Issue: Administrative Review of Hearing Officer's Decision in Case No. 10151; Ruling Date: February 24, 2014; Ruling No. 2014-3797; Agency: Department of Corrections; Outcome: Remanded to AHO.

COMMONWEALTH of VIRGINIA

Department of Human Resources Management

Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2014-3797
February 24, 2014

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 10151. For the reasons set forth below, EDR remands the decision for further consideration by the hearing officer consistent with this ruling.

FACTS

The grievant was employed by the Department of Corrections ("agency").[1] On June 20, 2013, the grievant received four Written Notices. In her decision, the hearing officer described the Written Notices:

> The first was a Group I Written Notice for, "On May 18, 2013 Grievant sent an offensive e-mail to ***, RN. The e-mail featured bold, oversized letters and condescending rhetoric that gave the appearance of strong anger". The second was a Group II Written Notice for, "Grievant treated fewer patients per day because he did not take adequate action to resolve the problem of not having enough security officers available to escort patients to the dental clinic". The third was a Group II Written Notice for, "On September 26, 2012, Grievant sent an e-mail from his work computer to his dental assistant in which he used multiple obscene words to describe his dental hygienist's cat". The fourth was a Group III Written Notice for, "From 4/1/13-5/16/13, Grievant spent five hours plus per day on the internet. Many of the sites visited were non-work related and were in violation of DVOC Operating Policy 310.2, Information Technology Security".[2]

The grievant timely grieved the disciplinary actions.[3] A hearing was subsequently held on December 2, 2013, and on January 8, 2014, the hearing officer issued a decision.[4] The hearing officer found that the Group I Written Notice for the offensive email and the Group II Written Notice "for failure to improve his patient load" were unfounded, but she upheld the

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[1] *See* Decision of Hearing Officer, Case No. 10151 ("Hearing Decision"), January 8, 2014, at 1.
[2] *Id.* (citations omitted).
[3] *Id.*
[4] *Id.*

remaining two Written Notices with termination.[5] The grievant has now requested administrative review of the hearing officer's decision.

DISCUSSION

By statute, EDR has been given 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."[6] 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 either party; the sole remedy is that the hearing officer correct the noncompliance.[7]

Due Process

The grievant argues that the hearing officer erred by upholding the Group II and Group III Written Notices because they failed to give the grievant adequate notice of the conduct he was required to prove at hearing. Constitutional due process, the essence of which is "notice of the charges and an opportunity to be heard,"[8] is a legal concept which may be raised with the circuit court in the jurisdiction where the grievance arose.[9] However, the grievance procedure incorporates the concept of due process and therefore we address the issue upon administrative review as a matter of compliance with the grievance procedure's *Rules for Conducting Grievance Hearings* ("Rules"). Further, as discussed below, we note that the grievant may request administrative review from the DHRM Director. DHRM Policy 1.60, *Standards of Conduct*, contains a section expressly entitled "Due Process".[10] If requested by the grievant, the DHRM Director will have the opportunity to respond to any objections based on the allegation that the agency failed to follow the due process provisions of state policy.

Prior to certain disciplinary actions, the United States Constitution generally entitles, to those with a property interest in continued employment absent cause, the right to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity to respond to the charges, appropriate to the nature of the case.[11] Importantly, the pre-disciplinary notice

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[5] *Id.* at 6.
[6] Va. Code §§ 2.2-1202.1(2), (3), (5).
[7] *See Grievance Procedure Manual* § 6.4(3).
[8] *E.g.*, Davis v. Pak, 856 F.2d 648, 651 (4th Cir. 1988); *see also* Huntley v. N.C. State Bd. Of Educ., 493 F.2d 1016, 1018-21 (4th Cir. 1974).
[9] *See* Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[10] *See* DHRM Policy 1.60, *Standards of Conduct*, § E.
[11] Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 545-46 (1985). State policy requires:

> Prior to the issuance of Written Notices, disciplinary suspensions, demotions, transfers with disciplinary salary actions, and terminations employees 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.

