

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10308, 10309;
Ruling Date: June 2, 2014; Ruling No. 2014-3884; Agency: Virginia Department of
Transportation; Outcome: Hearing Decision in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW

In the matter of the Virginia Department of Transportation
Ruling Number 2014-3884
June 2, 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 10308/10309. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Number 10308/10309, as found by the hearing officer, are as follows:¹

The Virginia Department of Transportation employed Grievant as a Project Manager/Small Contracts Supervisor. The Purpose of his position was:

Directs, oversees, and provides guidance on project management matters to all project team members in [location] District. Project management position responsible for overall project management to include planning, organizing, monitoring, and directing all work activities and resources necessary to complete assigned projects. Coordinates and communicates with VDOT and other engineering staff, local governments, other agencies, and FHWA. Manage projects to provide high-quality and accurate right of way and construction plans in accordance with applicable design standards and specifications. Ensure projects are on-time and on-budget. Responsible charge engineer for small contracts team; provides direction and oversight, technical guidance, and ensures standards compliance and QA/QC for the small contracts projects. Oversees and trains small contract team members on project management and technical matters.

He began working for the Agency in January 2012.

¹ Decision of Hearing Officer, Case No. 10308/10309 (“Hearing Decision”), April 25, 2014, at 2-8 (citations omitted).

On March 18, 2013, Grievant received a Notice of Improvement Needed/Substandard Performance issued by the Former Supervisor. The Former Supervisor wrote:

[Grievant] has been in the position as a Project Manager for just over 12 months. He continues to struggle with basic understanding of Department processes, protocols, and systems which is diminishing his ability to perform his duties as Project Manager and the Small Contracts Supervisor.

Project documentation routinely requires editing and clarification: [Grievant] continually submits RW and CN packages with missing or incorrect information, grammatical and spelling errors, and overall lack of quality control. UPC [number 2] had over 50 errors identified in the bidability review.

Lack of full understanding of processes and procedures: [Grievant] has a lack of understanding as to the establishment of appropriate time durations and sequencing of key activities within the concurrent engineering process. UPC [number 2] had several activities in the incorrect order ... Scheduling, activities, and durations, has been covered multiple times at Project Management School.

[Grievant] has a lack of understanding of the submittal process for Tier I projects. UPC [number 2] submittal to Central Office was made incorrectly to Construction Division thus jeopardizing the advertisement date. Information on the proper submittal process has been shared with the project management staff on multiple occasions.

Time management: [Grievant] re-assigned numerous projects ... to a subordinate. A key project ... was re-assigned to a subordinate for submittal to S&C for Advertisement due to inadequate planning of his time. [Grievant] had not managed his time appropriately and needed to devote his time to the submittal of UPC [number 2]. With the hand-off of the project, [Grievant] did not adequately convey status of the project; the PAC meeting had been held, the new project manager was unaware and scheduled another PAC meeting.

Improvement plan: Gain a stronger understanding of data systems, the integration of those systems, and how those systems impact both the engineering and programming functions by reviewing and using the ... District Project Management Guide, information on the PMO portal, attending PM school, attending VDOT Web-based training as available, and utilize Central PMO as a resource.

Work one-on-one with experienced PM's and supervisor for a minimum of 1 hour each week for the next 30 days to better understand scheduling an activity durations. All schedules for projects assigned to [Grievant] should be updated to have proper durations and sequencing within three weeks. Attend weekly project management team meetings and bi-monthly Project Management School.

Prepare and lead the Project Management team meeting on May 6 on the subject of POOL and IPM interactions and how the PM should review and update information in the POOL tabs for "General", "Schedule/Estimate", "Misc.", "Jobs", "Classification", "Federal", "Comments" and "STP".

Prepare a detailed schedule of intermediate steps required for RW and CN submissions for each project due within the next 9 months – is due within 2 weeks.

Prepare a weekly workplan to outline what will be accomplished for the following week. This plan must have sufficient detail to include projected hours per project. This is to be developed and submitted to supervisor COB on Friday for preceding week.

