Issue: Administrative Review of Hearing Officer's Decision in Case No. 10770; Ruling Date: May 26, 2016; Ruling No. 2016-4346; Agency: Department of Motor Vehicles; Outcome: AHO's decision affirmed.

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

## ADMINISTRATIVE REVIEW

In the matter of the Department of Motor Vehicles
Ruling Number 2016-4346
May 26, 2016

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 10770. For the reasons set forth below, EDR will not disturb the hearing decision.

### FACTS

The relevant facts in Case Number 10770, as found by the hearing officer, are as follows:[1]

> The Department of Motor Vehicles employed Grievant as a Generalist Senior at one of its facilities. Her duties included completing licensing and titling transactions for customers. Her work duties were satisfactory to the Agency.
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> The Agency typically registers vehicles for up to three years. In some counties such as County 1, however, vehicles could only be registered for up to two years. Under State regulation, vehicles garaged in the jurisdiction (garaged jurisdiction) of County 1 are required to have a vehicle emissions inspection completed every two years. Because vehicle emissions were required every two years for County 1, vehicles garaged in County 1 were eligible only for a two year registration (with limited exceptions). One of Grievant's duties included explaining vehicle emission requirements to customers. She had in-depth knowledge of the requirement for a two year registration in County 1.
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> On February 9, 2009, the Agency issued a Certificate of Title for a Vehicle to Grievant and her Husband. Grievant and her Husband signed the Certificate on April 7, 2011 as sellers with Grievant being the sole buyer. Grievant wrote that the garaged jurisdiction was County 1. The Agency received the document on April 11, 2011.
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> On April 11, 2011, the title was reissued in Grievant's name only with a garaged location of County 1. The vehicle passed an emissions test on April 8, 2011. The next date for an emissions test was April 30, 2013. The Vehicle

[1] Decision of Hearing Officer, Case No. 10770 ("Hearing Decision"), April 13, 2016, at 2-4 (citations omitted).

Emissions Inspection Report states, "you may now register this vehicle for a period of up to two (2) years."

On April 21, 2011, registration for the Vehicle was reissued. The garaged location remained County 1.

On October 15, 2011, the garaged jurisdiction for the Vehicle was changed from County 1 to Another State. The Vehicle was not garaged in Another State on a permanent basis. In fact, it remained principally garaged in County 1 and Grievant continued to use the Vehicle to commute to work.

On August 24, 2015, Grievant submitted an Address Change Request to Ms. W at the Agency's Facility. She changed her address from Address A to Address B in County 1. The form contained a Vehicle Registration Mailing Address section that Grievant left blank.

Ms. W processed the Address Change Request form. Ms. W then printed out the registration card for Grievant's vehicle. The registration card showed the garaged jurisdiction as being Another State. Grievant had resumed working. Grievant "finished up" with a customer. Ms. W approached Grievant and indicated the form showed the Vehicle being registered in Another State. Grievant said she knew that. Ms. W asked Grievant if she wanted Ms. W to "fix it". Grievant said "No" because she would "take care of it." Grievant did not change the garaged location for the Vehicle.

In September 2015, the Manager, Ms. J, spoke with Grievant and said that Ms. W told her that Grievant's Vehicle was garaged in Another State. Ms. J asked why. Grievant said she was going to change it but did not give a reason why the Vehicle was garaged in Another State. Ms. J told Grievant that she needed to change the garaged location for the Vehicle. Grievant did not make the change.

On November 16, 2015, the Manager spoke with Grievant about her failure to change the garaged jurisdiction for her Vehicle. Grievant explained that she was "going through things with her husband" and questioned why the Agency had the right to check her records. Grievant said she had been paying personal property taxes and wanted to know the difference between her changing jurisdictions and customers changing jurisdictions. Grievant said her Vehicle would not have passed an emissions test and she questioned how she would get to work.

