Issue: Administrative Review of Hearing Officer's Decision in Case No. 10717; Ruling Date: April 8, 2016; Ruling No. 2016-4321; Agency: Virginia Department of Agriculture and Consumer Services; Outcome: Remanded to AHO for clarification.

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

ADMINISTRATIVE REVIEW

In the matter of the Department of Agriculture and Consumer Services
Ruling Number 2016-4321
April 8, 2016

The Department of Agriculture and Consumer Services (the "agency") 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 10717. For the reasons set forth below, EDR remands the case to the hearing officer for further consideration and explanation.

FACTS

The relevant facts in Case Number 10717, as found by the hearing officer, are as follows:[1]

> The Virginia Department of Agriculture and Consumer Services employed Grievant as a Program Support Technician Senior. She had been employed by the Agency for approximately nine years. No evidence of prior active disciplinary action was introduced during the hearing.
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> Grievant was assigned a unique badge number for which she was required to use ("swipe") when she drove her personal vehicle into an assigned parking lot and when she entered the Agency's building.
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> Grievant's scheduled work hours were from 7 a.m. to 4:30 p.m. on Mondays, Tuesdays, Wednesdays, and Fridays. On Thursdays, she worked from 7 a.m. until 11 a.m. She had a 30 minute lunch break. Grievant was a non-Exempt employee under the Fair Labor Standards Act. The Agency was obligated to pay her overtime if she worked more than 40 hours per week.
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> Grievant typically worked during her lunch break. If she experienced unforeseen delays such as traffic congestion, she would work later than her scheduled shift to "make up the time."
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> Grievant was a non-exempt employee under the Fair Labor Standards Act. She was entitled to be compensated for working in excess of 40 hours per week. The Agency required her to complete a timesheet using the Time, Attendance, and Leave System (TAL). This system is an online database. Employees use their computers to enter information into TAL. Exempt employees were not required to

[1] Decision of Hearing Officer, Case No. 10717 ("Hearing Decision"), March 1, 2016, at 2-3 (citation omitted).

complete timesheets because they would not be compensated for working in excess of 40 hours per week.

The Former Supervisor instructed Grievant to complete her timesheet by entering her scheduled hours. Grievant understood this instruction to mean she should enter on the timesheet the time she was scheduled to work regardless of when she actually arrived at work.

Grievant typically completed her timesheet by writing the date and number of hours worked in the day. In the comments section she usually wrote "7 a.m. – 4:30 p.m. (30 min lunch)." She submitted her timesheets to the Former Supervisor who approved them routinely and without objection or comment.

Grievant sometimes left her office and went to the Laboratory located several miles away. She would sometimes go to the Laboratory before beginning her work shift, during her work shift, and at the end of her work shift.

Grievant's Former Supervisor allowed Grievant to work from her home on occasion even though Grievant did not complete a telecommuting agreement. Her actions were not contrary and do not form a basis for discipline. An employee may work away from his or her office on occasion when given permission to do so by his or her supervisor.

Grievant reported to the Former Supervisor for several years. She began reporting to the Division Director in June 2015. He observed Grievant reporting to work at 7:30 a.m. on July 27, 2015. When Grievant submitted her timesheet for the week including July 27, 2015, Grievant wrote 7:00 a.m. in the comments section. Because the Division Director knew Grievant had reported at 7:30 a.m. and not 7:00 a.m. he initiated an investigation.

The Agency compared the dates and times Grievant swiped her badge with the times she wrote on her timesheet. The Agency interpreted Grievant's comment "7 a.m. – 4:30 p.m. (30 minute lunch)" to mean that Grievant was claiming she reported to the worksite at 7 a.m. and left at 4:30 p.m. after taking a 30 minute lunch. The Agency reviewed Grievant's timesheets from November 1, 2014 through January 31, 2015 and June 20, 2015 through August 12, 2015. Based on this review, the Agency concluded there "were a total of 140 hours and 7 minutes of falsified work hours …."

