Issue: Administrative Review of Hearing Officer's Decision in Case No. 9073; Ruling Date: July 29, 2009; Ruling Code: 2009-2323; Agency: Department of Motor Vehicles; Outcome: Hearing Decision In Compliance.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling Number 2009-2323
July 29, 2009

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 9073. The grievant claims that all documents ordered to be produced by the hearing officer were not provided. The grievant further objects to the hearing officer admitting into evidence a previously issued Group I Written Notice. The grievant also asserts that multiple Written Notices were issued for a single offense. He further claims that the discipline imposed by the Department of Motor Vehicles (DMV or the agency) was excessively harsh. For the reasons set forth below, this Department finds no reason to disturb the hearing decision.

FACTS

The facts, as set forth in the May 14, 2009 hearing decision issued in Case Number 9073, are as follows:[1]

> The Department of Motor Vehicles employed Grievant as a Senior Special Agent at one of its Facilities. He had been employed by the agency for approximately four years prior to his removal effective February 24, 2009. Grievant had been a law enforcement officer for approximately 27 years.
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> When a Special Agent requests and receives an arrest warrant from a Local Magistrate, the warrant must be served within 72 hours otherwise it must be "pended". Pended means the warrant is recorded with the State Police and entered into the Virginia Criminal Information Network (VCIN). By entering the information into the VCIN, other law enforcement agencies become aware of the arrest warrant in the event they encounter a wanted suspect. A Special Agent can pend the arrest warrant immediately without waiting for the 72 hour time period to pass.
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> The Agency received information from a confidential informant regarding a 19 year old woman, Ms. T, who was falsifying licensure documents. Grievant and his Supervisor discussed how to handle the case.

[1] For the sake of brevity, a number of the footnotes from the original decision have been omitted.

> During their discussions, Grievant understood the Supervisor to have stated that Grievant was instructed to have the arrest warrant for Ms. T served within 72 hours regardless of holidays or weekends.
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> On November 25, 2008, Grievant obtained an arrest warrant for Ms. T. Grievant had spoken with Ms. T and her Father and arranged for a time for Ms. T to meet Grievant at the Agency's Customer Service Center. On November 28, 2008, Grievant met Ms. T and the Father at the Agency's Customer Service Center approximately 70 hours after Grievant had obtained the arrest warrant for Ms. T. The Customer Service Center was closed that day as a State employee holiday. Grievant arrested Ms. T. He did not search her but asked her whether she was carrying any weapons. Grievant did not handcuff Ms. T because he observed scars on her right wrist and was concerned that handcuffs would cause injury to her requiring immediate medical attention. Grievant placed Ms. T in the front passenger seat of his vehicle. Grievant placed Ms. T's cell phone and purse in the trunk of his vehicle. Grievant drove Ms. T to the local jail and turned her over to the local law enforcement officers. Grievant left with Ms. T's cell phone and purse still in the trunk of his vehicle. Once Ms. T was released from the local jail, she called Grievant and asked for her belongings. Grievant took the cell phone and purse to the Father's home and gave them to Ms. T. Neither Ms. T, nor the Father complained about Grievant's arrest.[2]

Based on these facts, the hearing officer reached the following "Conclusions of Policy":

> Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include acts of minor misconduct that require formal disciplinary action." Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action." Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."
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> Failure to comply with written policy is a Group II offense. Inadequate or unsatisfactory job performance is a Group I offense.
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> *Va. Code § 2.2-3005.1* authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Employment Dispute Resolution…." Under the *Rules for Conducting Grievance Hearings*, "[a] hearing officer must give deference to the agency's consideration and assessment of any

[2] Decision of Hearing Officer in Case Number 9073, issued May 14, 2009 ("Hearing Decision") at 2-3.

mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency's discipline, the hearing officer shall state in the hearing decision the basis for mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive.

