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ADMINISTRATIVE REVIEW

In the matter of the Virginia Military Institute
Ruling Number 2021-5203
March 3, 2021

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) administratively review the hearing officer’s decision in Case Number 11618. For the reasons set forth below, EDR will not disturb the hearing officer’s decision.

FACTS

The relevant facts in Case Number 11618, as found by the hearing officer, are as follows:¹

. . . [T]he Grievant was employed by the [Virginia Military Institute (the “Institute” or “agency”)] as the Grounds Shop Supervisor in the Physical Plant. In this capacity, the Grievant was responsible for supervising approximately a dozen employees, maintaining the grounds and performing other duties assigned to the Grievant’s shop. The Grievant has worked for [the agency] for approximately 13 years.

The Grievant’s direct supervisor was the Director of Maintenance & Operations, who, in turn, reports to the Director of Physical Plant [the “Director”].

The [agency] . . . provides academic study of the highest possible quality conducted in and facilitated by a rigorous system of military discipline. . . . The unique culture of [the agency] develops in cadets the highest standards of honor, respect, civility, self-discipline, and professionalism.

The Grievant, in the important Grounds Shop Supervisor role, supervised numerous [agency] grounds personnel in the important function of keeping the campus “always on parade.” It is integrally important to its mission and military

¹ Decision of Hearing Officer, Case No. 11618 (“Hearing Decision”), January 8, 2021, at 2-9 (internal citations and paragraph enumeration omitted).

tradition that the grounds appear immaculate to cadets, alumni, the public, staff, and visiting dignitaries, such as Vice President Pence, most recently.

According to his Employee Work Profile (“EWP”), the Grievant is the effective Supervisor of the Grounds Shop, responsible for coordinating the maintenance and support of all grounds, setups, snow removal, etc. post-wide and supports the Agency’s grounds programs by providing leadership and supervision to grounds workers in his shop. . . .

On April 2, 2019, the former Director of Physical Plant . . . submitted a [work order] “to spruce up the landscaping around the 404 Parade Avenue residence (“404”). The work should be scheduled to be done after the contractor has finished the renovation work and left the job site, but just before the projected move-in of [the Sergeant Major (“SM”)] currently scheduled for May 1.”

404 is in a very visible, prominent part of campus/post in military terminology. SM has had a distinguished military career and is in a prominent position at [the agency], leading and an example to cadets and staff alike.

On May 23, 2019, [the former Director of Physical Plant] requested an update from Grievant and Grievant responded, “We re-sodded where the dumpster was located be graduation and that all. Not sure what else needs to be done.”

On May 29, 2019, [the Director] inspected the landscaping work at [404] and it was obvious that the landscaping had not been satisfactorily completed to [agency] standards and commensurate with surrounding houses according to [agency] policy even though Grievant had previously stated “not sure what else needs to be done.” [The Director] took photos of the “eye sore” and sent Grievant an email requiring maintenance.

On June 9, 2020, SM, now a paying tenant of 404, himself sent in a Work Order . . . requesting clean up of “. . . the weeds and growth on the side yard Someone came last year and moved some rocks and cut down a lot of the weeds. I request it be landscaped when the opportunity arises.”

On June 23, 2020, after some perfunctory work . . ., Grievant closed the [June 9 work order] marking it completed. Appropriate landscaping conforming to [agency] policy and standards had not been done

On August 11, 2020, [another work order] was submitted by the Deputy Superintendent . . . stating, “404 Parade – Flower Bed: Please provide the plan and timeline for implanting plantings for these flower beds.”

On August 11, 2020, after receiving an email response from Grievant stat[ing], “going to be worked on late fall,” [the Deputy Superintendent] then

required a simple plan of weeding and some plants. [The Director] subsequently gave Grievant the directive to have the simple work completed by August 28, 2020.

