Issue: Administrative Review of Hearing Officer's Decision in Case No. 8891; Ruling Date: October 14, 2008; Ruling #2009-2091; Agency: Department of State Police; Outcome: Hearing Officer in Compliance/Remanded for Clarification.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2009-2091
October 14, 2008

The Department of State Police (VSP or the agency) has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 8891.

PRELIMINARY PROCEDURAL NOTE

During this Department's review of the hearing record, it was discovered that of the four hearing tapes, the first tape did not contain any recording of the proceedings.[1] The parties were notified about the lack of a verbatim recording of the first portion of the hearing and invited them to submit any alternate recording that might exist or a transcript of the proceedings. Although a court reporter had been retained by the grievant and was present at the hearing, neither party elected to submit additional recordings or transcripts. Therefore, this Department's review is based on the exhibits entered into evidence and the other three hearing tapes. Anything that occurred during the hearing that would have been on the first tape has not been reviewed and is not addressed by this ruling. Thus, this Department had no way to review the agency's arguments regarding any procedural matters that took place at the beginning of the hearing, the opening statements, and the questioning of the agency employee who conducted the criminal investigation, all of which would have occurred during the time of the first hearing tape.

FACTS

In this case, the grievant had received a Group III Written Notice with termination for "[e]ngaging in conduct, whether on or off the job, that undermines the effectiveness or efficiency of the [agency's] activities. This includes actions which might impair the [agency's] reputation or performance of its employees."[2] The disciplinary action arose from incidents that occurred involving alleged assault and battery of "Ms. A,"[3] with whom the grievant lived and has a child.[4]

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[1] In this case, the agency had the responsibility to arrange for recording equipment and the hearing officer's responsibility was to record the hearing. *Rules for Conducting Grievance Hearings* IV(B). During the hearing of this matter, agency employees controlled the recording equipment.
[2] Decision of Hearing Officer, Case No. 8891, July 17, 2008 ("Hearing Decision"), at 1.
[3] Ms. A is the nomenclature used in the hearing decision to refer to this individual and will be utilized in this Ruling. *See id.*
[4] *Id.*

The grievant was arrested for assault and battery, but he was acquitted of the charges.[5] A Petition for Expungement was granted in the case.[6]

The hearing officer determined that the agency had not proven by a preponderance of the evidence that the grievant assaulted Ms. A "in any way other than in self defense."[7] The hearing officer further found that the agency "provided no writing that demonstrated the alleged assault would have an adverse impact on the Grievant's ability to perform his duties or that it would undermine the effectiveness of the Agency's activities."[8] As such, the hearing officer rescinded the disciplinary action and ordered that the grievant be reinstated.[9] The agency now requests administrative review of the hearing decision on a number of grounds, largely alleging that the hearing officer was biased in his conduct of the hearing.

DISCUSSION

By statute, this Department 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."[10] If the hearing officer's exercise of authority is not in compliance with the grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.[11] The agency has presented various arguments in its request for administrative review. These arguments have been consolidated into topics and addressed below.

Deference to the Agency

The agency claims that the hearing officer acted as a "super-personnel officer" and failed to give the appropriate level of deference to the agency's actions. There is no evidence to support these contentions. The hearing officer simply found that the agency had failed to meet its burden of proving by a preponderance of evidence[12] that the grievant had engaged in misconduct.[13]

Hearing officers are authorized to make "findings of fact as to the material issues in the case"[14] and to determine the grievance based "on the material issues and grounds in the record for those findings."[15] 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

[5] *Id.* at 1, 3.
[6] *Id.* at 3.
[7] *Id.* at 6.
[8] *Id.*
[9] *Id.* at 8.
[10] Va. Code § 2.2-1001(2), (3), and (5).
[11] *See Grievance Procedure Manual* § 6.4(3).
[12] *Rules for Conducting Grievance Hearings* § VI(B).
[13] Hearing Decision at 5-6.
[14] Va. Code § 2.2-3005.1(C).
[15] *Grievance Procedure Manual* § 5.9.

aggravating circumstances to justify the disciplinary action.[16] 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.[17] 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, this Department cannot substitute its judgment for that of the hearing officer with respect to those findings.