The Agency contends Grievant violated policy by not searching Ms. T before transporting her to jail. Agency Policy 2-8(III)(B)(1) provides:

> The transporting Special Agent shall always search a prisoner before placing him or her into the vehicle. Special Agents must never assume that a prisoner does not possess a weapon or contraband or that someone else has already searched the prisoner. The transporting Special Agent shall conduct a search of the prisoner each time the prisoner enters custody of the Special Agent.

Grievant failed to search Ms. T prior to placing her in his vehicle and in his custody. The Agency has presented sufficient evidence to support the issuance of a Group II Written Notice for failing to search a prisoner in his custody.

Grievant argues that he was justified in believing Ms. T did not pose a risk to him because of her age and demeanor. This argument fails. The Policy specifically states that Special Agents must never assume that a prisoner does not possess a weapon or contraband.

There are no circumstances that would make the Agency's issuance of this disciplinary action in excess of the limits of reasonableness.

The Agency contends Grievant failed to comply with written policy because he did not attempt to obtain a caged vehicle prior to transporting Ms. T. Agency Policy 2-8(III)(A)(1) provides:

> Unless no other type of vehicle is available, all prisoners shall be transported in secure, caged vehicles.

Grievant did not transport Ms. T in a caged vehicle. Caged vehicles are available from local law enforcement agencies. Grievant did not contact a

local law enforcement agency to determine if a caged vehicle was available. Accordingly, the Agency has presented sufficient evidence to support the issuance of a Group II Written Notice for failure to transport Ms. T in a caged vehicle.

Grievant argued that neither his agency nor the State Police had caged vehicles available. This argument is untenable. The evidence showed that caged vehicles were readily available from local law enforcement agencies. If Grievant had contacted a local law enforcement agency, he would likely have had access to a caged vehicle.

There are no circumstances that would make the Agency's issuance of this disciplinary action in excess of the limits of reasonableness.

The Agency contends Grievant should receive a Group II Written Notice because he did not handcuff Ms. T before transporting her to the jail. Agency Policy 2-8(III)(E)(1) provides, "Prisoners shall be handcuffed with their hands behind their backs, palms outward, except for pregnant, handicapped, or injured prisoners, as detailed in Policy 2-7." Grievant chose not to handcuff up Ms. T because of the scars on her right wrist. He was concerned about injury to the prisoner. Grievant's decision was reasonable under the facts of this case and the applicable policy. Accordingly, the Agency's issuance to Grievant of a Group II Written Notice for failing to handcuff Ms. T must be reversed.

The Agency contends Grievant should receive a Group II Written Notice for failing to call the State Police Dispatcher at the beginning and end of his trip to log the time and odometer readings of his vehicle. Agency Policy 2-8(III)(H)(1) provides:

> a. When transporting a prisoner of one sex by a Special Agent of another sex, an additional Special Agent may be requested to accompany the transport.
>
> b. If using a second Special Agent is impractical, at a minimum the transporting Special Agent shall:
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> > Contact the dispatcher by radio and request that the time and odometer mileage be logged.
> > Go directly to the destination by using the shortest practical route.
> > Upon arrival at the destination, contact the dispatcher by radio and request that the time and the odometer reading be logged.

Grievant is male and he was transporting a female prisoner. He did not request the assistance of a second Special Agent. He did not contact the dispatcher by radio at the beginning and end of his trip to record the times and odometer readings. The Agency has presented sufficient evidence to support the issuance of a Group II Written Notice for failing to call the dispatcher at the beginning and at the end of his trip.

There are no circumstances that would make the Agency's issuance of this disciplinary action in excess of the limits of reasonableness.

The Agency contends Grievant did not obtain his Supervisor's approval before working five hours of overtime on November 28, 2008. Grievant is a Non-Exempt employee under the Fair Labor Standards Act. The Agency requires him to obtain his supervisor's approval prior to working overtime. Grievant did not obtain the approval, and thus, acted contrary to the Agency's policy. Mitigating circumstances exist, however. Grievant believed that the Supervisor had instructed him to serve the warrant within 72 hours regardless of whether the 72 hours ended on a holiday. Grievant believed that instruction served as an authorization to work overtime. Grievant's objective was to comply with his supervisor's instructions and not to work overtime without authorization. Grievant's understanding of the Supervisor's comments and the 72 hour time period were reasonable. Accordingly, the Group II Written Notice for working overtime without authorization must be reversed.