DHRM Policy 1.60, *Standards of Conduct*, § E(1). Significantly, the Commonwealth's Written Notice form instructs the individual completing the form to "[b]riefly describe the offense and give an explanation of the evidence."

and opportunity to be heard need not be elaborate, need not resolve the merits of the discipline, nor provide the employee with an opportunity to correct her behavior. Rather, it need only serve as an "initial check against mistaken decisions – essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action."[12]

On the other hand, post-disciplinary due process requires that the employee be provided a hearing before an impartial decision-maker; an opportunity to confront and cross-examine the accuser in the presence of the decision-maker; an opportunity to present evidence; and an opportunity for the presence of counsel.[13] The grievance statutes and procedure provide these basic post-disciplinary procedural safeguards through an administrative hearing process.[14]

In this case, the description of the offense in the Group II Written Notice stated:

> On September 26, 2012, [grievant] sent an e-mail from his work computer to his dental assistant in which he used multiple obscene words to describe his dental hygienist's cat.[15]

The grievant argues, in effect, that the hearing officer upheld the discipline issued to him on a basis other than that asserted by the agency. Specifically, he asserts that the Written Notice charged the grievant with using obscenity as that term is defined by state statute. The hearing officer rejected the grievant's contention, concluding instead that the grievant had been charged with using offensive language on a state computer, and that this language involved what is commonly described as an obscene word.[16]

Section VI(B) of the *Rules* provides that in every instance, an "employee must receive notice of the charges in sufficient detail to allow the employee to provide an informed response to the charge."[17] Our rulings on administrative review have held the same, concluding that only the charges set out in the Written Notice may be considered by a hearing officer.[18] In addition, the *Rules* provide that "[a]ny challenged management action or omission not qualified cannot be remedied through a hearing."[19] Under the grievance procedure, charges not set forth on the

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[12] *Loudermill*, 470 U.S. at 545-46.
[13] Detweiler v. Virginia Dep't of Rehabilitative Services, 705 F.2d 557, 559-561 (4th Cir. 1983).
[14] See Virginia Code Section 2.2-3004(E), which states that the employee and agency may be represented by counsel or lay advocate at the grievance hearing, and that both the employee and agency may call witnesses to present testimony and be cross-examined. In addition, the hearing is presided over by an independent hearing officer who renders an appealable decision following the conclusion of hearing. *See* Va. Code §§ 2.2-3005, 2.2-3006; s*ee also Grievance Procedure Manual* §§ 5.7, 5.8 (discussing the authority of the hearing officer and the rules for the hearing).
[15] Agency Exhibit 8.
[16] Hearing Decision at 5.
[17] *Rules for Conducting Grievance Hearings* § VI(B) (citing O'Keefe v. United States Postal Serv., 318 F.3d 1310, 1315 (Fed. Cir. 2002) (holding that "[o]nly the charge and specifications set out in the Notice may be used to justify punishment because due process requires that an employee be given notice of the charges against him in sufficient detail to allow the employee to make an informed reply.")).
[18] *See, e.g.*, EDR Ruling No. 2011-2704; EDR Ruling No. 2007-1409.
[19] *Rules for Conducting Grievance Hearings* § I.

Written Notice cannot be deemed to have been qualified, and thus are not before a hearing officer.

In this case, EDR finds that the grievant did have adequate notice of the charge against him and that the charge was sufficiently set forth on the Written Notice. While the Written Notice does use the term "obscene," it clearly does so in the context of a specific email in which the alleged obscene language is readily identifiable. Although the grievant may disagree that the words used in the email are "obscene," there can be little question, based on the Written Notice, that the grievant had notice of the conduct for which he was being charged and the agency's theory for its disciplinary action. Accordingly, the hearing officer's decision with respect to the Group II Written Notice will not be disturbed on this basis.