On August 17, 2020, after some perfunctory work, Grievant closed [the August 11 work order] marking it completed. The simple plan was not completed to [agency] standards, nor were any plants planted. The [August 11 work order] was not complete

On August 18, 2020, Grievant sent [the Director] an email suggesting a tree, a Mt. Fuji Flowering Cherry Tree, to plant at 404 VMI Parade Ave, clearly indicating that the simple plan was not completed. Grievant also stated, “You wanted the top section finished by 8/28/2020,” which acknowledges understanding of the deadline for the simple landscaping.

On August 20, 2020, [the Director] responded to the inquiry about the Cherry Tree. She asked what other plants Grievant planned to plant, and even suggested a few specific plants to consider, namely “lemon grass, day lilies, sage, coneflower, or plantain lily.” Grievant rejected plantain lily but said the other ideas were fine.

On August 28, 2020, Grievant did not meet [the] deadline for installation of the simple landscaping. No new plantings had been planted. Grievant ignored the deadline and did not provide [the Director] or his supervisor an update.

On September 1, 2020, [the Director] sent Grievant an email asking for an update. Grievant responded via email, “I asked for a quote for plants on the 20th and did not receive this quote until Tuesday or Wednesday of last week (after my follow up). As for 404 Parade house the tree was ordered and is ready to be planted. They are waiting on the Miss utility ticket to go through.”

On September 2, [20]20, [the Director] responded via email, “You had not previously indicated that you had concerns with meeting the deadline for installation of landscaping at 404 Parade, nor did you ask for additional time. I was surprised and disappointed to see that it had not been done.” Grievant did not provide a response.

On September 8, 2020, Grievant provided an update via email, “The miss utility ticket has went thru. With the VP coming on Thursday I think the tree will be planted next week.” No update was provided regarding the other plantings. In a separate email on September 9, 2020, the Grievant stated, “The tree at 404 Parade was planted today.”

As of September 18, 2020, the plantings still had not been planted. No update had been provided on the plantings since September 1, 2020. Photographs were taken on 9/16/20 of the incomplete landscaping at 404 VMI Parade Ave.

. . . . The Grievant's disciplinary infractions concerning this case did negatively impact the Agency's operations.

On October 7, 2020, the agency issued to the grievant a Group III Written Notice of disciplinary action with termination for failure to follow instructions and/or policy, insubordination, and falsifying records.² The grievant timely grieved the Written Notice, and a hearing was held on December 14, 2020.³ In a decision dated January 8, 2021, the hearing officer determined that, although the agency did not prove the offense of falsifying records, the grievant's "failure to follow instructions on multiple occasions and insubordination on multiple occasions, all of which materially adversely impacted the Agency, along with the Grievant's supervisory status, all combined, rise to the level of a Group III offense in this case."⁴ The hearing officer noted that, even if he had found that the grievant's misconduct supported only a Group II Written Notice, the grievant's accumulation of discipline would still support termination.⁵ The hearing officer also found no mitigating circumstances meriting reduction of the disciplinary action.⁶

The grievant now appeals the hearing decision to EDR.

DISCUSSION

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

In his request for administrative review, the grievant disputes numerous findings by the hearing officer. With respect to his duties at the 404 Parade Avenue address, he maintains that he performed this work in 2019 consistent with instructions by the former Director of Physical Plant, who did not participate in the hearing, and that in 2020 he performed the required work on August 13, 2020.¹⁰ The grievant claims that the hearing officer misstated his chain of command and

² Agency Ex. 2; *see* Hearing Decision at 1.

³ *See* Hearing Decision at 1.

⁴ *Id.* at 11.

⁵ *Id.*; *see* Agency Ex. 19.

⁶ Hearing Decision at 13-14.