The Agency contends Grievant should receive a Group I Written Notice for retaining the personal property of the prisoner after delivering her to the jail. The evidence showed the Agency's practice was for Special Agents to give a prisoner's personal property to the employees at the jail when the prisoner was transferred to the jail. Because Grievant failed to comply with this practice, Ms. T did not have her belongings immediately upon her release and Grievant had to make a special trip to deliver them to Ms. T. The Agency has presented sufficient evidence to support the issuance of a Group I Written Notice for inadequate or unsatisfactory job performance.

There are no circumstances that would make the Agency's issuance of this disciplinary action in excess of the limits of reasonableness.

Upon the accumulation of two or more Group II Written Notices of disciplinary action, the Agency may remove Grievant from employment. Grievant has now received more than two Group II Written Notices and, thus, his removal must be upheld.

An Agency may not retaliate against its employees. To establish retaliation, Grievant must show he or she (1) engaged in a protected activity; (2) suffered a materially adverse action; and (3) a causal link exists between the adverse action and the protected activity; in other words, management took an adverse action because the employee had engaged in the protected activity. If the agency presents a nonretaliatory business reason for the adverse action, retaliation is not established unless the Grievant's evidence shows by a preponderance of the evidence that the Agency's stated reason was a mere pretext or excuse for retaliation. Evidence establishing a causal connection and inferences drawn therefrom may be considered on the issue of whether the Agency's explanation was pretextual.

Grievant contends that the Agency retaliated against him by stacking the written notices. Grievant has not presented any evidence that he had engaged in a protected activity. In the absence of engaging in a protected activity, Grievant's claim of retaliation fails.[3]

Based on the forgoing, the hearing officer reached the following decision:

For the reasons stated herein, the Agency's issuance to the Grievant of a Group II Written Notice of disciplinary action for failing to search the prisoner is **upheld**.

The Group II Written Notice of disciplinary action for failing to attempt to obtain a caged vehicle to transport the prisoner is **upheld**.

The Group II Written Notice of disciplinary action for failing to handcuff the prisoner is **reversed**.

The Group II Written Notice of disciplinary action for failing to call the dispatcher at the beginning and the end of the transport is **upheld**.

The Group II Written Notice of disciplinary action for working overtime without a supervisor's approval is **reversed**.

The Group I Written Notice of disciplinary action for inadequate or unsatisfactory job performance is **upheld**.

Grievant's removal based upon the accumulation of disciplinary action is **upheld**.

[3] Hearing Decision at 3-7.

Grievant's request for relief from retaliation is **denied**.[4]

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."[5] 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.[6]

Prior Written Notice

The grievant asserts that the hearing officer erred by allowing into evidence a previous but active Written Notice (which referenced several prior counseling memoranda).[7] This Department finds no error with the admission of the prior Written Notice. The agency introduced the Written Notice for consideration for accumulation purposes under the Commonwealth's Standards of Conduct.[8] Under the Standards of Conduct (SOC), the accumulation of active Written Notices can be used to sustain a disciplinary discharge.[9] It is therefore appropriate for a hearing officer to admit any active Written Notice for the purpose of allowing the agency to establish the total number of active Written Notices for accumulation purposes under SOC policy.