In suggesting that the facts and testimony support its issuance of the Written Notice, the agency appears to contest the hearing officer's findings of fact, the weight and credibility that the hearing officer accorded to the testimony of the various witnesses, the resulting inferences that he drew, the characterizations that he made, and the facts he chose to include in his decision. Such determinations are within the hearing officer's authority as the hearing officer considers the facts *de novo* to determine whether the disciplinary action was appropriate.[18] A review of the hearing record demonstrates sufficient evidence to support the hearing officer's fact-findings and decision. This Department cannot find that the hearing officer exceeded or abused his authority where, as here, the findings are supported by the record evidence and the material issues in the case. Consequently, this Department has no basis to disturb the hearing officer's findings as they stand.

Bias

The agency claims that the hearing officer was biased in favor of the grievant. The Virginia Court of Appeals has indicated that as a matter of constitutional due process, actionable bias can be shown only where a judge has "a direct, personal, substantial [or] pecuniary interest" in the outcome of a case.[19] While not dispositive for purposes of the grievance procedure, the Court of Appeals test for bias is nevertheless instructive and has been used by this Department in past rulings.[20] In this case, the agency has not claimed nor presented evidence that the hearing officer had a "direct, personal, substantial or pecuniary interest" in the outcome of the grievance. Accordingly, this Department cannot conclude that the hearing officer showed actionable bias in this case.

Appearance of Partiality / Questions Asked

As the agency points out, the *Rules for Conducting Grievance Hearings* ("*Hearing Rules*") provide that "the hearing officer may question the witnesses."[21] The *Hearing Rules* further caution, however, that the "tone of the inquiry, the construct of the question, or the frequency of questioning one party's witnesses can create an impression of bias, so care should

[16] *Rules for Conducting Grievance Hearings* § VI(B).
[17] *Grievance Procedure Manual* § 5.8.
[18] *Rules for Conducting Grievance Hearings* § VI(B).
[19] Welsh v. Commonwealth, 14 Va. App. 300, 315, 416 S.E. 2d 451, 460 (1992) (alteration in original).
[20] *See, e.g.*, EDR Ruling No. 2004-640; EDR Ruling No. 2003-113.
[21] *Rules for Conducting Grievance Hearings* § IV(C).

be taken to avoid appearing as an advocate for either side."[22] The manner of questioning witnesses, however, is within the sound discretion of the hearing officer. Noncompliance with the grievance procedure and *Hearing Rules* on these grounds will only be found if the hearing officer has abused that discretion.

After reviewing the three hearing tapes in this case, this Department finds no indication that the hearing officer abused his discretion in asking questions of witnesses. The questions appeared to be relevant and an attempt to clarify issues that were muddled or had not been addressed. The hearing officer's questions and comments were made in a calm, even tone of voice. For instance, the hearing officer questioned agency employees about the following issues: 1) self-defense,[23] 2) the agency's consideration of mitigating circumstances,[24] 3) testimony about other agency employees who had been charged with similar crimes as the grievant and were not terminated,[25] 4) the basis for the disciplinary action (whether it was because the grievant had been charged criminally with assault or had simply engaged in the alleged conduct), and 5) the language included on the Written Notice.[26] These are all exceedingly relevant issues. Moreover, the testimony about these issues had not been clear until the hearing officer asked additional questions. As such, the need to inquire further was apparent.

