex. G.

> *Personal use of the computer and the Internet – Personal use means use that is not job-related. In general, incidental and occasional personal use of the Commonwealth's electronic communications tools, including the Internet is permitted during work hours, but not to interfere with the performance of the employee's duties or the accomplishment of the unit's responsibilities.*[21]

The grievant argues that this provision requires the agency to demonstrate that the grievant's use of the internet interfered with the performance of his duties, which, the grievant asserts, the agency did not present evidence about and the hearing officer did not address in the decision.

After reviewing the record, EDR is unable to identify testimony that addresses the issue as to how or whether the grievant's work performance was impacted by his use of the internet. The due process notice indicates that the grievant "could not have been attentive" to his work duties as a result of the internet use.[22] However, what is also clear from the record and specifically cited on the Written Notice itself is that the agency found that the grievant's personal internet use was not "incidental and occasional."[23]

We interpret the language of agency Operating Procedure 310.2 above to allow for incidental and occasional personal use of the internet as long as that incidental and occasional use does not interfere with the employee's work performance. Thus, for example, if an employee engages in incidental and occasional use of the internet but it is demonstrated by the agency that that incidental and occasional use interfered with the employee's work performance, the employee's conduct is in violation of the policy. The facts of this case are different, however. Where an employee engages in personal use of agency internet resources that exceeds the incidental and occasional allowance, such use violates policy without a specific showing of an interference in the employee's performance. To put it another way, where an employee engages in personal use of the internet at work that is more than incidental and occasional, it is presumed that such use unreasonably takes an employee's attention away from their duties such that performance is impacted, and the agency can appropriately view the employee's conduct as violating policy. There is no provision of policy that permits personal use of agency internet resources in an excessive manner (*i.e.*, beyond incidental and occasional).

In the decision, the hearing officer accepted the agency's assessment of the grievant's personal use of the agency's internet resources as "enormous."[24] Although the hearing officer could have included more factual findings as to how he reached this conclusion, we cannot find that he was required to do so here. As noted by the hearing officer, the grievant "presented no refuting evidence or cross-examination to overcome the Agency's evidence of excessive internet

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[21] *See id.* at 11. These provisions are largely consistent with the applicable state human resource policy, DHRM Policy 1.75, *Use of Electronic Communications and Social Media*.
[22] Agency Ex. K at 3.
[23] Agency Ex. L at 3.
[24] Hearing Decision at 5, 7.

usage."[25] Consequently, the hearing officer could reasonably accept the agency's assessment of the grievant's internet usage, as he has done here,[26] in the absence of conflicting evidence.

Hearing officers are authorized to make "findings of fact as to the material issues in the case"[27] and to determine the grievance based "on the material issues and the grounds in the record for those findings."[28] Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action.[29] Thus, in disciplinary actions, the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.[30] Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based on evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

Evidence in the hearing record supports the hearing officer's factual findings. As described in the decision, the agency produced exhibits that reflected the webpages visited by the grievant at particular times and listed the searches performed by the grievant using search engines at particular times.[31] While it cannot be said that the grievant engaged in excessive personal use of the internet every day in the period of review, the evidence clearly demonstrates substantial use of the internet for prolonged periods during multiple work days.[32]

A significant portion of the grievant's internet use appears to be related to his own grievance activity or possibly assisting others in their grievances.[33] The grievant suggests that such use is "business related" and, by implication, permitted. While the *Grievance Procedure Manual* states that grievances are "official business" and allows for employees to "make reasonable use of agency office equipment including computers,"[34] such use must be *reasonable*. No provision of policy or the grievance procedure provides employees with unfettered discretion to redirect their day-to-day work to grievance activities away from their normal work duties. For example, both the *Grievance Procedure Manual* and DHRM Policy provide for the use of work-related leave to participate in grievance activities, including time to "prepare as grievant for the grievance procedure."[35] Use of work time for such purposes, beyond incidental and occasional activities,