"Delay" Defense

The grievant appears to argue that his conduct should be excused because of Va. Code § 18.2-469. That statutory provision states that "[i]f any officer willfully and corruptly refuse to execute any lawful process requiring him to apprehend or confine a person convicted of, or charged with, an offense, or willfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, such officer shall be guilty of a Class 3 misdemeanor." The grievant's request for administrative review does not explain how this provision is relevant to the alleged misconduct. However, the hearing officer addressed the apparent delay argument in his Reconsideration Decision. The hearing officer held that:

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[4] Hearing Decision at 7.
[5] Va. Code § 2.2-1001(2), (3), and (5).
[6] *Grievance Procedure Manual* § 6.4.
[7] *See also* hearing recording at 1:17 where the grievant makes the same objection.
[8] *Id.* at 1:17-1:18.
[9] *See* Department of Human Resource Management (DHRM), Policy 1.60 *Standards of Conduct* ("SOC"). Under the SOC, a Group II Notice in addition to three active Group I Notices normally should result in termination. SOC (B)(2)(b). Similarly, accumulation of four active Group I Offenses normally should result in termination unless there are mitigating circumstances. SOC (B)(2)(a).

> Grievant contends he was obligated to avoid delay in executing lawful process under Va. Code § 18.2-469. This argument is untenable. Grievant was not disciplined for failing to timely issue process. Grievant was disciplined for how he conducted the arrest and transport of the prisoner.[10]

The Written Notice, which describes misconduct including failure to: (1) search the suspect, (2) contact the dispatcher, (3) handcuff the suspect, and (4) attempt to secure a car with a cage, affirms the hearing officer's conclusion that the grievant was disciplined for the manner in which he executed the arrest, not the timeliness of the arrest.

Excessive Discipline/Mitigation

The grievant asserts that the discipline issued: (1) all stemmed from a single incident, (2) was excessive, and (3) should have been mitigated.

As an initial point, we note, as did the Reconsideration Decision of the Hearing Officer, that the agency took the unorthodox step of issuing five Written Notices on one Written Notice form.[11] The Reconsideration Decision states that "it is clear from the evidence that Grievant knew the Agency intended to issue him five separate written notices even though it used one form." The decision concludes that the "the Grievant was not confused by the Agency's mistake. That mistake was harmless error."[12]

To the extent that using a single form for five separate offenses may constitute a mistake, we agree that it was harmless error. The grievant was informed via the Written Notice that he was being disciplined for failing to: search the suspect, contact the dispatcher, and so on. Moreover, the Written Notice made it clear that the agency considered each policy violation a separate Group II Offense.[13] We find that the grievant had sufficient notice of the charges against him.[14]

As to the grievant's contention that all of the Written Notices stem from one incident, it is true that all of the alleged misconduct was related to a single arrest and the subsequent transportation of the arrested. However, the hearing officer found that during

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[10] Reconsideration Decision of the Hearing Officer issued June 10, 2009 ("Reconsideration Decision") at 2.
[11] *Id.*
[12] *Id.*
[13] The agency had checked the "Group II" box and indicated beside the box: "Five Group II's - - All code 13." Under "Circumstances Considered" the agency wrote "You have been *issued 5 Group II notices*, and you have an Active Group I notice; two active Group II notices normally result in removal. Your work history and previous evaluation were considered, but they did not serve to mitigate these disciplinary actions and termination." (Emphasis added).
[14] *C.f.* EDR Ruling #2009-2300. (Grievant was not initially informed of the level of the Written Notice. However, prior to hearing the Written Notice was amended to list the level. Moreover, the original Written Notice adequately set forth the charges with a sufficient degree of specificity for the employee to respond to the charges and the Written Notice at all times informed the employee that he was being discharged for the misconduct.)

the arrest and transportation, the grievant committed multiple violations of agency policy. Unquestionably, the agency can charge an employee with multiple, separate acts of misconduct that, while related, standing alone constitutes an offense in its own right.