The hearing officer also asked questions to elicit information the agency had not produced to support the Written Notice. The grievant had been charged with "[e]ngaging in conduct, whether on or off the job, that undermines the effectiveness or efficiency of the [agency's] activities. This includes actions which might impair the [agency's] reputation as well as the reputation or performance of the employee."[27] However, there was insufficient evidence presented during the hearing as to how the grievant's conduct did so.[28] The hearing officer questioned an agency witness about this element of the agency's case.[29] Indeed, rather than representing any kind of bias or partiality, the hearing officer's questions gave the agency further opportunities to present necessary evidence. Though the number of questions posed to agency witnesses by the hearing officer did, unfortunately, result in an appearance of bias to the agency, there was no abuse of discretion here.[30]

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[22] *Id.*
[23] Hearing Recording, Tape 2, Side A, at Counter Nos. 455-86.
[24] Hearing Recording, Tape 2, Side B, at Counter Nos. 278-92, 677-744.
[25] Hearing Recording, Tape 2, Side B, at Counter Nos. 294-332.
[26] Hearing Recording, Tape 2, Side B, at Counter Nos. 333-390, 744-68.
[27] Hearing Decision at 4 (quoting VSP General Order 19, ¶ 14(b)(20)).
[28] Hearing Decision at 6.
[29] Hearing Recording, Tape 3, Side A, at Counter Nos. 558-620.
[30] The agency also notes that the hearing officer questioned some witnesses during the cross-examination portion of the witnesses' testimony before allowing the agency to re-direct. There is certainly nothing in the *Hearing Rules* that requires the hearing officer to hold his questions until the end of all the parties' questions. Indeed, the hearing officer is within his discretion to ask questions during a party's direct questioning if clarification is needed. However, unless there is a particular need to do otherwise, the better practice for a hearing officer would be to wait and pose questions once the parties have completed their examinations. In this case, it does not appear that the proceedings were materially affected by the order of questioning. All parties were still given time to ask additional questions. The order of questioning that occurred in this case, while not necessarily ideal in some cases, is not reversible error.

As to the questions asked of the human resources director by the hearing officer about a DHRM Policy, again, there was no abuse of discretion. The witness had not answered a question asked by the grievant's attorney, and to extract an answer, the hearing officer clarified the questions himself for the witness.[31] While the manner in which these questions were posed to the witness was direct, and the tone, though calm and even, could be construed as somewhat chastising,[32] the witness had not answered such questions when previously posed by the grievant's attorney. The hearing officer's conduct was consistent with the *Hearing Rules* to exercise control over the proceedings and require a witness to answer questions that are asked.

The agency has also raised the point that both the hearing officer and the grievant's attorney posed hypothetical questions to witnesses. While rules of evidence in court proceedings may place certain limitations on the use of hypothetical questions,[33] there is no general prohibition on using hypothetical questions in grievance hearings. Indeed, those utilized by the hearing officer, especially those regarding self-defense, were reasonable, clear, and assisted in an understanding of the pertinent issues in the case.[34] The hearing officer in no way abused his discretion in asking hypothetical questions.

There may be cases in which a hypothetical question is objectionable. For instance, depending on the manner in which it is asked, if the hypothetical situation posed to a witness does not reflect the claims or facts of the case, an objection could properly be raised to the question. Although there were some hypothetical questions by the grievant's attorney that might have been objectionable on this ground, the hearing officer was under no duty to interject. The hearing officer would have been within his discretion to do so, but the failure to interject is not reversible error. In any event, there is no evidence that the hearing officer based his consideration of the evidence on any inappropriate hypothetical questions. There is no basis to disturb the hearing decision based on the grounds of hypothetical questioning.

Evidentiary Issues

Exclusion of Photographs: The agency asserts that the hearing officer improperly excluded evidence. A review of the record and the agency's submission appears to indicate that the only evidence excluded by the hearing officer were the photographs taken of Ms. A. It is unclear from the hearing decision and the record how the hearing officer came to the conclusion that these potential exhibits should be excluded and the basis of that decision. This lack of clarity is exacerbated by the fact that this Department had no way to review the proceedings when this matter was discussed at the beginning of the hearing. However, it appears the hearing officer relied on the definition of the term "criminal history record information," and the exclusion therefrom of "criminal justice investigative information," as provided in the Virginia

[31] Hearing Recording, Tape 3, Side A, at Counter Nos. 230-58.
[32] *Id.*
[33] *See, e.g.*, Certain Underwriters at Lloyd's v. Sinkovich, 232 F.3d 200, 203 (4th Cir. 2000). Though the agency did not identify any specific hypothetical questions to which it is objecting, it is not clear that any of those posed by the hearing officer would have been improper even under the rules of evidence utilized in a circuit court.
[34] Hearing Recording, Tape 2, Side A, at Counter Nos. 455-86; Hearing Recording, Tape 2, Side B, at Counter Nos. 659-77.