On November 16, 2015 at 8:12 p.m., Grievant accessed the internet and renewed the registration for her vehicle. The new registration expiration date was in April 2019.

On November 16, 2015 at 9:52 p.m., Grievant accessed the internet and changed the garaged jurisdiction from Another State to County 1.

> In November 2015, Grievant entered the office where she worked and began waiving her registration form. Grievant announced repeatedly to other employees that she received a three year registration.
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> Grievant used the Vehicle to commute to work for at least four years without interruption. Grievant paid County 1's personal property taxes on the Vehicle since 2011.
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> Grievant sent an email to Ms. S on January 5, 2016 seeking relocation to another facility due to work place harassment.

On or about January 11, 2016, the grievant was issued a Group III Written Notice with termination for unsatisfactory performance, failure to follow instructions and/or policy, and falsification of records.[2] The grievant timely grieved the disciplinary action[3] and a hearing was held on March 15, 2016.[4] In a decision dated April 13, 2016, the hearing officer determined that the agency had presented sufficient evidence to show that the grievant had falsified records and upheld the issuance of the Group III Written Notice with termination.[5] 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."[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]

The *Grievance Procedure Manual* provides that "[r]equests for administrative review must be in writing and ***received by*** the reviewer within 15 calendar days of the date of the original hearing decision."[8] EDR has typically permitted an appealing party to submit additional briefing material after this deadline to supplement a timely request for administrative review. However, new matters raised after the deadline passes will not be addressed. Only issues raised within the 15 calendar days can be considered by EDR on administrative review. EDR specifically advised the grievant as to these requirements.[9]

The grievant submitted a short request for administrative review on April 28, 2016, the final day of the 15 calendar-day appeal period. After the deadline passed, the grievant submitted

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[2] Agency Exhibit 1.
[3] Agency Exhibit 2.
[4] *See* Hearing Decision at 1.
[5] *See id.* at 1, 5-8.
[6] Va. Code §§ 2.2-1202.1(2), (3), (5).
[7] *See Grievance Procedure Manual* § 6.4(3).
[8] *Id.* § 7.2.
[9] *See, e.g.*, Hearing Decision at 8-9.

a longer "rebuttal" document,[10] along with other materials. To the extent the issues raised in the rebuttal and these additional materials cannot be inferred so as to have been included or raised in the original request for review, EDR is unable to consider them in this ruling.

The initial request for review contains some specific issues, but primarily contests the hearing officer's findings of fact generally. The grievant's rebuttal contains many specific factual matters on which she contests the hearing officer's decision. The grievant's rebuttal stretches EDR's allowance to submit supplemental briefing after the 15 calendar-day deadline to its limits and beyond. Some of the matters raised in her supplemental submissions will be addressed in this ruling in an effort to give the grievant every benefit of the doubt as to what she had intended to challenge in her original submission. However, not all of her claims will be addressed, as some are considered untimely. To the extent this ruling does not specifically address a particular claim raised by the grievant on administrative review, it has been determined by EDR that those matters are either insufficient to warrant remand to the hearing officer and/or are untimely.

*Factual Disputes*

In her request for administrative review, the grievant argues that the hearing officer's findings of fact, based on the weight and credibility that he accorded to evidence presented at the hearing, are not supported by the evidence. Hearing officers are authorized to make "findings of fact as to the material issues in the case"[11] and to determine the grievance based "on the material issues and the grounds in the record for those findings."[12] 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.[13] Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.[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.