The grievant contends that the discipline issued against him was excessive, particularly when compared to the treatment of other employees who have committed serious misconduct. Under the *Rules for Conducting Grievance Hearings (Rules),* the hearing officer reviews the facts de novo (afresh and independently, as if no determinations had yet been made) to determine (i) whether the employee engaged in the behavior described in the Written Notice; (ii) whether the behavior constituted misconduct, (iii) whether the agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g., properly characterized as a Group I, II, or III offense) and, finally, (iv) whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances.[15] In reviewing agency-imposed discipline, the hearing officer must give due consideration to management's right to exercise its good faith business judgment in employee matters, and the agency's right to manage its operations.[16] Therefore, 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.[17]

Here, the hearing officer found that the grievant had engaged in the conduct described in the Written Notices, and that in four instances the behavior constituted misconduct. Moreover, the hearing officer appears to have correctly found that the levels of discipline issued were appropriate for the misconduct. Thus, the hearing officer was able to mitigate the agency's discipline only if, under the record evidence, the discipline exceeds the limits of reasonableness. One of the examples of a mitigating circumstance set forth in the *Rules* is the inconsistent application of discipline, which is defined as "discipline [that] is inconsistent with how other similarly-situated employees have been treated."[18]

The grievant asserts that he was treated more harshly than other employees who have committed serious infractions. This argument was also addressed by the hearing officer. He held in his Reconsideration Decision:

> Grievant argues the Agency inconsistently disciplined its employees. He offered the example of another DMV employee who made threats to a DMV customer. Grievant has not established that another

[15] *Rules for Conducting Grievance Hearings,* § VI (B).
[16] *Id.*
[17] *Id.*
[18] *Rules for Conducting Grievance Hearings,* §VI (B)(1).

> DMV employee engaged in behavior sufficiently similar to his behavior and that other employee received lower discipline. Threatening a DMV customer is materially different from Grievant's behavior.

We agree that threatening a DMV customer is different from the grievant's behavior, although recognize that reasonable minds might differ at to whether threatening a customer is a less serious offense that those found to have been committed by the grievant. Notably, however, the individual with whom the grievant seeks to be compared also apparently lost his job. According to the grievant, this individual was allowed to resign instead of being discharged as a result of his misconduct. Under the facts of this case, this Department cannot conclude that the hearing officer abused his discretion by not reducing the discipline. The agency in this case viewed the grievant's actions as a serious departure from elementary police procedure and that he posed a risk to himself and the agency.[19]

Documents Issue

The grievant asserts that the agency did not provide certain documents that the hearing officer had ordered the agency to produce. The hearing officer addressed these concerns in his Reconsideration Decision. He states:

> Grievant contends the Agency failed to produce all of the documents ordered by the Hearing Officer to be produced. It is not clear whether the Agency actually failed to produce all of the documents ordered by the Hearing Officer. To the extent the Agency failed to comply with the Hearing Officer's order, the Hearing Officer might draw an adverse inference against the Agency regarding those documents. In this case, Grievant did not identify at the hearing or as part of his appeal which documents were not produced as ordered. Grievant did not identify during the hearing or as part of his appeal what adverse inference the Hearing Officer should make and apply to the Agency's evidence in this case. The discipline taken against Grievant was based largely on his own statements and the statements of two citizens and Agency policy that was not in dispute. It is unclear how any missing documents would affect the outcome of the case regarding the Agency's case in chief.

In fact, the grievant did mention, in his closing argument, one of the documents purportedly not produced. It was the statement of the woman arrested by the grievant.[20] The grievant asserts that he wanted the statement to show that it was tear-stained.[21] It is difficult to see how this document would have made any difference in this case. The

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[19] Hearing recording beginning at 2:16 (testimony of the Director of Law Enforcement Services), and at 1:20 (testimony of the Special Agency in Charge).
[20] Hearing recording at 3:17-3:18. The grievant asserts that the agency informed him that they could not locate the statement. *Id.* at 3:18.
[21] Hearing recording at 3:18.

grievant did not explain the significance of the tear stains. One can only presume that he wanted to show that grievant was remorseful, and therefore may have posed little threat. The agency made it clear that the policy violations committed by the grievant failing to handcuff, contact the dispatcher, and so on constituted direct violations of basic police procedure and agency policy, and were not the sorts of breaches in protocol that one would expect even a recent graduate of the police academy to make.[22] From a review of the hearing, there is no reason to believe that a tear-stained statement would have made a difference to the hearing officer (or the agency).