On or about October 22, 2015, the grievant was issued a Group III Written Notice with termination for failure to follow policy and falsification of records.[2] The grievant timely grieved the disciplinary action[3] and a hearing was held on January 11, 2015.[4] In a decision dated March 1, 2016, the hearing officer concluded that the agency had not presented sufficient evidence to show that the grievant had falsified her timesheets, but did find that the evidence showed she had

[2] Agency Exhibit 1 at 1-6.
[3] Agency Exhibit 3; *see* Hearing Decision at 1.
[4] *See* Hearing Decision at 1.

failed to follow policy by working through her lunch break to make up for late arrivals to and early departures from work.[5] As a result, he reduced the Group III Written Notice with termination to a Group II Written Notice with a ten-workday suspension and ordered the grievant reinstated with back pay, less the ten-day suspension.[6] The agency 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."[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 either party; the sole remedy is that the hearing officer correct the noncompliance.[8]

Inconsistency with Agency Policy

In its request for administrative review, the agency asserts that the hearing officer's decision is inconsistent with state and agency policy. Specifically, the agency argues that: (1) it was not permissible for the grievant to telework with approval from her supervisor because teleworking without a telework agreement is prohibited by state and agency policy; (2) the grievant's method of completing her timesheets constituted falsification because the agency's policy regarding the completion of timesheets required the grievant to enter her actual times of arrival and departure; and (3) the grievant was not present at work for her "assigned work schedule" as required by 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.[9] The agency has requested such a review. Accordingly, the agency's policy claims will not be discussed in this ruling.

Burden of Proof

The agency further argues that the hearing officer failed to apply the correct burden of proof in rendering a decision. In rejecting the agency's arguments that the grievant must have falsified her timesheets because she "could not account for her whereabouts on certain days or hours", the hearing officer noted that "[t]he agency has the burden of showing Grievant was not working on days she reported hours worked."[10] In its request for administrative review, the agency claims that it presented evidence to show "that the Grievant was not at her assigned work location" at certain times, "and therefore it is the Grievant's burden to provide evidence of mitigating circumstances" to show that she was actually performing work during those times when she was not at her customary work location. The agency asserts that "it is the employee's

[5] *Id.* at 1, 4-7.
[6] *Id.* at 8.
[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] Hearing Decision at 6.

burden to provide evidence of satisfactory work performance" when there is evidence that she was not at her normal worksite.

In cases involving discipline, the agency is required to show by a preponderance of the evidence that the issuance of the disciplinary action was warranted and appropriate under the circumstances,[11] and the hearing decision states as much in no uncertain terms.[12] In the Written Notice, the grievant was charged with falsification of records based on her submission of allegedly inaccurate timesheets that did not reflect her actual hours worked.[13] The agency presented a record of the grievant's arrivals to and departures from her primary work location as evidence that she worked less than her scheduled hours on certain days, and thus had falsified her timesheets by reporting that she worked her scheduled hours on those days.[14]

Evidence that an employee was not at her assigned work location during her normally scheduled work hours could, in some situations, constitute sufficient proof that the employee was not performing work to support the issuance of discipline. In this case, however, the parties do not appear to dispute that the grievant occasionally performed work outside of the agency's office,[15] though they disagree about when and how often that work occurred, as well as whether such work was acceptable under policy. In a case like this one, where an employee does not always work at a single location, a record of that employee's comings and goings from the agency's office would not, by itself, demonstrate that the employee was not performing work when she was not at a particular work location. Under the facts of this case, the hearing officer's application of the burden of proof was consistent with the requirements of the grievance procedure, the misconduct charged on the Written Notice, and the evidence in the record.[16] Accordingly, we decline to disturb the decision on this basis.