On October 24, 2013, Grievant received an annual performance evaluation with an overall rating of "Below Contributor." The annual evaluation mentioned that Grievant received three written counseling memorandums and a Notice of Improvement Needed/Substandard Performance during the evaluation period.

The evaluation stated that Grievant failed to properly supervise a subordinate, Mr. S. Several of Mr. S's projects were behind schedule due to inadequate guidance from Grievant.

The evaluation stated that Grievant lacked a fundamental understanding of the processes, procedures, and systems involved. Several of Grievant's projects had to be reassigned to a subordinate.

The evaluation stated that while Grievant has attended sessions of the Project Management School, he did not grasp the concepts reviewed or how to use the various Department systems.

The evaluation stated that Grievant was ineffective in communicating with employees in other sections of the Agency.

In the Supervisor's Comments section of the evaluation, the Former Supervisor wrote:

[Grievant] should continue to enhance his knowledge of VDOT scheduling and estimating systems in order to more effectively

manage the large number of projects currently allocated to him. He needs to improve his maintenance and updating of IPM/POOL data quality. [Grievant] should look for training opportunities to improve his skill set as a supervisor. With his increase in workload, he needs to focus on planning his workload and ensuring that senior administration has sufficient time to review and approve. He needs to make it a practice to document meetings and project discussion and communicating these milestones.

On November 6, 2013, Grievant received a Performance Re-Evaluation Plan stating:

Because your performance for 2013 was rated as “Below Contributor” you will be re-evaluated under the guidelines of the DHRM Policy Number 1.40 – Performance Planning and Evaluation. The detail of the Re-Evaluation Process has been pulled from this policy [and] is copied to the end of this document.

Attached to this document is the Performance Re-Evaluation form that will be reviewed in 3 – months to record your re-evaluated performance for this period. Within the attached documents are the detailed core responsibilities which will be used to guide your Performance re-evaluation Plan.

Your supervisor, [Former Supervisor] will review this plan with you, highlighting the specific performance measures that you will need to meet. Your supervisor will schedule periodic meetings with you to discuss your progress. Per the policy, your planned re-evaluation will be scheduled approximately 2 weeks prior to the end of this 3 – month process. The estimated date for your re-evaluation will be January 23, 2014.

Grievant was provided with an Employee Work Profile, Performance Re-Evaluation setting forth his Core Responsibilities for the re-evaluation period as follows:

Monitoring and Providing Guidance to Direct Reports

Escalating Risks and Problems to Relevant Individuals Once They Occur. [Grievant] Shall Maintain A Daily Journal In Which He Notes Project Risks and His Actions.

Completeness and Accuracy of Project Data/Documentation. [Grievant] and His Supervisor Shall Review Data On His Projects [On] A Weekly Basis.

Communication. In Addition To His Daily Journal, [Grievant] Shall Provide Copies Of Emails, Meeting Minutes, And Other

Communications. Supervisor Will Also Check With Other Project Team Members For Communications They Received From [Grievant] During The Week.

Contract Submissions Inclusive of Forms, Special Provisions, And Copy Notes Shall Be Complete And Submitted On Time.

Project Schedules Including Intermediate Milestones Shall Be Met.

Project Budgets Shall Be Adequately Monitored.

The Former Supervisor held progress meetings with Grievant during the re-evaluation period. On December 4, 2013, the Former Supervisor resigned from the Agency. Grievant began reporting to the Supervisor who assumed responsibility for supervising Grievant throughout the remainder of the re-evaluation period.

The Supervisor typically met with Grievant on a weekly basis to discuss Grievant's work performance.