A similar conclusion must be reached in regard to the Group III Written Notice. In that Notice, the agency described the charged conduct as:

> From 4/1/13 -5/16/13, [grievant] spent five hours plus per day on the internet. Many of the sites visited were non-work related and were in violation of VDOC Operating Policy 310.2, Information Technology Security.[20]

The grievant correctly notes that the hearing officer found that the agency had failed to show that the grievant spent the amount of time asserted by the agency using the internet for non-work related reasons. Instead, the hearing officer relied on the grievant's admission that he "spent a lot of time on the computer" and played "a math game" in upholding the disciplinary action.[21] While the hearing officer did not find the specific facts asserted by the agency to be proven, the grievant nevertheless had sufficient notice that the agency intended to show that he engaged in excessive personal use of the internet during the charged time period in violation of the agency's computer use policy. Because the grievant received adequate notice of the charges against him, the Group III Written Notice will not be disturbed on this basis.

Findings of Fact

The grievant's request for administrative review may also be fairly read to assert an argument that the hearing officer erred in finding a sufficient factual basis to support the Group II and Group III Written Notices. Hearing officers are authorized to make "findings of fact as to the material issues in the case"[22] and to determine the grievance based "on the material issues and grounds in the record for those findings."[23] 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.[24] Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has

[20] Agency Exhibit 11.
[21] Hearing Decision at 5.
[22] Va. Code § 2.2-3005.1(C).
[23] *Grievance Procedure Manual* § 5.9.
[24] *Rules for Conducting Grievance Hearings* § VI(B).

established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.[25] 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 upon 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.

With respect to the Group II Written Notice, the grievant appears to argue that the hearing officer was required to find that the grievant's September 26, 2012 email constituted obscenity as defined by the Virginia Code. Although the grievant is correct that the hearing officer must determine whether he engaged in the behavior described in the Written Notice, EDR does not agree that the description of the charged conduct requires the hearing officer to reach such a finding of "obscenity" as defined by Code under the grievance procedure. Instead, it was sufficient under the grievance procedure for the hearing officer to address whether the grievant's language contained obscene words, as that term is commonly understood. Her finding that the agency had met this burden is supported by the record and will therefore not be disturbed.[26] As discussed below, however, to the extent the grievant argues that the agency was required to prove the use of obscene language under the applicable policy or policies, this question must be addressed to DHRM.

The Group III Written Notice is more problematic. In concluding that the agency's action was warranted, the hearing officer stated:

> Grievant['s] excessive use of the State computer was neither proven nor disproven by the printout logs presented. His use was proven by Grievant's own admission. While the Warden accused Grievant of being on the internet 6 hours a day, Grievant stated he told the Warden he spent a lot of time on the computer because he often had no patients. Grievant further described in his testimony a math game he played on the computer. There is no doubt that Grievant had considerable time available to engage in computer use which would not be consistent with "incidental and limited use". Agency found the volume of the computer misuse to warrant a Group III action.[27]

Reading the hearing decision, it is difficult to understand clearly the analysis and basis for the hearing officer's findings that the grievant had engaged in misconduct warranting a Group III Written Notice. The relevant portion of the agency's Operating Policy 310.2, *Information Technology Security*, provides:

> *Personal Use of the Computer and the Internet* – Personal use means use that is not job-related. Internet use during during work hours should be incidental and

[25] *Grievance Procedure Manual* § 5.8.
[26] Agency Exhibit 4. For example, the email in question used "f**k" four times. *Id.* As will be addressed later in this ruling, the determination of whether the email content violated state or agency policy must be made, if at all, by DHRM.
[27] Hearing Decision at 5 (citation omitted).

> limited to not interfere with the performance of the employee's duties or the accomplishment of the unit's responsibilities.[28]

The plain language of this provision appears to suggest that before finding that the grievant's internet use constituted misconduct under this section, the hearing officer needed to assess both the quantity of time the grievant spent on the internet and the impact, if any, on the performance of the grievant's duties or his unit's responsibilities.