Administrative Code (VAC).[35] To the extent that he did, it is unclear from the ruling why the photographs were not considered "criminal justice investigative information." There may have been discussion or even evidence presented on this matter at hearing. However, because of the blank hearing tape and the parties' election not to provide additional recordings or transcripts, this Department has not had the opportunity to review those proceedings.

If it is assumed that the hearing officer improperly excluded this evidence, the matter must be remanded if the evidence would affect the outcome.[36] In this case, it cannot be said that the outcome would be entirely unaffected by the introduction of this evidence. The photographs are potentially relevant to the issue of self-defense.[37] This ruling is not meant to indicate that the probative value of this evidence is particularly significant, only that it could potentially be relevant and that it is not wholly immaterial.

Accordingly, the matter must be remanded to the hearing officer to clarify the basis for his exclusion of the photographs and/or, if upon reconsideration, it is determined that the evidence should be admitted, consider the photographs as part of the record. If the hearing officer admits the photographs into evidence, the hearing officer will have the discretion to re-open the hearing on this limited issue.[38] Re-opening the hearing is not intended to give the parties another opportunity to present additional evidence. The re-opened hearing would be limited to the photographs and evidence about the photographs only.

Use of Document Not Provided During Exhibit Exchange: The agency has also raised the fact that the hearing officer permitted the grievant's attorney to ask questions regarding a document that was not provided during the exhibit exchange prior to the hearing. In reviewing the record, it appears that the grievant's attorney asked questions about the document and did not offer it into evidence.[39] The hearing officer was correct to address the problem by determining whether there was any issue of "surprise."[40] It appears that the grievant had earlier requested the document from the agency and the agency provided the grievant with a copy, all of which occurred very close to the hearing date.[41] Therefore, the hearing officer's determination that the agency could not be surprised by asking questions about this document at hearing is understandable. Further, technically speaking, the document was not an "exhibit" that needed to be provided in advance of the hearing because it was never offered into evidence. In any event,

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[35] Hearing Decision at 3-4 (discussing 6 VAC 20-120-20).

[36] *See* EDR Ruling No. 2004-727; *see also, e.g.,* Pace v. Richmond, 231 Va. 216, 226, 343 S.E.2d 59, 65 (1986) ("We will not reverse a judgment for error in excluding evidence 'where it appears from the record that the error … could not and did not affect the verdict.'" (quoting Davidson v. Watts, 111 Va. 394, 398, 69 S.E. 328, 330 (1910)) (alteration in original)).

[37] *E.g.,* Diffendal v. Commonwealth, 8 Va. App. 417, 421, 382 S.E.2d 24, 25-26 (1989) ("The common law in this state has long recognized that a person who reasonably apprehends bodily harm by another is privileged to exercise reasonable force to repel the assault. … Moreover, the amount of force used must be reasonable in relation to the harm threatened.").

[38] The hearing officer will have the discretion to determine whether it would be necessary to re-open the hearing. Depending on what evidence was already presented at hearing, for instance during the testimony of the criminal investigator, there may not be a need to re-open.

[39] Hearing Recording, Tape 3, Side A, at Counter Nos. 374-92, 460-78.

[40] Hearing Recording, Tape 3, Side A, at Counter Nos. 460-78.

[41] *Id.*

it appears the grievant had not even received the document until *after* the date for exchanging exhibits.[42] In addition, this document and any evidence contained therein did not have a material effect on the case. The document appears to have involved discipline of an agency employee in an arguably similar case.[43] Inconsistency of discipline was not one of the grounds on which the hearing officer rescinded the Written Notice.[44] Therefore, the use of this document did not prejudice the agency and there is no basis to remand the matter on these grounds.