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 Request for Administrative Review at 2.

ignored clarifications he sought from management about expectations,¹¹ as well as the fact that the grievant was on approved leave from August 24 to September 7, with his foreman as the point of contact in his absence.¹² He maintains that the agency's disciplinary actions against him have been retaliatory¹³ and inconsistent with its responses to other employees who missed landscaping deadlines or committed more serious offenses.¹⁴ Finally, he contends that improper conduct by the agency advocate and/or managers tainted the hearing process.¹⁵

Hearing officers are authorized to make "findings of fact as to the material issues in the case"¹⁶ and to determine the grievance based "on the material issues and the grounds in the record for those findings."¹⁷ 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.¹⁸ 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.¹⁹ Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based on evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

Failure to Follow Instructions / Insubordination

The Group III Written Notice issued to the grievant in this matter charged that he failed to follow the Director's instructions by not providing "a simple landscape plan" for the 404 Parade address by August 28, 2020.²⁰ The Written Notice further charged that the grievant had been insubordinate by still not completing that work by September 25, 2020, nor providing any status update.²¹ The hearing officer sustained these charges, finding that the Director instructed the grievant to provide a "simple plan of weeding and some plants" at the 404 Parade address by August 28 and that ultimately the grievant "ignored the deadline and did not provide . . . an update" to his supervisor or the Director.²² The hearing officer further found that, as of September 18, "the plantings still had not been planted" and "[n]o update had been provided on the plantings since

¹¹ *Id.* at 1, 3-5.

¹² *Id.* at 4-5, 7-8.

¹³ *Id.* at 5-10.

¹⁴ *Id.* at 10-11.

¹⁵ *Id.* at 1-2, 5. To the extent that this ruling does not expressly address other specific grounds for review identified in the grievant's request, EDR has thoroughly reviewed the hearing record in this matter and finds no basis to disturb the hearing decision in addition to the issues discussed herein.

¹⁶ Va. Code § 2.2-3005.1(C).

¹⁷ *Grievance Procedure Manual* § 5.9.

¹⁸ *Rules for Conducting Grievance Hearings* § VI(B).

¹⁹ *Grievance Procedure Manual* § 5.8.

²⁰ Agency Ex. 2.

²¹ *Id.*

²² Hearing Decision at 6-7.

September 1.”²³ The hearing officer determined that these circumstances constituted not only failure to follow instructions, but also insubordination “by failing to complete the landscaping” by September 29 and failing to provide updates despite management’s express concerns about the delay.²⁴

Evidence in the record supports the hearing officer’s findings. In April 2019, the grievant’s managers directed him to “spruce up” the landscaping at 404 Parade and then followed up after being unsatisfied with the grievant’s work there.²⁵ In June 2020, SM, who by then resided at 404 Parade, put in a new work order to request landscaping at the property;²⁶ he testified that landscaping was not complete when he moved in and he did not believe his subsequent work order resulted in satisfactory improvements.²⁷ Agency emails indicate that, on August 11, 2020, the agency’s Deputy Superintendent submitted a work order and associated email directing grounds staff to “provide the plan and timeline for implanting plantings for [the] flower beds” at 404 Parade.²⁸ The grievant responded by suggesting to contract the job out to a third party due to internal staffing constraints.²⁹ The Deputy Superintendent then directed the grievant as follows:

Please develop a “simple” plan that includes removing the growth that is now beginning to appear again (grass, weeds, other vegetation) and installation of some plants. Plantings, even if just at the top near the porch/entry to the quarters and mulch, will go a long ways to beautify the area. In short, it can’t remain like it is.

I am supportive of a longer term project which addresses the rock etc. but that does not need to be addressed immediately.

This has been an area of interest since the renovation of 404 Parade was underway. Please consider a short term measure that will clean up and beautify the space.³⁰

The grievant then inquired about the expected time frame, and the Director responded: “Please have the simple landscaping completed by 28 August.”³¹

Agency witnesses testified that, although the grievant ultimately had a tree installed at 404 Parade, he never took further action on additional plantings, despite specific planting suggestions from the Director.³² Similarly, the grievant’s foreman testified that, during August and September, he was not aware of specific plans for the grounds crew to install plantings other than the single

²³ *Id.* at 8.

²⁴ *Id.*

²⁵ Agency Ex. 2, at 27, 33.

²⁶ *Id.* at 34.

²⁷ Hearing Recording Pt. II at 1:38:30-1:39:10, 1:42:20-1:43:30.

²⁸ Agency Ex. 2, at 6, 11.