In the hearing decision, the hearing officer assessed the evidence and determined that, "[o]n October 15, 2011, Grievant changed the DMV garaged jurisdiction records to show that her Vehicle was garaged in Another State thereby avoiding a Vehicle emissions test."[15] He

[10] The grievant appears to have read the *Grievance Procedure Manual* to permit her to submit such a "rebuttal" within 10 days after the conclusion of the original 15 calendar-day appeal period. *See Grievance Procedure Manual* § 7.2(a). The grievant's reading is incorrect. The "rebuttal" referred to in the *Manual* relates to the response that may be filed by the party responding to the opposing party's request for administrative review. Thus, for example, in this case, the agency is the party that is permitted to file a rebuttal within 10 days after the conclusion of the original appeal period, not the grievant.
[11] Va. Code § 2.2-3005.1(C).
[12] *Grievance Procedure Manual* § 5.9.
[13] *Rules for Conducting Grievance Hearings* § VI(B).
[14] *Grievance Procedure Manual* § 5.8.
[15] Hearing Decision at 6.

further stated that she "was notified by Ms. W that the garaged information was in error on August 24, 2015" and "did not correct the DMV record until November 16, 2015 . . . ."[16] The hearing officer also concluded that the grievant "accessed the internet" to "renew[] the registration for her vehicle" and "change[] the garaged jurisdiction from Another State to County 1" on November 16, 2015,[17] and found that the grievant "announced repeatedly to other employees that she received a three year registration" in November after the internet transaction had been completed.[18] The grievant disputes the hearing officer's factual findings on these points and asserts that: (1) Ms. W should have changed the garage jurisdiction to County 1 when processing the Address Change Request in August 2015; (2) she was unaware the Vehicle was garaged in Another State until she was notified by the agency in November 2015; (3) she did not tell other employees that she had received a three-year registration; (4) the Vehicle was first reported as garaged in Another State in April 2013, not October 2011; and (5) her husband conducted the online transactions on November 16, 2015 to renew the registration for three years and changed the garage jurisdiction to County 1.

There is evidence in the record to support the hearing officer's finding that the Address Change Request as submitted by the grievant was not sufficient to change the jurisdiction in which the Vehicle was garaged. Three agency witnesses testified consistently that, when processing such a form for a customer, an agency employee would not change the garaged jurisdiction unless requested to do so by the customer.[19] Ms. W testified that she told the grievant the Vehicle was garaged in Another State when she processed the Address Change Request on August 24, 2015, and that the grievant told her to leave the garaged jurisdiction as Another State.[20] There is also evidence to show that the "Grievant was reminded of the error in September 2015 by Ms. J but Grievant chose not to correct the error."[21] In short, the hearing officer's conclusion that the grievant knew the Vehicle was garaged in Another State before November 16, 2015 is supported by record evidence.[22] Ms. W further testified that the grievant told other employees that she had received a three-year registration after the transaction had been processed on November 16.[23] Though the grievant argues that Ms. W stated she "heard" that the grievant had done this, Ms. W's testimony was that she observed the grievant telling others about the three-year registration.[24]

Though the grievant may disagree with the hearing officer's assessment of this evidence, conclusions as to the credibility of witnesses are precisely the kinds of determinations reserved solely to the hearing officer, who may observe the demeanor of the witnesses, take into account motive and potential bias, and consider potentially corroborating or contradictory evidence. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the

[16] *Id.*
[17] *Id.* at 3-4.
[18] *Id.* at 4.
[19] Hearing Recording at 46:59-48:13 (testimony of Ms. J), 1:23:06-1:25:37 (testimony of Ms. W), 2:14:18-2:15:22 (testimony of Deputy Director).
[20] *Id.* at 1:15:45-1:16:29 (testimony of Ms. W).
[21] Hearing Decision at 6; *see* Hearing Recording at 14:26-15:25 (testimony of Ms. J).
[22] Hearing Decision at 6.
[23] Hearing Recording at 1:17:53-1:18:19 (testimony of Ms. W).
[24] *See id.*

version of facts adopted by the hearing officer, as is the case here.[25] Because the hearing officer's findings of facts with regard to these issues are based upon evidence in the record and address the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