The hearing decision did not appear to make findings in these regards. First, the decision does not clearly make any factual finding regarding the amount of time the grievant spent on the internet. The hearing officer found that the agency had failed to establish the amount of use through documentary evidence, but she nevertheless concluded that the grievant engaged in more than "incidental and limited" use on the basis of his admission that he used the internet "a lot" and played a math game (for an unspecified period).[29] However, describing the grievant's conduct as more than "incidental and limited" use is simply a conclusion that the policy was violated, not a factual finding regarding his actual use, of which there is none in the decision. Instead, she notes that the grievant "had considerable time available to engage in computer use which would not be consistent with 'incidental and limited use.'"[30] However, the finding of "considerable time" in which use could have occurred does not equate to a finding of an amount of actual use.[31]

In addition, the hearing decision does not address the question of whether the grievant's internet use adversely affected his work or that of his unit. Although the hearing officer recognized that the grievant's use of the internet was related to his lack of work,[32] the decision does not address the impact of this lack of work on the agency's ability to demonstrate misconduct. Moreover, the decision does not explain how internet use with no impact on work performance can be found to violate the agency's computer use policy, regardless of the quantity of the use.[33] The absence of this analysis is further conspicuous in light of the warden's testimony that personal use of the internet is not problematic unless it interferes with an employee's work performance.[34]

The hearing officer also fails to explain her conclusion that the nature of the grievant's conduct warranted a Group III Written Notice, rather than a Group II Written Notice, the typical

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[28] Department of Corrections Operating Policy 310.2, *Information Technology Security*, § VI(B)(3). The policy also restricts personal use that interferes with agency systems or otherwise violates law or policy. *Id.* However, the hearing officer's finding that the grievant's conduct constituted misconduct was based solely on the conclusion that it was not "incidental and limited."

[29] The grievant testified that he did not spend "a lot of time" playing games. Hearing Recording, Disc 2 at 2:49:09 - 2:50:09.

[30] Hearing Decision at 5.

[31] While a hearing officer would not necessarily need to determine a precise amount of use in all such cases, some kind of estimate of the time based on the record evidence would be sufficient.

[32] *Id.* The hearing officer found that the grievant's lack of work was not his responsibility and overturned a Group II Written Notice that had been issued on that basis. *Id.* at 1, 4-5.

[33] Ultimately, the question of what type of internet use violates policy is a question for a DHRM policy review.

[34] Hearing Recording, Disc 1 at 4:40:10-4:40:39.

level of discipline for failure to follow policy.[35] In her decision, the hearing officer states, with no further analysis, that "Agency found the volume of the computer misuse to warrant a Group III Action."[36] However, the agency's judgment, although entitled to deference, is not dispositive. The determination of whether the disciplinary action taken is appropriate for the misconduct proven at hearing must be made by the hearing officer, in light of all the facts and circumstances presented.[37] The agency's judgment regarding the appropriateness of the disciplinary action in no way diminishes the hearing officer's responsibility to determine whether the agency's judgment was correct. This is especially true here, as it is questionable whether the agency established any basis for escalating the discipline to the Group III level. For example, the hearing officer apparently concluded that the agency had not proven the specific amount of internet use per day with which the Written Notice charged him.[38] In addition, the Group III Written Notice identifies as "circumstances considered" two disciplinary actions overturned by the hearing officer.[39] The hearing decision fails to address these factors or explain any other basis on which the grievant's conduct was properly charged as a Group III rather than a Group II.