On January 28, 2014, the Supervisor presented Grievant with a memorandum describing his three month re-evaluation. She rated Grievant's overall work performance as "Below Contributor." She addressed each of Grievant's Core Responsibilities. With respect to Monitoring and Providing Guidance to Direct Reports, the Supervisor wrote:

While [Grievant] did set-up meetings with his direct report, [Mr. H], the content of those meetings was not documented and shared. [Grievant] failed to properly monitor the work product of his direct report as evidenced by the basic errors encountered at the year-end review of [Mr. H's] projects (8 of 14 need attention). During the evaluation period, other project submissions made by [Mr. H] with budgetary increases were not revised and corrected by [Grievant] even after the discrepancies were brought to [Grievant's] attention. This further demonstrates inability to adequately guide, direct and monitor work of subordinates.

With respect to Escalating Risks and Problems to Relevant Individuals Once They Occur. [Grievant] Shall Maintain A Daily Journal In Which He Notes Project Risks And His Actions, the Supervisor wrote:

A daily journal was not maintained during the evaluation period. Examples of risks/issues discussed during the evaluation period include the change in cut-off dates and property owner notification letters. In the instance of the change in cut-off dates, [Grievant] did not escalate the problem to the relevant individual. Moreover, he did not follow the standard operating procedure for obtaining guidance within the District that had been communicated to PMO

staff at both PM School and at Program/Project Day on multiple occasions. For the issue of the property owner notification letters, instead of rendering a decision, [Grievant] requested the Survey Manager to render the decision. The other junior project managers when presented the same scenario, made the decision for their projects.

With respect to Completeness and Accuracy of Project Data/Documentation, [Grievant] and His Supervisor Shall Review Data On His Project [On] A Weekly Basis, the Supervisor wrote:

The majority of [Grievant's] projects had schedules already established prior to this evaluation period. The end of year cycle focus is on estimate in preparation for SYIP updates. There were a number of [Grievant's] projects that had estimate discrepancies, increases, and systematic inaccuracies.

With respect to Communication In Addition To His Daily Journal, [Grievant] Shall Provide Copies Of Emails, Meeting Minutes, And Other Communications. Supervisor Will Also Check With Other Project Team Members For Communications They Received From [Grievant] During The Week, the Supervisor wrote:

[Grievant] largely depends on others to supply information regarding his projects specifically when consultant services are used. He has used consultants to provide project briefing and documentation that are generally the responsibility of the PM.

With respect to Contract Submissions Inclusive of Forms, Special Provisions, And Copy Notes Shall Be Complete And Submitted On Time, the Supervisor wrote:

During the evaluation period the following were deliverables and/or submitted:

- [Grievant] submitted special provisions for UPC [number 1] on 12/20/2013.
- The scheduled CN submittal date for UPC [number 1] is 1/28/14, per [Grievant] the CN package would be turned in the ADA PE by 1/14/14; ADA PE received the CN package on 1/16/14.
- The scheduled CN submittal for UPC [number 2] is 1/28/14. The DA must receive the CN package for submittal no later than 1/23/14. As of 1/16/14, ADA PE had not received the CN package.

With respect to Project Schedules Including Intermediate Milestones Shall Be Met, the Supervisor wrote:

During the evaluation period, [Grievant] did not have any projects which required the development of a full schedule from inception to construction advertisement. However, [Grievant] did encounter issues with basic schedule maintenance/updates which required the assistance of his direct supervisor.

With respect to Project Budgets Shall Be Adequately Monitored, the Supervisor wrote:

[Grievant] had significant difficulties with establishing, monitoring, updating, and entering project budgets into the system. He has not followed established protocols for budgetary increases/decreases. [Grievant] has had numerous projects with estimate errors, systemic inaccuracies, prolonged periods without update that have caused significant increases, and general milestone tracking protocols not adhered to.

The Supervisor commented:

Overall, [Grievant's] performance is not improved during the 3 month evaluation period. He has failed to improve his understanding of Departmental process, procedure, and system usage. In his role as a senior project manager, [Grievant] should be proactive in the management of his subordinates and the development and review of their work. However, he often requires routine guidance when he should be giving guidance to others. [Grievant] lacks a fundamental understanding of many of the processes, procedures, and systems utilized by the Department for project management. He lacks the knowledge, skills, and abilities which are necessary for the position as a project manager.