Hearing Officer's Consideration of Evidence

Fairly read, the remainder of the agency's request for administrative review contends that the hearing officer's decision is inconsistent with the evidence in the record. Hearing officers are authorized to make "findings of fact as to the material issues in the case"[17] and to determine the grievance based "on the material issues and the grounds in the record for those findings."[18] 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.[19] 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

[11] *Grievance Procedure Manual* § 5.8.
[12] Hearing Decision at 2.
[13] *See* Agency Exhibit 1.
[14] *See* Agency Exhibit 5.
[15] *See, e.g.*, Agency Exhibit 2 at 9-14; Agency Exhibit 9.
[16] Whether the evidence in the record is sufficient to support the hearing officer's finding that the agency had not satisfied that burden will be discussed further below.
[17] Va. Code § 2.2-3005.1(C).
[18] *Grievance Procedure Manual* § 5.9.
[19] *Rules for Conducting Grievance Hearings* § VI(B).

circumstances.[20] 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.

Grievant's Reporting of her Start and End Times

The hearing officer addressed the evidence showing whether the grievant had the necessary intent to falsify her timesheets, noting that "the times Grievant wrote on her timesheets were not intended . . . to reflect her 'clock in/clock out' times" because "[t]he Former Supervisor instructed Grievant to record her scheduled work hours on her time sheets."[21] In other words, the hearing officer found that the grievant intended to record "the number of hours she was scheduled to work" in the comments sections on her timesheets,[22] not the time of her arrival and departure each day. The hearing officer further determined that the agency policies and/or other evidence did not demonstrate the grievant should have known that she was falsifying her timesheets by completing them in this manner pursuant to the Former Supervisor's instructions.[23]

In its request for administrative review, the agency asserts that the grievant's intent in entering her scheduled work hours in the comments section of her timesheet is irrelevant because "policy requires employees to enter their start and end time and amount of time taken for their meal break." As discussed in the hearing decision, "[f]alsification is not defined by the Standards of Conduct but the Hearing Officer interprets this provision to require proof of an intent to falsify by the employee . . . ."[24] Whether the grievant entered her "start and end time" in the comments of timesheets consistent with the requirements of agency policy is a separate question from whether she engaged in falsification by intentionally entering information that she knew or should have known was inaccurate.[25] An analysis of this issue requires consideration of the Former Supervisor's instructions to the grievant regarding the completion of timesheets, which is discussed further below. Even assuming the hearing officer had found that the grievant failed to follow agency policy, however, misconduct of that nature would constitute only a Group II offense.[26] The hearing officer defined falsification to require "proof of an intent to falsify" the timesheets in order to support the issuance of the disciplinary action. As a result, evidence showing the requirements of agency policy was not, by itself, sufficient to uphold the disciplinary action in this case absent a showing of an intent to falsify.

The agency further disputes the hearing officer's findings of fact regarding whether the grievant possessed the necessary intent to falsify her timesheets. More specifically, the agency claims that the evidence shows the Former Supervisor "agreed he never instructed the Grievant to report work hours other than what was actually worked" and that the grievant knew or should have known how to properly complete her timesheets based on her receipt of agency policy

[20] *Grievance Procedure Manual* § 5.8.
[21] Hearing Decision at 4.
[22] *Id.* at 5.
[23] *Id.* at 5-6.
[24] Hearing Decision at 4.
[25] This question is one that may, in part, be addressed by the DHRM policy review.
[26] *See* DHRM Policy 1.60, *Standards of Conduct*, Attachment A (classifying "[f]ailure to follow supervisor's instructions or comply with written policy" as a Group II offense).

relating to the reporting of work hours and "numerous e-mails distributed to employees on correct timesheet completion."

The Former Supervisor appears to have provided several conflicting descriptions of his instructions to the grievant regarding the information she should report on her timesheets. At the hearing, the Former Supervisor testified that he directed the grievant to report the hours she was supposed to work in the comments section of her timesheet.[27] He further explained that he told her to report her regular work schedule for each day, and that it did not make sense for her to report the time she arrived and left each day because she worked 40 hours per week regardless of the exact times of her arrival and departure.[28] Though there is also some evidence in the hearing record to suggest that the Former Supervisor provided other statements describing his instruction to the grievant that conflicted with his testimony at the hearing,[29] conclusions as to the credibility of witnesses 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. EDR finds no basis to disturb the hearing officer's conclusion that the Former Supervisor's testimony regarding his instruction to the grievant was credible.