In view of these issues, additional explanation by the hearing officer of her findings and conclusions regarding the Group III Written Notice is necessary. The decision is therefore remanded to the hearing officer for further consideration and explanation of whether and on what basis the agency has met its burden of showing that the grievant's internet use constituted misconduct under Operating Policy 310.2, *Information Technology Security*. In addition, if the hearing officer again concludes that the agency has met its burden of showing misconduct, she must then address whether the agency properly charged the offense at the Group III level, taking into account such factors as the amount of internet use proven, the circumstances under which the grievant engaged in the internet use, and the hearing officer's dismissal of two of the disciplinary actions cited as circumstances considered in issuing the Group III. Following the hearing officer's decision on remand, the determination of whether the hearing officer has correctly applied policy will ultimately be a matter within the sole authority of DHRM.

Inconsistency with State and Agency Policy

Several of the arguments made by the grievant appear to challenge the hearing officer's application of state and agency policy. The Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy.[40] To the extent the grievant challenges the hearing officer's application of policy with respect to the Group II Written Notice, if he has not already done so, the grievant may raise these issues in a request for administrative review to the Director of the Department of Human Resource Management, 101 North 14th St., 12th Floor, Richmond, VA 23219. However, because this decision is being remanded to the hearing officer for further consideration of matters that are at the core of the

[35] *See* DHRM Policy 1.60, *Standards of Conduct*, Attachment A.
[36] Hearing Decision at 5.
[37] *See Rules for Conducting Grievance Hearings* § VI(B)(1).
[38] Hearing Decision at 5.
[39] Agency Exhibit 11. The grievant notes that as these two disciplinary actions were found to be unwarranted, they should not serve as a basis for an elevated level of discipline.
[40] Va. Code § 2.2-3006(A); Murray v. Stokes, 237 Va. 653, 378 S.E.2d 834 (1989).

decision, it makes sense to await a remand decision from the hearing officer before any new administrative reviews are requested. Thus, to the extent the grievant wishes to raise his concerns regarding the Group II Written Notice, or to the extent either party wishes to challenge any new issues in the hearing officer's application of policy related to the Group III Written Notice, the parties will have **15 calendar days** from the date of the remand decision to raise these issues to DHRM.

Mitigation

In challenging the decision to uphold the Group III Written Notice, the grievant also asserts that the hearing officer erred in rejecting mitigating evidence of other employees' computer usage.[41] Under statute, hearing officers have the power and duty to "[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [EDR]."[42] The *Rules* provide that "a hearing officer is not a 'super-personnel officer.' Therefore, in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy."[43] More specifically, the *Rules* provide that in disciplinary grievances, if the hearing officer finds that:

> (i) the employee engaged in the behavior described in the Written Notice,
> (ii) the behavior constituted misconduct, and
> (iii) the agency's discipline was consistent with law and policy,
>
> the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.[44]

Thus, the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above.

Importantly, because reasonable persons may disagree over whether or to what extent discipline should be mitigated, a hearing officer may not simply substitute his or her judgment on that issue for that of agency management. Indeed, the "exceeds the limits of reasonableness" standard is difficult to meet, and has been described in analogous Merit Systems Protection Board case law as one prohibiting interference with management's discretion unless the facts show that the discipline imposed is unconscionably disproportionate, abusive, or totally

[41] Hearing Decision at 4. The grievant argues that the hearing officer erred by considering mitigation with respect to one of the disciplinary actions she did not uphold. *Id.* at 5-6. As the grievant does not appear to be challenging the dismissal of the disciplinary action, we will not address this argument further.
[42] Va. Code § 2.2-3005(C)(6).
[43] *Rules for Conducting Grievance Hearings* § VI(A).
[44] *Id.* at § VI(B)(1) (citations omitted).

unwarranted.[45] EDR will review a hearing officer's mitigation determination for abuse of discretion,[46] and will reverse only where the hearing officer clearly erred in applying the *Rules*' "exceeds the limits of reasonableness" standard.