The Agency removed Grievant from employment effective January 30, 2014. Before removing Grievant, the Agency considered whether Grievant could be demoted or moved to another position. The Agency considered whether Grievant's work duties could be reduced in lieu of removal. The Agency concluded its only option was to remove Grievant from employment.

In the hearing decision, the hearing officer assessed the evidence as to whether the grievant's annual performance evaluation was arbitrary or capricious, finding in the negative.² The hearing officer further considered whether the agency removed the grievant from employment after a re-evaluation in accordance with state policy, finding in the affirmative, and

² *Id.* at 9-12.

upheld the grievant's removal.³ The hearing officer also found that the agency had not discriminated against the grievant based on his race and/or religion or retaliated against the grievant based on his participation in protected activity.⁴ The grievant now appeals the hearing decision to EDR.

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.”⁵ 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.⁶

Notice of Qualified Issues

The grievant claims that he “never received a written response” from the agency regarding whether his first grievance challenging his 2012-2013 performance evaluation “qualified for a hearing or not.” The grievance procedure provides that, at the qualification phase, “[t]he agency head must determine whether the grievance qualifies for a hearing” and “provide a written response on the Grievance Form A or an attachment” within five workdays.⁷ Even assuming that the agency did not properly notify the grievant that his first grievance was qualified for a hearing, he had ample notice that the grievance had, in fact, been qualified. For example, EDR issued a ruling consolidating the first grievance with a subsequent grievance challenging the grievant's removal for unsatisfactory performance.⁸ At the hearing, the hearing officer identified the qualified issues as including the grievant's challenge to his 2012-2013 performance evaluation.⁹ Most importantly, the grievant has not asserted, and there is no basis for EDR to conclude, that he experienced any material prejudice as a result of the agency's omission or that he was somehow denied notice of the qualified issues in advance of the hearing. Any initial procedural error that may have occurred was corrected and the grievant ultimately had proper notice of the qualified issues.

Inconsistency with State Policy

The grievant argues in his request for administrative review that the hearing officer's decision is inconsistent with state policy. Specifically, he claims that his re-evaluation was not carried out according to the requirements of DHRM Policy 1.40, *Performance Planning and Evaluation*, as well as the agency's failure to give him “prior notice” that alternatives to termination were not available. The Director of DHRM has the sole authority to make a final

³ *Id.*

⁴ *Id.* at 12.

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

⁶ *See Grievance Procedure Manual* § 6.4(3).

⁷ *Id.* § 4.2.

⁸ EDR Ruling Nos. 2014-3829, 2014-3830. Both grievances were qualified and addressed by the hearing officer in the grievant's administrative hearing.

⁹ Hearing Recording at 1:00-1:42.

determination on whether the hearing decision comports with policy.¹⁰ The grievant has requested such a review. Accordingly, the grievant's policy claims will not be addressed in this ruling.

Hearing Officer's Findings of Fact

Fairly read, the grievant's request for administrative review challenges the hearing officer's findings of fact and related conclusions. The grievant asserts that the evidence in the record does not support the hearing officer's conclusion that the agency's "assessment of Grievant's work performance was reasoned and supported by the evidence,"¹¹ that alternatives other than removal, such as demotion or transfer, were available and not considered by the agency, and that the hearing officer "did not weigh all the evidences fairly" and "disregarded" testimony and documents favorable to the grievant.¹²

Hearing officers are authorized to make "findings of fact as to the material issues in the case"¹³ and to determine the grievance based "on the material issues and the grounds in the record for those findings."¹⁴ 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.