²⁹ *Id.* at 9.

³⁰ *Id.* at 8.

³¹ *Id.*

³² Hearing Recording Pt. I at 57:50-1:04:40 (Director’s testimony); Hearing Recording Pt. II at 27:50-30:20 (Deputy Superintendent’s testimony); *see* Agency Ex. 2, at 13.

tree.³³ The grievant does not dispute these accounts, testifying instead that he never was instructed to arrange for additional plantings by August 28.³⁴ However, although the grievant disagrees, the hearing officer was entitled to evaluate the instructions contained in emails to the grievant and to accept the agency's interpretation of those instructions as more persuasive. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.³⁵

Taken together, the above evidence supports the hearing officer's finding that the grievant failed to follow instructions – normally a Group II offense.³⁶ The hearing officer further reasoned that the grievant's supervisory role and previous active discipline for other instances of failure to follow instructions both justified the Group III Written Notice issued in this case.³⁷ Upon a thorough review of the record, EDR cannot say the hearing officer's conclusions were inconsistent with the evidence or otherwise unreasonable.

Nevertheless, the grievant objects that the hearing officer failed to consider certain evidence that may have supported the grievant's claims. The grievant maintains that he was on approved leave from August 24 until September 7, 2020 and cannot be held accountable for failure to perform work, including work-related correspondence, during this time.³⁸ He further maintains that the hearing officer misstated his chain of command and did not acknowledge his communications to the Director as she sought updates on the status at 404 Parade.³⁹ He also alleges that his staff was overworked since the agency no longer employed a horticulturalist.⁴⁰ Although the hearing officer's findings did not address the grievant's leave period or all of his correspondence with his managers during that time, EDR cannot find that this silence creates grounds for reconsideration. There is no requirement under the grievance procedure that the hearing decision specifically address each aspect of the parties' evidence presented at a hearing. Thus, mere silence as to particular testimony and/or other evidence does not necessarily constitute a basis for remand. In addition, it is squarely within the hearing officer's discretion to determine the weight to be given to the evidence and arguments presented. Here, even assuming that the grievant was on approved leave from August 24 to September 7 and had no work responsibilities during that time, he testified that he had not arranged for any plantings (other than the tree) at 404 Parade as of August 21, did not have plans to do so at that time, and did not attempt to do so even

³³ Hearing Recording Pt. II at 3:06:40-3:07:50.

³⁴ *Id.* at 3:40:35-3:43:00, 4:05:51-4:08:10. Likewise, the grievant maintains in his request for administrative review that further planting was to be done later in the fall, after ground preparation could be completed. Request for Administrative Review at 3. He argues that more immediate planting would have been wasteful and that for his managers to insist upon it would be harassment. *Id.*

³⁵ *See, e.g.*, EDR Ruling No. 2020-4976.

³⁶ DHRM Policy 1.60, *Standards of Conduct*, Att. A: Examples of Offenses Grouped By Level.

³⁷ Hearing Decision at 11-12.

³⁸ Request for Administrative Review at 3-4.

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 2, 5-7. The hearing decision explicitly addressed the grievant's claims in this regard as mitigating circumstances but concluded that they did not render the agency's disciplinary action unreasonable. Hearing Decision at 13-15.

after returning from leave.⁴¹ Ultimately, it is not apparent how the various alleged omissions and factual inaccuracies cited by the grievant might have affected the hearing officer's reasoning or the outcome of the case.⁴² Accordingly, EDR declines to disturb the ruling on these grounds.