Furthermore, it is clear from a review of the hearing decision that the hearing officer considered and addressed the impact of agency policy and/or emails directing employees about what information they should report on their timesheets in reaching his decision. The hearing officer specifically quoted relevant sections of the policies addressing timesheet completion and noted that those policies "[did] not specify that an employee must record the precise minute he or she began and ended working on a particular day."[30] While the ultimate interpretation of policy is an issue for DHRM, based on a review of the hearing record, EDR cannot find sufficient fault with the hearing officer's analysis of the policy such that remand is warranted as a matter of the grievance procedure. For example, while emails to staff regarding timesheets stated that employees must "enter their start and end time" and the "amount of time taken for their lunch break,"[31] one of those emails also states that "[i]f your supervisor has told you otherwise *please follow your supervisor's instructions*."[32] As discussed above, the hearing officer found that the Former Supervisor directed the grievant to enter her normally scheduled work hours in the comments section of her timesheet, not her time of arrival and departure each day.

For these reasons, EDR concludes that there is evidence in the record to support the hearing officer's findings that the Former Supervisor directed the grievant to complete her timesheets by entering her scheduled work hours in the comments section and that the grievant did not know she should have done otherwise. Therefore, the grievant's behavior of entering her start and end times consistent with this directive from her Former Supervisor, even if inconsistent with the requirements of policy, would support the hearing officer's conclusion that the grievant did not act in accordance with an intent to falsify. Determinations of credibility as to disputed facts are precisely the sort of findings reserved solely to the hearing officer. In this case, EDR cannot conclude that the hearing decision was not based upon the evidence in the

[27] Hearing Recording at 2:58:16-2:59:56, 3:00:11-3:02:03(testimony of Former Supervisor).
[28] *Id.* at 3:00:55-3:02:03 (testimony of Former Supervisor).
[29] *E.g.*, Agency Exhibit 9.
[30] Hearing Decision at 6.
[31] Agency Exhibit 11 at 8, 13.
[32] *Id.* at 8 (emphasis added).

record and the material issues of the case. As a result, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings and declines to disturb the decision on this basis.

Grievant's Reporting of her Number of Hours Worked

In the hearing decision, the hearing officer considered whether the grievant "falsified her timesheets by reporting that she worked on days and for hours she did not work," and found that the agency had not presented evidence to demonstrate she had done so.[33] In support of this conclusion, the hearing officer noted that the "Grievant's Former Supervisor permitted Grievant to work from home on occasion and required her to perform duties away from her customary work site. She was not required to record where she was working or what she was doing on these days. Expecting Grievant to account for her activities on particular dates occurring nine to ten months earlier is unreasonable."[34]

In its request for administrative review, the agency argues that the evidence in the record does not support the hearing officer's findings on this issue and that the hearing officer failed to consider some of the evidence relating to the number of hours the grievant worked. Specifically, the agency notes that the grievant did not provide evidence to show that "she worked beyond her scheduled shift;" that several witnesses who testified about their knowledge of the grievant's work schedule left work before the grievant, and thus could not verify the time at which the grievant left work; that the evidence regarding the grievant's trips to the Laboratory "does not account for the significant discrepancies" in her timesheets; that the grievant's response to the Division Director on July 27, which prompted the investigation leading to the discipline, indicates that she knew her actions were improper; and that the record of the grievant's swipes into and out of the building "fall[s] short of her required total 40 hour work week."