The grievant asserts that many of the facts cited by the hearing officer in his decision are "not true" or otherwise inaccurate in some way. A review of the hearing record, however, indicates that there is evidence to support the hearing officer's conclusions. The grievant's Supervisor testified at length about the grievant's work performance during the 2012-2013 performance evaluation cycle, as well as the three-month period of the Performance Improvement Plan ("PIP"). She stated, for example, that the grievant was not able to satisfactorily manage his subordinates,¹⁵ required as "significant amount" of coaching and tutoring to address repeated performance problems with project scheduling and data upkeep issues,¹⁶ that he did not communicate effectively with co-workers and consultants about certain projects,¹⁷ and that he routinely made data entry errors in contract scheduling and assembly.¹⁸ Moreover, another agency employee from a different work group testified that the grievant's projects regularly contained errors that required extra time and effort to correct to remain on

¹⁰ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

¹¹ Hearing Decision at 11.

¹² The grievant also argues that the Supervisor created a document that has been placed in his personnel file, has "harmed [his] future employment," and demonstrates her "on-going arbitrary and capricious behavior." "Challenges to management actions or omissions that have not been qualified . . . are not before [the] hearing officer, and may not be resolved or remedied." *Rules for Conducting Grievance Hearings* § V(C). To the extent that the grievant is requesting relief from EDR in relation to this management action, there is no basis for EDR to address this claim as this issue was not qualified.

¹³ Va. Code § 2.2-3005.1(C).

¹⁴ *Grievance Procedure Manual* § 5.9.

¹⁵ Hearing Recording at 25:02-26:43 (testimony of Supervisor).

¹⁶ *Id.* at 34:01-35:37 (testimony of Supervisor).

¹⁷ *Id.* at 35:39-36:37 (testimony of Supervisor).

¹⁸ *Id.* at 26:46-29:28 (testimony of Supervisor).

schedule and within budget, and that these issues did not typically occur with other project managers.¹⁹

The Supervisor also testified that, after the PIP was issued, the grievant continued to exhibit problems with managing his subordinates' work tasks,²⁰ communicating properly with other agency employees about assigned tasks,²¹ and accurately entering data into the system such that his assigned projects remained on track without intervention from other project managers.²² The Supervisor explained that these issues with the grievant's performance while under the PIP were the substantially similar to those that prompted the overall rating of "Below Contributor" on the grievant's 2012-2013 performance evaluation.²³ The grievant's Former Supervisor did not deny that there were errors in the grievant's work during the 2012-2013 performance evaluation cycle, but merely stated that he disagreed with the Supervisor as to their level of severity and/or impact on agency operations.²⁴ The grievant expressed an opinion similar to that of the Former Supervisor.²⁵

The grievant further claims that the agency failed to consider alternatives to termination once it had concluded that his performance was unsatisfactory after the three-month PIP evaluation period. The grievant argues that "other options were available," although he has not specified what these alternatives might have been.²⁶ There is evidence in the record to support hearing officer's conclusion that "[t]he agency considered whether the Grievant's work duties could be reduced in lieu or removal," and that it determined the "only option to was to remove Grievant from employment."²⁷ At the hearing, for example, the Supervisor testified that she considered whether a transfer or demotion might have been an appropriate way to address the grievant's performances issues, but that other project management positions required knowledge of the same systems and performance of the same general scheduling and data entry tasks with which the grievant struggled.²⁸ Based on this assessment, the Supervisor concluded that there was a basis for removal.²⁹

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 factual findings made by the hearing officer, as is the case here.³⁰ Other individuals, had they been in the hearing officer's position, may not have reached the same conclusion as the hearing officer in this case. The question to be answered, however, is not whether another person would have made the same decision as the hearing officer in any particular case, but whether that decision is based on the evidence in the record. Because the hearing officer's findings are based upon evidence in

¹⁹ *Id.* at 1:50:17-1:51:41, 1:53:58-1:55:40 (testimony of Manager R).

²⁰ *Id.* at 58:17-1:00:33 (testimony of Supervisor).

²¹ *Id.* at 1:00:36-1:03:23 (testimony of Supervisor).

²² *Id.* at 1:04:12-1:08:05 (testimony of Supervisor).

²³ *Id.* at 1:13:35-1:14:20 (testimony of Supervisor).

²⁴ *Id.* at 2:25:54-2:26:29, 2:34:46-2:35:05 (testimony of Former Supervisor).