The second group of documents that the grievant asserts he was not provided consists of past performance evaluations. These documents too would appear to have made no difference in this case. Presumably, these documents were intended to reflect an otherwise satisfactory work record by the grievant, which might serve as a source for mitigation.

Indeed, otherwise satisfactory work performance is grounds for mitigation by *agency management* under the Standards of Conduct.[23] However, a hearing officer's authority to mitigate under the *Rules for Conducting Grievance Hearings* is not identical to the agency's authority to mitigate under the Standards of Conduct. Under the *Rules for Conducting Grievance Hearings*, the hearing officer can only mitigate if the agency's discipline exceeded the limits of reasonableness. Therefore, while it cannot be said that otherwise satisfactory work performance is *never* relevant to a hearing officer's decision on mitigation, it will be an extraordinary case in which this factor alone could adequately support a hearing officer's finding that an agency's disciplinary action exceeded the limits of reasonableness.[24] The weight of an employee's 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.[25] The more serious the charges, the less significant otherwise satisfactory work performance becomes.[26]

In this case, the grievant's otherwise satisfactory work performance is not so extraordinary as to justify mitigation of the agency's decision to discharge the grievant for conduct that was determined by the hearing officer to be terminable, i.e., three Group II offenses and a Group I. As noted above, the agency characterized the grievant's behavior as "inconceivable" and "incomprehensible," and viewed the breaches in standard protocol as ones that even a rookie officer would know are clearly impermissible.[27] Moreover, the agency expressly stated on the Written Notice form that the grievant's "work history and previous evaluations were considered, but they did not

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[22] Hearing recording at 2:16-2:22 (testimony of Director of Law Enforcement Services summing up the grievants behavior as "inconceivable" and "incomprehensible.")
[23] *See* SOC (B)(3)(a).
[24] EDR Ruling No. 2007-1518.
[25] *Id.*
[26] *Id.*
[27] Hearing recording at 2:16-2:22 (testimony of Director of Law Enforcement Services).

serve to mitigate these disciplinary actions and termination." Accordingly, the hearing officer would have erred had he mitigated on this basis.

The remaining documents that the grievant alleges were not produced are documents that appear to pertain to a 2007 case and sought, among other things, "all warrants obtained by Grievant." The grievant did not identify at hearing or in his request for administrative review how these documents might be relevant to the issue before the hearing officer: the manner in which the grievant arrested and transported a female suspect. We cannot conceive of any such relevance. Accordingly, we would find no reason to disturb the decision on this basis or any remaining basis advanced by the grievant.[28]

APPEAL RIGHTS AND OTHER INFORMATION

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 and any reconsidered hearing decisions following such review have been decided.[29] 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.[30] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[31] This Department's rulings on matters of procedural compliance are final and nonappealable.[32]

Claudia T. Farr
Director

[28] For example, the grievant asserts in his request for administrative review that the agency rescinded several policies. The significance of the elimination of these policies is not explained. Likewise, the grievant asserts in his request for administrative review that "District 5 had been out of compliance of the LES policy concerning arrest warrants being PINNED by the State Police and maintained by the State Police," but does not explain how this alleged violation had any impact on his case. We thus decline to speculate as to the relevance of the rescinding of the policies or the purported violation of policy. Throughout the hearing the grievant cross-examined witnesses about the maintenance and storage of warrants but he never made evident the relevance of any such procedures. Moreover, there was ample unrefuted evidence to support the charges upheld by the hearing officer.

[29] *Grievance Procedure Manual*, § 7.2(d).

[30] Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

[31] *Id. See also* Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 573 S.E. 2d 319 (2002).

[32] *See* Va. Code § 2.2-1001 (5), § 2.2-3003 (G).