As discussed above, it was the agency's burden in this case to demonstrate that the grievant was not working at the times she reported on her timesheets. EDR does not disagree that evidence in the record relating to the number of hours the grievant worked each week is unclear, and could have supported a conclusion that the grievant reported hours she did not actually work on her timesheets. Indeed, the apparent discrepancies in the start and end times reported on the grievant's timesheets and the record of her swipes into and out of the building raise legitimate concerns about whether she was working 40 hours per week, and would justify an agency investigation to determine whether misconduct had occurred. However, the question to be addressed on administrative review is not whether EDR agrees with the decision reached by the hearing officer, but whether there are facts in the record to support that decision.

The agency presented evidence to show the grievant's swipes into and out of the agency's office location from two time periods: November 1, 2014 through January 31, 2015 and June 20, 2015 through August 12, 2015.[35] From the hearing officer's discussion, it is apparent that he considered the evidence regarding the grievant's reported number of hours worked from November 2014 through January 2015 in concluding that "[e]xpecting Grievant to account for

[33] Hearing Decision at 6.
[34] *Id.*
[35] Agency Exhibit 5.

her activities on particular dates occurring nine to ten months earlier [was] unreasonable."[36] Having reviewed the hearing record, EDR finds that there is evidence to support the hearing officer's conclusion that the agency did not show that the grievant falsely reported that she worked 40 hours per week on her timesheets when she had actually not done so with respect to the November 2014 through January 2015 time period.[37]

It is squarely within the hearing officer's discretion to determine the weight to be given to the evidence presented by the parties. 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. 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] For the November 2014 through January 2015 time period, there is little, if any, evidence in the record that would reasonably explain discrepancies in the grievant's swipe log given the broad discretion the Former Supervisor allowed for the grievant to work from home, perform work out of the office, and/or run work-related errands, combined with an apparent lack of oversight. In short, where the record is unclear, the hearing officer can reasonably resolve the case against the party carrying the burden of proof, i.e., the agency. EDR cannot find record evidence that would suggest the hearing officer abused his discretion in making these factual conclusions.

However, EDR is unable to determine whether the hearing officer considered and addressed some of the evidence in the record relating to the actual number of hours the grievant worked during the June through August 2015 time period. The stated grounds for the hearing officer's conclusion that the agency had not met its burden on this issue appear to relate to the November 2014 to January 2015 time period, rather than this later period. The agency's record of the grievant's swipes in and out between June and August 2015 indicates that the grievant left the agency's office location between one and three hours before the end of her scheduled work shift on multiple days.[39] The grievant no longer reported to the Former Supervisor at that time,[40] and there is a greater degree of temporal proximity between those dates and the investigation that resulted in the grievant's termination.[41] These discrepancies in the grievant's swipes in and out between June and August 2015, and how they compare with the number of work hours the grievant reported on her timesheets, are not addressed clearly in the hearing decision. It may be that the hearing officer did not discuss the evidence relating to the number of hours the grievant reported on her timesheets during this time period because he did not find that it was sufficient to demonstrate the grievant had engaged in falsification. However, EDR cannot determine whether the hearing officer considered the evidence in the record relating to that time period in making his decision. Accordingly, the hearing decision must be remanded to the hearing officer for further consideration and explanation of the evidence in the record relating to the grievant's

[36] Hearing Decision at 6.
[37] *E.g.*, Hearing Recording at 2:58:48-2:59:56, 3:02:58-3:03:18, 3:12:21-3:12:31 (testimony of Former Supervisor), 3:40:05-3:41:09, 4:49:19-4:49:44 (testimony of grievant).
[38] *See, e.g.*, EDR Ruling No. 2012-3186.
[39] Agency Exhibit 1 at 11-12; Agency Exhibit 5 at 1-26.
[40] Hearing Recording at 11:08-11:38 (testimony of Supervisor).
[41] The grievant was presented with a due process notice on or about August 18, 2015, approximately one to two months after the June through August 2015 time period, and nine to ten months after the November 2014 through January 2015 time period. *See* Agency Exhibit 1 at 13.

reporting of her work hours between June 20 and August 12, 2015, including the agency's allegations regarding July 27, 2015.[42]