The grievant's claims regarding the original change of the garaged jurisdiction in 2013 and the transactions conducted on November 16, 2015, however, appear to have some merit. Although one of the agency's records shows that the Vehicle's garaged jurisdiction was changed to Another State on October 15, 2011,[26] other evidence shows that it continued to be correctly listed as garaged in County 1 until April 24, 2013.[27] Based on EDR's review of the evidence in the record, the agency's documents are unclear as to when the garaged jurisdiction of the Vehicle was changed. Similarly, the agency's records regarding the November 16, 2015 three-year registration renewal and change of the garaged jurisdiction from Another State to County 1 do not indicate who carried out the transactions because they were done on the internet.[28] At the hearing, the grievant testified that her husband maintained the registration for the Vehicle and that he conducted the internet transactions on November 16 at her request.[29] EDR has not identified any evidence in the record to show that the grievant herself accessed the internet to renew the registration or change the garaged jurisdiction. In short, we agree with the grievant that the hearing officer's findings that the Vehicle was reported as garaged in Another State on October 15, 2011, and that she accessed the internet to renew the registration and change the garaged jurisdiction to County 1 on November 16, 2015, may not be supported by evidence in the record.

However, the hearing officer further determined that, even if the grievant's husband originally changed the garaged jurisdiction of the Vehicle to Another State, the "Grievant was notified of the error on August 25, 2015 but took no action to correct the problem" and thus "made the falsification her own by taking no action to correct it."[30] As discussed above, there is evidence in the record to show that Ms. W notified the grievant that the Vehicle was garaged in Another State on August 25.[31] The hearing officer appears to have focused on the time period beginning on August 25 and continuing until the garaged jurisdiction was changed to County 1 on November 16 as the relevant time period in which the falsification occurred. The hearing officer determined that the grievant's failure to correct the garaged jurisdiction during this time period constituted falsification.[32] In so doing, the hearing officer relied upon facts in the record.[33]

As stated above, hearing officers must make "findings of fact as to the *material issues* in the case"[34] and determine the grievance based "*on the material issues* and grounds in the record

[25] *See, e.g.*, EDR Ruling No. 2012-3186.
[26] Agency Exhibit 5 at 4-5.
[27] Agency Exhibit 9 at 1; Hearing Recording at 1:49:26-1:50:56 (testimony of Program Manager).
[28] Agency Exhibit 9 at 1; Hearing Recording at 1:51:41-1:52:33, 1:58:13-1:58:25 (testimony of Program Manager).
[29] *E.g.*, Hearing Recording at 4:09:55-4:11:52 (testimony of grievant).
[30] Hearing Decision at 6.
[31] Hearing Recording at 1:15:45-1:16:29 (testimony of Ms. W).
[32] Whether this failure to correct can reasonably be considered "falsification" under the DHRM Policy 1.60, *Standards of Conduct*, is a question of policy, and not ultimately answerable by EDR.
[33] *E.g.*, Hearing Recording at 2:11:41-2:13:13, 2:17:41-2:18:25 (testimony of Deputy Director).
[34] Va. Code § 2.2-3005.1(C).

for those findings."[35] Based on the hearing officer's discussion of the evidence, it is apparent that the original change of the garaged jurisdiction to Another State, as well as the transactions that corrected the garaged jurisdiction to County 1 and resulted in the issuance of a three-year registration in violation of the agency's registration policies on November 16, 2015, were not material issues in this case such that the outcome of this case would be changed if remanded to the hearing officer for further consideration and/or correction of the facts. The hearing officer determined that the grievant engaged in falsification between August and November 2015, when she was aware that the Vehicle was incorrectly garaged in Another State and took no action to correct the falsely-reported garaged jurisdiction. The hearing officer has based his decisions on facts in the record and, accordingly, EDR is unable to disturb the hearing decision on the bases discussed above.

*Mitigation*

Fairly read, the grievant's request for administrative review alleges that the hearing officer erred in not mitigating the agency's disciplinary action. By 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]."[36] The *Rules for Conducting Grievance Hearings* (the "*Rules*") provide that "a hearing officer is not a 'super-personnel officer'" and that "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."[37] 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.[38]

Thus, the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above. Further, if those findings are made, a hearing officer must uphold the discipline if it is within the limits of reasonableness.