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[25] Hearing Decision at 7.
[26] *Id.*
[27] Va. Code § 2.2-3005.1(C).
[28] *Grievance Procedure Manual* § 5.9.
[29] *Rules for Conducting Grievance Hearings* § VI(B).
[30] *Grievance Procedure Manual* § 5.8.
[31] Hearing Decision at 5; *see also* Agency Exs. O, P.
[32] Agency Exs. O, P.
[33] *See id.*
[34] *Grievance Procedure Manual* § 8.8.
[35] *Grievance Procedure Manual* § 8.6; DHRM Policy 4.05, *Civil and Work Related Leave.*

would necessarily require the employee to seek the approval of a supervisor or manager.[36] Reasonable limits may also be established by management "to prevent abuse of state time."[37] There is no record evidence to suggest that the grievant had received approval of management to apply his work time to grievance activities. Consequently, we cannot find that the hearing officer erred in determining that the grievant's internet use during his work hours was personal and excessive.

Conclusions as to the credibility of witnesses and the weight of their respective testimony on issues of disputed facts are precisely the kinds of determinations reserved solely to the hearing officer, who may observe the demeanor of the witnesses, take into account motive and potential bias, and consider potentially corroborating or contradictory evidence. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.[38] Accordingly, EDR cannot substitute its own judgment for that reflected in the hearing decision; we perceive no reversible error in the hearing officer's analysis of the factual issues or how they were discussed in the decision.

Retaliation

The grievant asserts that the Written Notice at issue in this case was retaliatory, citing to his activities as a whistleblower.[39] The grievant argues that the investigation into his internet use began as a result of an email he sent from his state email account to members of the General Assembly and others describing alleged wrongdoing by the agency.[40] The hearing officer considered[41] the grievant's argument, finding that the grievant "elicited no persuasive evidence of retaliation" during the hearing.[42] The hearing officer analyzed the grievant's claim as follows:

> Here, I find that the discipline at issue resulted from an investigation into the Grievant's potential misuse of state property – not from a motive to retaliate against the Grievant for that correspondence. The grievant maintains that his employment would not have been terminated had his December 21 correspondence, using his state email account, not attracted attention to him for alleging Agency corruption. Since the information conveyed had previously been published I do not infer pretext from this chain of events. The Grievant, other than his own assertions,

[36] *See id.*
[37] *Id.*
[38] *See*, *e.g.*, EDR Ruling No. 2020-4976.
[39] The grievant cites Virginia Code Sections 2.2-2902.1 and 2.2-3009, et seq., in support of his claims.
[40] *See* Hearing Decision at 6. The grievant's email is Agency Exhibit J.
[41] The grievant disputes the hearing officer's statement in the decision "find[ing] persuasive the Agency's argument that the Grievant did not qualify as a whistle blower, since his email of December 21, 2022, contained only information already published." Hearing Decision at 7. Because the hearing officer nevertheless presumed the grievant to have engaged in protected activity and considered the retaliation claim accordingly, Hearing Decision at 7-8, there is no reversible error as to this statement requiring remand. EDR would observe that had the hearing officer concluded his analysis without finding that the grievant engaged in protected activity, we would have remanded the matter to the hearing officer for further consideration.
[42] Hearing Decision at 7.

> presented no other evidence of pretext. Engaging in a protected activity does not insulate an employee from discipline for misconduct. Ultimately, weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and here the facts are not in dispute and the record contains evidence that supports the Agency's discipline. The Grievant did not present sufficient evidence of retaliation or disparate treatment for the internet misconduct. In sum, and in light of the Grievant's burden to prove his affirmative defenses, I conclude that the Grievant has not proved he is protected by the WBPA or other statute and, alternatively, to retaliation in general.[43]

Determinations of disputed facts of this nature are precisely the sort of findings reserved solely to the hearing officer. As discussed above, the agency presented sufficient evidence to support its decision to issue the Written Notice to the grievant. EDR has reviewed nothing to indicate that the hearing officer's analysis of the evidence regarding the agency's motivation for issuing the discipline was in any way unreasonable or inconsistent with the actual evidence in the record. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and we cannot conclude that the hearing officer's decision on this issue constitutes an abuse of discretion in this case. Considering that the grievant bore the burden to prove retaliation by a preponderance of the evidence,[44] EDR will not disturb the hearing decision on this basis.