Lunch Breaks

Finally, the agency argues that the hearing officer erred in his consideration of the evidence relating to the grievant's practice of working through her lunch break. The agency claims that hearing officer's statement that that the "Grievant typically worked during her lunch break"[43] is inconsistent with his conclusion that it was not reasonable for the agency to expect the grievant to recall what work she performed on certain days in the past in order to prove she had not falsely reported the number of hours she worked on her timesheets. The agency also contends that there is no evidence to support the grievant's testimony that she worked through her lunch breaks, and that she engaged in falsification by reporting a lunch break in the comments section of her timesheets if she had actually worked through lunch.

Though the hearing officer found that the grievant usually worked during her lunch break, he made no explicit findings regarding actual dates or times when this occurred. Several witnesses testified that the grievant normally did not take a lunch break,[44] and EDR has identified nothing to indicate the hearing officer's finding that the grievant often worked through lunch was contrary to the evidence. That the grievant and/or other witnesses did not identify specific dates on which she worked through lunch would not preclude the hearing officer from concluding that it was her typical practice to do so. Furthermore, the hearing officer's determination that the grievant usually did not take a lunch break does not contradict any of his other factual findings, nor does it conflict with any of his conclusions about whether the grievant's reporting of the number of hours she worked on her timesheets constituted falsification. As discussed above, it was the agency's burden to prove that the grievant had not actually worked for the number of hours she reported on her timesheets each week.

In addition, the agency's claim that the grievant falsified her timesheets by reporting her lunch breaks when she typically worked through lunch is not persuasive. As discussed above, the Former Supervisor instructed the grievant to report her normally scheduled work hours, including lunch breaks, in the comment section on her timesheets. Pursuant to that instruction, the grievant should have reported her normally scheduled lunch break for each day, not the specific length of time she took for lunch each day.

As stated above, determinations of disputed facts of this nature are precisely the sort of findings reserved solely to the hearing officer. Based on EDR's review of the hearing record, there is nothing to indicate that the hearing officer's analysis of the evidence relating to the grievant's lunch breaks was in any way unreasonable or not based on the actual evidence in the record. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR cannot conclude that the hearing officer's decision constitutes an

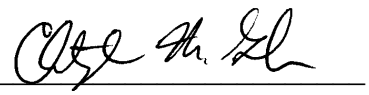
[42] This remand should in no way be interpreted to mean that EDR considers the record evidence sufficient to meet the agency's burden. Rather, these questions are obviously central to the disciplinary action in this case and, consequently, must be clearly considered and addressed by the hearing officer, to the extent they have not been already.
[43] Hearing Decision at 2.
[44] Hearing Recording at 2:18:40-2:18:56 (testimony of Coworker), 2:58:16-2:58:34 (testimony of Former Supervisor); *see* Agency Exhibit at 2 at 9.

abuse of discretion in this case. Accordingly, EDR will not disturb the hearing decision on this basis.

CONCLUSION AND APPEAL RIGHTS

This case is remanded to the hearing officer for further consideration of the evidence in the record to the extent discussed above. The hearing officer should issue his remand decision before DHRM addresses the agency's request for administrative review based on questions of compliance with state and/or agency policy. Following the remand decision, DHRM will have the opportunity to address all issues of policy that have been timely raised or that may be raised after the remand decision is issued.

Both parties will have the opportunity to request administrative review of the hearing officer's reconsidered decision on any other *new matter* addressed in the remand decision (i.e., any matters not previously part of the original decision).[45] Any such requests must be **received** by the administrative reviewer **within 15 calendar days** of the date of the issuance of the remand decision.[46] 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 been decided.[47] 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.[48] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[49]



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[45] *See, e.g.*, EDR Ruling Nos. 2008-2055, 2008-2056.
[46] *See Grievance Procedure Manual* § 7.2.
[47] *Id.* § 7.2(d).
[48] Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).
[49] *Id.; see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).