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 the issue for that of agency management. Indeed, the "exceeds the limits of reasonableness" standard is a high standard to meet, and has been described in analogous Merit Systems Protection Board case law as one prohibiting interference with management's discretion unless under the facts the discipline imposed is viewed as unconscionably disproportionate, abusive, or totally unwarranted.[39] EDR will review a hearing officer's mitigation determination for abuse of

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[35] *Grievance Procedure Manual* § 5.9.
[36] Va. Code § 2.2-3005(C)(6).
[37] *Rules for Conducting Grievance Hearings* § VI(A).
[38] *Id.* § VI(B)(1).
[39] 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).

discretion,[40] and will reverse only where the hearing officer clearly erred in applying the *Rules*' "exceeds the limits of reasonableness" standard.

In the hearing decision, the hearing officer assessed the evidence and found that the grievant had not been singled out for discipline or treated differently than other similarly situated employees.[41] The hearing officer concluded that "the Agency learned of [the grievant's] behavior only because she submitted a change of address that contained incorrect information" and that it reviewed the grievant's and another employee's registration records.[42] Based on this review, the agency determined that the other employee's actions did not warrant the issuance of discipline because "[t]he other employee corrected an error when the error was brought to the employee's attention."[43] The grievant disagrees with the hearing officer's assessment of the evidence regarding the comparator employee and appears to argue that hearing officer should have mitigated the disciplinary action.

At the hearing, the comparator employee testified at the hearing that she had reported her vehicle was garaged outside of County 1 for a period of one day, then corrected the garaged jurisdiction to County 1.[44] An agency witness stated that the other employee's actions did not warrant corrective action due to the nature and duration of the change in the garaged jurisdiction.[45] The evidence in the record shows that the grievant, on the other hand, reported that her Vehicle was garaged in another jurisdiction for a period of multiple years, was notified by agency management that the Vehicle was garaged in Another State repeated times, and was directed to correct the garaged jurisdiction but did not do so.[46] One agency witness further testified that she had not engaged in discrimination against the grievant, nor, to her knowledge, had any other agency employees.[47]

While the grievant may disagree with the hearing officer's mitigation decision, there is nothing to indicate that the hearing officer's decision not to mitigate on this basis was contrary to the evidence in the record or constitutes an abuse of discretion. Based on EDR's review of the record, it appears that the evidence presented at the hearing was sufficient to support the hearing officer's decision not to mitigate the discipline and that his determination was otherwise not arbitrary or capricious. Accordingly, EDR will not disturb the hearing officer's mitigation decision on that basis.

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[40] "'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.*
[41] Hearing Decision at 7.
[42] *Id.*
[43] *Id.*
[44] Hearing recording at 2:34:35-2:35:34 (testimony of co-worker).
[45] *Id.* at 2:02:29-2:03:29 (testimony of Deputy Director).
[46] *E.g.*, Agency Exhibit 9 at 1; Hearing Recording at 14:26-15:25 (testimony of Ms. J), 1:15:45-1:16:29 (testimony of Ms. W).
[47] Hearing Recording at 1:08:41-1:08:51 (testimony of Ms. J).

*Newly-Discovered Evidence*

The grievant has submitted additional documents to EDR that were not admitted into the hearing record.[48] Because of the need for finality, evidence not presented at hearing cannot be considered upon administrative review unless it is "newly discovered evidence."[49] Newly discovered evidence is evidence that was in existence at the time of the hearing, but was not known (or discovered) by the aggrieved party until after the hearing ended.[50] However, the fact that a party discovered the evidence after the hearing does not necessarily make it "newly discovered." Rather, the party must show that

> (1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has been exercised; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended.[51]

The grievant has provided no information to support a contention that the documents should be considered newly discovered evidence under this standard. Indeed, the documents she has provided to EDR are dated after the hearing,[52] and thus did not exist at the time the hearing took place. Accordingly, there is no basis for EDR to re-open or remand the hearing for consideration of this additional evidence.