Retaliation and Inconsistent Discipline

The grievant maintains that the Group III Written Notice at issue in this case, as well as previous disciplinary action issued earlier in the year, resulted from the retaliatory motives of agency management following a complaint the grievant made in April. To prevail at a hearing on a claim that the agency's disciplinary action was improperly motivated by retaliation, a grievant must ultimately prove by a preponderance of the evidence that, but for his engagement in an activity protected from such retaliation, the agency would not have taken its disciplinary action against him.⁴³

Specifically, the grievant points to an email he sent to the Deputy Superintendent on April 9, 2020, suggesting that the grounds staff was being treated differently and "lied to" by the Director regarding work expectations, and he sought clarification.⁴⁴ He claims that this email set off a campaign of retaliation against him.⁴⁵ However, assuming his email is protected activity for retaliation purposes,⁴⁶ the hearing officer found that the agency had proven a legitimate, non-retaliatory reason for issuing its disciplinary action on October 7, 2020; namely, the grievant's ongoing failure to follow management's instructions regarding the 404 Parade property. Therefore, the grievant bore the burden to prove that the agency's stated reason for issuing discipline and terminating his employment was a pretext for retaliation.⁴⁷

In support of this claim, the grievant argues that the agency began to pursue disciplinary actions against him almost immediately following the April 9 email, and that the Director received a text message from the agency's human resources director stating: "with as stirred up as he is he will probably pushback again just a matter of time. You got this!"⁴⁸ He alleges that communications with his managers became less frequent and that they increased his team's workload while denying his requests to add personnel.⁴⁹ He further argues that dissatisfaction with

⁴¹ Hearing Recording Pt. II at 3:40:35-3:43:00, 4:05:51-4:08:10; *see also* Request for Administrative Review at 3.

⁴² To the extent the grievant argues that the Director and Deputy Superintendent did not have the authority to give him direct instructions, to prioritize areas for landscaping, or to set general landscaping standards for the grounds, *see* Request for Administrative Review at 2-3, the hearing officer was entitled to credit their respective testimony about their roles at the agency and in the grievant's chain of command. *See, e.g.*, Hearing Recording Pt. I at 25:58-28:50 (Director's testimony); Hearing Recording Pt. II at 1:00-5:50 (Deputy Superintendent's testimony); *see also* Agency Ex. 21. Thus, EDR will not remand on this basis.

⁴³ *See* *Netter v. Barnes*, 908 F.3d 932, 938 (4th Cir. 2018) (citing *Univ. of Tex. S.W. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013)); *Villa v. CavaMezze Grill, LLC*, 858 F.3d 896, 900-901 (4th Cir. 2017).

⁴⁴ Grievant Ex. D at 1.

⁴⁵ Hearing Recording Pt. II at 3:12:40-3:13:25 (Grievant's testimony); Request for Administrative Review at 6-7.

⁴⁶ By state law, "employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management." Va. Code § 2.2-3000(A).

⁴⁷ *See Nassar*, 570 U.S. at 360.

⁴⁸ Hearing Recording Pt. II at 3:12:40-3:13:45 (Grievant's testimony); Grievant Ex. K, at 1.

⁴⁹ Hearing Recording Pt. II at 3:21:20-3:21:40 (Grievant's testimony); Grievant Exs. E, M; Request for Administrative Review at 6-7.

the 404 Parade work was unreasonable and not brought to his attention prior to the agency pursuing disciplinary action.⁵⁰ He contended that other employees have missed landscaping deadlines or committed other serious misconduct and not been terminated.⁵¹

The hearing officer found that “the Grievant raised generally the affirmative defense of retaliation but did not come close to meeting his burden of proof in this regard.”⁵² Although the hearing decision does not address this issue further, EDR cannot find that the hearing officer’s brief conclusion about this issue is a basis for remand. While the grievant offered evidence to support his suspicions of his management’s motives, his former managers testified to their experience of the grievant’s increasingly disrespectful attitude and insubordinate behavior, as well as to the difficulties imposed on agency management by the pandemic, particularly during the end of summer as students were set to return to campus.⁵³ The Director testified that August 2020 was the busiest period of her career, made more difficult by the grievant’s ongoing failure to follow her instructions and the resulting need for disciplinary action.⁵⁴ She also testified that the “you got this” message from the human resources director was in the context of required consultation with human resources for all disciplinary actions, “motivating me to stay strong in my convictions and do what I thought was right” during the “worst part of a manager’s job.”⁵⁵ In light of this testimony, and upon a thorough review of the record, EDR cannot say that the hearing officer was required to find that, but for the grievant’s April 9 email, the agency would not have issued the Group III Written Notice. Considering that the grievant bore the burden to prove retaliation by a preponderance of the evidence,⁵⁶ as the hearing officer noted, EDR will not disturb the hearing decision on this basis.