The *Rules* provide that:

> By law, the hearing officer must "[r]eceive and consider evidence mitigation or aggravation of any offense charged by an agency. Examples of "mitigating circumstances" to be considered by the hearing officer include, but are not limited to: . . . whether the discipline is consistent with the agency's treatment of similarly situated employees . . . .[47]

At hearing, the grievant presented testimony and computer printouts relating to the internet use of other employees.[48] The hearing officer concluded that because the other employees for whom the grievant had requested and provided internet use data had not been disciplined for internet use, they were not similarly situated to the grievant for purposes of mitigation.[49]

The hearing officer's refusal to consider testimony and documentary evidence regarding undisciplined employees was error. The purpose of mitigation is to protect employees from arbitrary or inconsistent disciplinary actions. This protection applies both when the comparator employees have been disciplined and when they have not. The question for the hearing officer is simply whether other similarly situated employees received less or no discipline for comparable conduct: if so, then mitigation may be warranted. Although the hearing officer is correct that the comparator employees have not been proven through the grievance hearing process to have engaged in internet misuse, such a showing is not necessary. The grievant need merely show by a preponderance of the evidence that the comparator employees engaged in comparable conduct and received a lower level of discipline or were not disciplined at all.[50]

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[45] The Merit Systems Protection Board's approach to mitigation, while not binding on EDR, can be persuasive and instructive, serving as a useful model for EDR hearing officers. *E.g.*, EDR Ruling No. 2012-3102; EDR Ruling No. 2012-3040; EDR Ruling No. 2011-2992 (and authorities cited therein).

[46] "'Abuse of discretion' is synonymous with a failure to exercise a sound, reasonable, and legal discretion." Black's Law Dictionary 10 (6th ed. 1990). "It does not imply intentional wrong or bad faith . . . but means the clearly erroneous conclusion and judgment—one [that is] clearly against logic and effect of [the] facts . . . or against the reasonable and probable deductions to be drawn from the facts . . . ." *Id.*

[47] *Rules for Conducting Grievance Hearings* § VI(B)(2).

[48] *See, e.g.*, Grievant Exhibit 9; Hearing Recording, Disc 1 at 4:39:35-4:40:14.

[49] Hearing Decision at 4-6. The hearing officer explained, "To say a person who had never been given the benefit of due process was engaged in the same behavior as Grievant is not a competent comparison but rather conjecture." *Id.* at 5-6.

[50] This showing may be made through witness testimony or through documentary evidence. Although the hearing officer appears to have found much of the documentary evidence of alleged internet use incompetent, *see* Hearing Decision at 4, it is not clear whether these exhibits could still present some degree of relevant evidence as to the questions on mitigation (such as access of non-work-related websites), even if they were not sufficient to prove a specific amount of internet use by the grievant or others. Further, there was other witness testimony on these points to consider. *See* Hearing Recording, Disc 1 at 4:39:35-4:40:14 (warden discussing his own personal use).

The hearing officer's finding that she could not consider evidence related to the internet use of the other employees was an abuse of discretion. The hearing decision is therefore remanded for consideration of this evidence in accordance with the mitigation standard set forth in the *Rules for Conducting Grievance Hearings.*

CONCLUSION

For the foregoing reasons, we remand the decision for further consideration consistent with this ruling. Once the hearing officer issues her reconsidered decision, both parties will have the opportunity to request administrative review of the hearing officer's reconsidered decision on any *new matter* addressed in the reconsideration decision (i.e., any matters not previously part of the original decision).[51] Any such requests must be **received** by the administrative reviewer **within 15 calendar days** of the date of the issuance of the reconsideration decision.[52]

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, the hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided, and if ordered by an administrative reviewer, the hearing officer has issued his remanded decision.[53] Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.[54] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[55]

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[51] *See, e.g.*, EDR Ruling Nos. 2008-2055, 2008-2056. In order to avoid unnecessary confusion, challenges to the hearing officer's interpretation of policy regarding the Group III Written Notice in her remanded decision will be considered new matters, even if such challenges could have been raised with respect to the initial decision as well.
[52] *See Grievance Procedure Manual* § 7.2(a).
[53] *Grievance Procedure Manual* § 7.2(d).
[54] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[55] *Id.; see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).