²⁵ *Id.* at 2:52:12-2:52:32 (testimony of grievant).

²⁶ To the extent that the grievant's assertions with regard to the agency's consideration of alternatives to removal raise questions as to whether DHRM Policy 1.40, *Performance Planning and Evaluation*, was properly applied, those issues must be addressed by DHRM in its administrative review.

²⁷ Hearing Decision at 8.

²⁸ Hearing Recording at 1:14:34-1:15:38 (testimony of Supervisor).

²⁹ *Id.* at 1:14:27-1:14:34 (testimony of Supervisor).

³⁰ *See, e.g.*, EDR Ruling No. 2012-3186.

the record and address the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer, and we decline to disturb the hearing decision on this basis.

With respect to the grievant's claim that the hearing officer failed to consider evidence favorable to the grievant, it does not appear that the hearing officer's evaluation of the evidence was in any way deficient or improper. The grievant presented evidence to show that the Former Supervisor did not believe the grievant's work performance was "Below Contributor" level and that the Supervisor may have pressured or otherwise influenced the Former Supervisor to issue the Notice of Improvement Needed/Substandard Performance, the three counseling memos, and the 2012-2013 "Below Contributor" performance evaluation.³¹ The Former Supervisor and the grievant also both testified that the Former Supervisor, not the Supervisor, worked closely with the grievant on a day-to-day basis, was most familiar with the grievant's ability to carry out tasks effectively, and thus would have been better able to develop an informed opinion as to the level of the grievant's work performance.³² The grievant also presented evidence that "it was not unusual or unexpected for an employee in his position to make some errors, and that the "number of errors . . . made were not so significant as to justify Below Contributor ratings."³³

The hearing officer noted that "[a]n evaluation reflects the opinion of a supervisor," and that "[t]wo supervisors may look at the same employee's work performance and reach different opinions regarding the nature of that performance. Simply because the Former Supervisor had a different opinion from the Supervisor's opinion is not a basis to establish that the Supervisor's opinion was arbitrary or capricious."³⁴ The hearing officer also found that the Supervisor was "familiar with Grievant's skills because she was involved in the Project Management School"³⁵ and that she "reviewed Grievant's work performance" after the Former Supervisor resigned "for the remaining portion of the re-evaluation period and concluded the Grievant's overall work performance was that of a Below Contributor."³⁶ There is evidence in the record to support these findings.³⁷ That the grievant disagrees with the agency's assessment of his performance as it was presented at the hearing does not, in itself, render that assessment invalid. It is within the hearing officer's authority to weigh the evidence presented by the parties and make findings of fact. While the grievant may not agree with the hearing officer's conclusions about whether and to what extent the evidence he introduced was relevant or persuasive, there is nothing in the hearing recording or the hearing decision to indicate that the hearing officer abused his discretion in assessing the relative persuasive weight of the evidence presented by the parties. Accordingly, we decline to disturb the hearing decision on this basis.

CONCLUSION AND APPEAL RIGHTS

For the reasons stated above, we decline to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have

³¹ *Id.* at 2:10:58-2:12:58 (testimony of Former Supervisor), 2:53:02-2:53:23 (testimony of grievant).

³² *Id.* at 2:16:22-2:17:13 (testimony of Former Supervisor), 2:57:10-2:57:41 (testimony of grievant).

³³ Hearing Decision at 11-12.

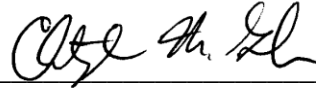
³⁴ *Id.* at 11.

³⁵ *Id.* at 11 n.6.

³⁶ *Id.* at 11.

³⁷ See Hearing Recording at 12:02-13:18, 54:57-56:10, 1:13:35-1:14:12 (testimony of Supervisor), 2:16:23-2:17:04 (testimony of Former Supervisor),

been decided.³⁸ 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.³⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁴⁰



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³⁸ *Grievance Procedure Manual* § 7.2(d).

³⁹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁴⁰ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).