Hearing Officer Bias

The grievant asserts that the hearing officer was biased. The *Rules* provide that a hearing officer is responsible for avoiding the appearance of bias and:

> [v]oluntarily recusing himself or herself and withdrawing from any appointed case (i) as required in "Recusal," § III(G), below, (ii) when required by the applicable rules governing the practice of law in Virginia, or (iii) when required by EDR Policy No. 2.01, Hearing Officer Program Administration.[45]

The applicable standard regarding EDR's requirements of a voluntary disqualification is generally consistent with the manner in which the Court of Appeals of Virginia reviews recusal cases.[46] The Court of Appeals has indicated that "whether a trial judge should recuse himself or herself is measured by whether he or she harbors 'such bias or prejudice as would deny the defendant a fair trial.'"[47] EDR finds the Court of Appeals' standard instructive and has held that

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[43] Hearing Decision at 8.
[44] *See Rules for Conducting Grievance Hearings* § VI(B)(1).
[45] *Rules for Conducting Grievance Hearings* § II. See also EDR Policy 2.01, *Hearings Program Administration*, which indicates that a hearing officer shall be deemed unavailable for a hearing if "a conflict of interest exists or it is otherwise determined that the hearing officer must recuse himself/herself."
[46] While not always dispositive for purposes of the grievance procedure, EDR has in the past looked to the Court of Appeals of Virginia and found its holdings persuasive.
[47] Welsh v. Commonwealth, 14 Va. App. 300, 315, 416 S.E.2d 451, 459 (1992) (citation omitted); *see* Commonwealth v. Jackson, 267 Va. 226, 229, 590 S.E.2d 518, 520 (2004) ("In the absence of proof of actual bias, recusal is properly within the discretion of the trial judge.").

in compliance reviews of assertions of hearing officer bias, the appropriate standard of review is whether the hearing officer has harbored such actual bias or prejudice as to deny a fair and impartial hearing or decision.[48] The party moving for recusal has the burden of proving the hearing officer's bias or prejudice.[49]

EDR has conducted a thorough review of the hearing record and decision. With consideration of the grievant's allegations about the hearing officer's alleged bias, we find no basis to conclude that the hearing officer's conduct at the hearing or during the hearings process demonstrated bias against the grievant that warrants remanding the case or other actions. The grievant alleges that the hearing officer is financially motivated to find in favor of agencies so that he receives more cases appointed by EDR. As described in EDR's Hearings Program Administration Policy, EDR appoints hearings to its own full-time employed hearing officer or to a hearing officer from the list kept by the Office of the Executive Secretary at the Supreme Court of Virginia *on a rotating basis*.[50] As outside hearing officers, such as the one appointed in this case, are utilized on a rotating basis, EDR does not and would be unable to appoint more cases to a particular outside hearing officer based on hearing results.

The grievant also alleges that the hearing officer is biased by allowing the agency to be represented by outside counsel in this case, which the grievant alleges was a violation of Section 2.2-507 of the Code of Virginia. The grievant alleges that use of outside counsel requires authorization from the Office of the Attorney General. The agency produced a letter from the Office of the Attorney General that appears to document such authorization. The grievant argues the document is falsified because it is dated before the grievant filed his grievance. Based on the circumstances surrounding this case, the agency would have reasonably anticipated that the grievant would file a grievance to contest his termination. Thus, the fact that the agency had already sought outside counsel from the OAG prior to the grievance being filed does not clearly support the grievant's argument. Based on the foregoing, EDR finds no basis to suggest that the hearing officer's determinations violated a provision of Virginia law,[51] much less that they suggest an improper bias. Accordingly, the grievant has not met his burden to demonstrate bias on the part of the hearing officer in this case.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing decision becomes a final hearing decision once all timely requests for administrative review have been decided.[52] Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit

[48] *E.g.*, EDR Ruling No. 2014-3904; EDR Ruling No. 2012-3176.
[49] *Jackson*, 267 Va. at 229, 590 S.E.2d at 519-20.
[50] EDR Policy 2.01, *Hearings Program Administration*.
[51] Inasmuch as the determinations potentially involve questions of law, nothing prevents the grievant from raising the issue in a timely appeal to the appropriate circuit court. *See* Va. Code § 2.2-3006(B).
[52] *Id.* § 7.2(d).

court in the jurisdiction in which the grievance arose.[53] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[54]

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[53] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[54] *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).