Procedural Challenges

Finally, the grievant asserts that the grievance process was tainted due to improper conduct by the agency’s advocate and/or representative before and during the hearing. First, the grievant takes issue with the fact that the Director was involved in producing documents he requested in preparation for the hearing.⁵⁷ He asserts that the agency may not have been entirely forthcoming in responding to his request, and he suggests that he had difficulty accessing documents sent to him electronically. While it appears that the parties may have presented certain documents issues to the hearing officer prior to the hearing, the record does not include ongoing objections by the

⁵⁰ Hearing Recording Pt. II at 3:14:50-3:14:55 (Grievant’s testimony); Request for Administrative Review at 8-9.

⁵¹ Request for Administrative Review at 10-11.

⁵² Hearing Decision at 18.

⁵³ Hearing Recording Pt. I at 38:40-45:38 (Director’s testimony); Hearing Recording Pt. II at 37:43-40:39:58 (Deputy Superintendent’s testimony).

⁵⁴ Hearing Recording Pt. I at 1:20:05-1:20:50.

⁵⁵ *Id.* at 2:15:40-2:17:00 (Director’s testimony).

⁵⁶ See *Rules for Conducting Grievance Hearings* § VI(B)(1). EDR’s analysis of these claims is based on a review of the evidence admitted into the hearing record by the hearing officer. To the extent the grievant seeks to offer additional facts contained in his request for administrative review as new evidence, or requests that EDR conduct additional fact-finding or investigation into his allegations, such requests are outside the scope of EDR’s authority upon administrative review, and as such EDR’s evaluation is limited to the evidence in the record and the hearing officer’s findings of fact. See *Grievance Procedure Manual* § 7.2(a); *Rules for Conducting Grievance Hearings* § IV(G).

⁵⁷ Request for Administrative Review at 1-2.

grievant regarding particular documents not produced. Likewise, the request for administrative review does not cite particular documents the grievant believes he was entitled to but did not receive, or erroneous resolution of any documents issues by the hearing officer. Without more to suggest that the grievant's defense may have been hampered by inability to access specific evidence in his favor, EDR cannot find that this objection creates a basis for remand.

In addition, the grievant contends that one or more of the agency's witnesses were improperly coached prior to their testimony; namely the Deputy Superintendent and SM.⁵⁸ The grievant apparently raised the charge regarding the Deputy Superintendent to the hearing officer following the hearing.⁵⁹ After hearing from both parties on the issue, the hearing officer found that, "faced only with general aspersions and speculation concerning the challenged gathering and the content of any communications therein, the hearing officer denies any relief to the Grievant in this regard."⁶⁰ EDR notes that the hearing officer's findings of fact, as reflected in his decision, do not rely on testimony from either of these witnesses. In addition, even accepting the grievant's charge that agency witnesses received improper communications before their testimony, the grievant does not elaborate in his request for administrative review as to how their testimony might have been tainted or, ultimately, how his allegations would have affected the reasoning reflected in the hearing decision. The grievant further makes general accusations that the agency's advocate lied numerous times during the hearing,⁶¹ but his request for review does not identify which statements he considered to be improper and/or grounds for remand. Upon review of the hearing proceedings, EDR perceives no conduct by either party to indicate that remand is appropriate under the circumstances. Accordingly, EDR will not disturb the decision on these grounds.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing decision becomes a final hearing decision once all timely requests for administrative review have been decided.⁶² 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.⁶³ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁶⁴

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⁵⁸ *Id.* at 5.

⁵⁹ *See* Hearing Decision at 16-18.

⁶⁰ *Id.* at 18.

⁶¹ Request for Review at 5.

⁶² *Grievance Procedure Manual* § 7.2(d).

⁶³ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁶⁴ *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).