*Alleged Bias*

In her request for administrative review, the grievant further asserts that the hearing officer demonstrated bias against her because he did not shake her hand or her advocate's hand at the hearing, but gave the agency's advocate a "proper hand shake." The *Rules* address bias primarily in the context of recusal, and provide that a hearing officer is responsible for

> [v]oluntarily recusing himself or herself and withdrawing from any case (i) as required in "Recusal," § III(G), below, (ii) when required by the applicable rules governing the practice of law in Virginia, or (iii) when required by EDR Policy No. 2.01, Hearing Officer Program Administration.[53]

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[48] The grievant has provided EDR with two documents that were not admitted into the hearing record and other documents that appear to have been included among the grievant's exhibits that were admitted into the record at the hearing. EDR's review will address those submissions that are not a part of the hearing record.

[49] *Cf.* Mundy v. Commonwealth, 11 Va. App. 461, 480-81, 390 S.E.2d 525, 535-36 (1990), *aff'd en banc*, 399 S.E.2d 29 (Va. Ct. App. 1990) (explaining the newly discovered evidence rule in state court adjudications); *see* EDR Ruling No. 2007-1490 (explaining the newly discovered evidence standard in the context of the grievance procedure).

[50] *See* Boryan v. United States, 884 F.2d 767, 771-72 (4th Cir. 1989) (citations omitted).

[51] *Id.* at 771 (quoting Taylor v. Texgas Corp., 831 F.2d 255, 259 (11th Cir. 1987)).

[52] *See* Hearing Decision at 1.

[53] *Rules for Conducting Grievance Hearings* § II.

The EDR requirement of recusal when the hearing officer cannot guarantee a fair and impartial hearing is generally consistent with the manner in which the Court of Appeals of Virginia approaches the judicial review of recusal cases.[54] The Court of Appeals has indicated that "whether a trial judge should recuse himself or herself is measured by whether he or she harbors 'such bias or prejudice as would deny the defendant a fair trial.'"[55] EDR finds the Court of Appeals' standard instructive and has held that in compliance reviews of assertions of hearing officer bias, the appropriate standard of review is whether the hearing officer has harbored such actual bias or prejudice as to deny a fair and impartial hearing or decision.[56]

The party moving for recusal of a judge has the burden of proving the judge's bias or prejudice.[57] The evidence presented by the grievant here is insufficient to establish bias or any other basis for disqualification. Further, EDR's review of the hearing record did not indicate any bias or prejudice on the part of the hearing officer. 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. Nothing in this ruling is meant to indicate agreement with the outcome or findings in this case; rather, this ruling only determines that under the standard of review applicable under the grievance procedure EDR is unable to remand the case for further proceedings. 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.[58] 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.[59] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[60]

Christopher M. Grab
Director
Office of Employment Dispute Resolution

[54] While not always dispositive for purposes of the grievance procedure, EDR has in the past looked to the Court of Appeals of Virginia and found its holdings persuasive. *See, e.g.*, EDR Ruling No. 2015-3969.
[55] Welsh v. Commonwealth, 14 Va. App. 300, 315, 416 S.E.2d 451, 459 (1992) (citation omitted); *see* Commonwealth v. Jackson, 267 Va. 226, 229, 590 S.E.2d 518, 520 (2004) ("In the absence of proof of actual bias, recusal is properly within the discretion of the trial judge.").
[56] EDR Ruling No. 2012-3176.
[57] *Jackson*, 267 Va. at 229, 590 S.E.2d at 519-20.
[58] *Grievance Procedure Manual* § 7.2(d).
[59] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[60] *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).