Strict Application of Rules of Evidence: The agency has asserted that the hearing officer violated the *Hearing Rules* by utilizing a strict application of the rules of evidence. Upon a review of the record, which, again, did not include the first hearing tape, there is no indication that the hearing officer made any evidentiary rulings in a more restrictive manner than that provided by the *Hearing Rules*.[45] This Department finds no support in the hearing record for the agency's contention, and, as such, there is no reason to remand the case on that basis.

Conduct of Grievant's Attorney

The agency has also raised concerns with the grievant's attorney's conduct during the hearing and the hearing officer's alleged failure to address it. The control of the hearing process consistent with the *Hearing Rules* is within the sound discretion of the hearing officer. A hearing officer has the authority to exert control over the parties and attendees of the hearing to establish order and a "hearing environment that is conducive to a free exchange of information and the development of the facts."[46] A party's disagreement with how the hearing officer exercises that authority will result in a new hearing[47] only in extreme cases, when the hearing officer has abused his discretion to control the hearing process to the prejudice of one or both parties. This is not such a case.

First, the grievant's attorney, rather than questioning witnesses, testified or argued various points, for which the hearing officer admonished him on multiple occasions[48] by instructing him to ask questions, to not testify, and to allow witnesses to answer the questions.[49] This was appropriate conduct by the hearing officer because the grievant's attorney was not engaging in proper examination of witnesses.

The grievant's attorney also demonstrated, at times, an argumentative, condescending approach in questioning witnesses, and at other times could reasonably be perceived as insulting or disrespectful to certain witnesses, including during his closing statement.[50] If a party or

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[42] *Id.*
[43] *Id.*
[44] Hearing Decision at 5-7.
[45] The exclusion of the photographs has already been discussed above.
[46] *Rules for Conducting Grievance Hearings* § IV(C).
[47] If a hearing officer fails to conduct a hearing that allows a free exchange of information and the development of facts, it is unclear what other remedy would be suitable.
[48] Hearing Recording, Tape 2, Side A, at Counter Nos. 356-58, 427-28; Hearing Recording, Tape 2, Side B, at Counter Nos. 82-85, 158-59, 226-27, 448; Hearing Recording, Tape 3, Side A, at Counter Nos. 329-34, 359-60.
[49] *Id.*
[50] *See* Hearing Recording, Tape 4, Side A, at Counter Nos. 155-486.

representative does not conduct himself or herself with civility and professionalism, that conduct can and should be admonished and curtailed by the hearing officer.

However, the hearing officer's failure to exert more control over the grievant's attorney did not materially prejudice the agency's presentation of the merits of its case or the outcome of its case. The grievant's attorney's statements and tone, while at times overly zealous or abrasive, did not prevent the agency from presenting its case, nor was there a jury to influence with inflammatory rhetoric. Thus, there is no reason to remand the matter for further proceedings on the basis of the attorney's conduct. Nevertheless, this Department must make it clear to all participants in grievance hearings that excessively argumentative rhetoric and personally denigrating comments will not be tolerated during any part of the hearing process and should be appropriately curtailed by the hearing officer.[51]

Mitigating Circumstances

The agency also asserts that the hearing decision incorrectly applied the Standards of Conduct (Department of Human Resource Management (DHRM) Policy 1.60) in its discussion of the agency's consideration of mitigating circumstances. First, it appears that this part of the hearing decision was *dicta*, and did not affect the outcome of the hearing.[52] Further, to the extent the agency alleges that the hearing decision is inconsistent with the Standards of Conduct, that is a question of policy and more properly an issue for DHRM.[53] Accordingly, if the agency has not previously made a request for administrative review of the hearing officer's decision to DHRM but wishes to do so, it must make a written request to the DHRM Director, **which must be received within 15 calendar days of the date of this ruling**. Since the initial request for review to this Department was timely, a request for administrative review to DHRM within this 15-day period will be deemed timely as well.[54]

Because the case is being remanded to the hearing officer on limited grounds, this Department must comment on the hearing decision's discussion of mitigating circumstances. Though the hearing officer's decision was not based on mitigation, the hearing decision does indicate that the hearing officer would have mitigated the Written Notice based on the grievant's length of service and past performance.[55] This Department has ruled previously that it will be an extraordinary case in which an employee's length of service and/or past work experience could

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[51] In this regard, the Virginia Supreme Court has recently endorsed Principles of Professionalism that express aspirational ideals of civility, respect, and courtesy for Virginia lawyers. See Alan Cooper, *High Court Endorses 'Principles of Professionalism'*,Virginia Lawyers Weekly, August 25, 2008. The Preamble to the Principles states in part that "[l]awyers help their clients, the institutions with which they deal and themselves when they treat everyone with respect and courtesy." Such a standard of civility would appear to be equally beneficial in employee grievance hearings, not only for party representatives (whether lawyers or lay representatives), but also for the parties themselves, their witnesses and the hearing officer.

[52] *See* Hearing Decision at 7.

[53] *See, e.g., Grievance Procedure Manual* § 7.2(a).

[54] This Department does note for the information of the parties and the hearing officer that DHRM has previously ruled that there is no requirement under an earlier version of DHRM Policy 1.60 that an agency even consider mitigating circumstances. DHRM Policy Ruling, Grievance No. 8636, Sept. 19, 2007.

[55] Hearing Decision at 8.

adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness.[56] The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become.[57] This guidance is provided not to indicate that the hearing officer's hypothetical consideration of mitigating circumstances was incorrect or an abuse of discretion, but merely to assist the hearing officer should mitigating circumstances need to be assessed substantively on remand.

One further potential issue for the hearing officer's consideration on remand involves the evidence of a polygraph examination of Ms. A. The inclusion of this evidence in the hearing decision was not discussed in the agency's request for review, and neither party objected to this evidence at the hearing. However, this Department must note certain Virginia Code provisions prohibiting the use of polygraph evidence at grievance hearings.[58] It is unclear whether the polygraph of Ms. A was relied upon in any way by the hearing officer in this case. To the extent it was, or may be, these provisions are noted.

Hearing Officer Closing His Eyes

The agency's representative and another witness assert that they observed the hearing officer close his eyes on a few "brief" occasions. On that basis, the agency suggests that the hearing officer was "nodding off" during the agency's presentation of evidence. The agency's stated observations, however, do not indicate that the hearing officer fell asleep during the proceedings. Indeed, the hearing officer's attentiveness and knowledge of the testimony is apparent in his questioning of the witnesses. There is no basis to find any misconduct on the part of the hearing officer in this regard.

Request Regarding Assignment of Hearing Officers

The agency has further requested that the hearing officer in this case not be assigned to future grievance hearings involving the agency. This Department is bound by statute to select hearing officers on a rotating basis.[59] Given that statutory mandate, as well as our conclusion that no bias or misconduct by the hearing officer in this case would warrant such an extreme determination even if this Department could make that specific order as part of this ruling, the agency's request is denied.

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[56] EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518.
[57] *Id.*
[58] Va. Code § 40.1-51.4:4(D) ("The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be submitted, referenced, referred to, offered or presented in any manner in any [grievance] proceeding … except as to disciplinary or other actions taken against a polygrapher."); *see also* Va. Code § 8.01-418.2 ("The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be admissible in any [grievance] proceeding ... over the objection of any party except as to disciplinary or other actions taken against a polygrapher."); *Rules for Conducting Grievance Hearings* § IV(D) (citing statute and noting same).
[59] Va. Code § 2.2-1001(6).

CONCLUSION APPEAL RIGHTS AND OTHER INFORMATION

This matter is remanded to the hearing officer for clarification and/or consideration of the evidentiary matter of the photographs of Ms. A, and other potential issues as expressly described in this ruling. This Department finds no other reason to disturb the hearing officer's decision.

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided.[60] 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.[61] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[62]

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Claudia T. Farr
Director

[60] *Grievance Procedure Manual* § 7.2(d).
[61] Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).
[62] *Id.; see also* Virginia Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319 (2002).