Issue: Administrative Review of Hearing Officer's decision in Case No. 9847; Ruling Date: October 5, 2012; Ruling No. 2013-3415; Agency: Virginia Commonwealth University; Outcome: Hearing Decision Affirmed.

COMMONWEALTH of VIRGINIA

Department of Human Resource Management

Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW

In the matter of Virginia Commonwealth University
Ruling Number 2013-3415
October 5, 2012

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 9847. For the reasons set forth below, EDR finds no reason to disturb the hearing officer's decision in this matter.

FACTS

At issue in this case were three separate disciplinary actions issued to the grievant, two of which were overturned by the hearing officer. The remaining Written Notice, a Group III with removal, was issued for falsifying records.[1] The relevant facts as to this charge are set forth in the hearing decision in Case Number 9847 as follows:

> Grievant and his brother began the process of creating and building a Restaurant. The Restaurant operated as a Domestic Limited Liability Company. The Certificate of Formation was dated May 1, 2007 and filed with the State Department of the Treasury on May 2, 2007. The Limited Liability Company was organized for the purpose of operating Quick Service Restaurant. Grievant obtained a temporary Employer Indemnification Number for the company. January 1, 2008 was the first day wages were paid by the company. Grievant ended his employment with the Restaurant effective March 31, 2008.
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> Grievant presented as evidence a copy of a General Employment Agreement effective January 1, 2008 showing that his base compensation salary would be at the rate of $60,000 per year and that he would receive bonus compensation as a percentage of the company's gross sales. The Document was not signed or dated. Grievant received $40,000 as a "salary advancement".
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> On April 17, 2011, the Restaurant Domestic Limited Liability Company was canceled because:

[1] Decision of Hearing Officer, Case No. 9847, August 2, 2012 ("Hearing Decision"), at 1, 11.

This was for a restaurant chain that never was able to obtain adequate financing. We never opened for business or had any revenue.

On February 19, 2008, Grievant submitted an online Application for Employment for the position of Chief Administrative Officer. He listed the Restaurant as his current employer. Grievant wrote that his Job Title was Chief Operating Officer, Date Employed was from April 1, 2007, and his Starting Salary was $90,000. Grievant did not report an ending employment date or ending salary for the Restaurant. The Application for Employment contained a box entitled "Agreement" at the end of the application. The text in the box provided:

I hereby certify that all entries are true and complete, and I agree and understand that any falsification of information herein, regardless of time of discovery, may cause forfeiture on my part to any employment in the service of the Commonwealth of Virginia. I understand that all information on this application is subject to verification and I consent to criminal history background checks. I also consent to references and former employers and educational institutions listed being contacted regarding the application. I further authorize the Commonwealth to rely on and use, as it sees fit, any information received from such contacts. Information contained in this application may be disseminated to other agencies, nongovernmental organizations or systems on a need-to-know basis for good cause shown as determined by the agency head or designee.

By signing below, I certify that I have read and agree with these statements.

Grievant was selected for an interview. As part of the interview process, Grievant spoke with Dr. L who became Grievant's Supervisor once Grievant began working for the Agency. During the interview, Grievant explained the nature of the Restaurant's business but did not disclose that his salary was not actually $90,000 per year. Dr. L established Grievant's salary based on the assumption that Grievant previously was earning salary of $90,000.

On March 21, 2008, Grievant received a letter from the Human Resource Generalist stating, "You will begin employment with VCU on April 1, 2008, at an annual salary of $84,000."

On April 1, 2008, Grievant reported to work and was presented with a copy of his online Application for Employment. Grievant was asked to sign the Application for employment. Grievant signed his name and wrote the date 4/1/08 in a box entitled "Agreement" at the end of the application thereby certifying the accuracy of the information he wrote in his employment application.

In April 2011, the University Audit & Management Services office was contacted by the Dean's Office of the School of Medicine regarding fiscal activity within Grievant's Department. As part of that audit, the Auditor reviewed the financial records of Grievant's Department and interviewed Grievant and his staff. The Auditor also took possession of the personal computer owned by the Agency but used by Grievant to perform his work duties. Grievant had placed draft copies of the 2007 and 2008 joint tax returns for Grievant and his wife. A draft of Grievant's and his wife's 2007 federal income tax return showed adjusted gross income $79,673. Grievant listed wages, salary, tips etc. as $62,240 and unemployment compensation of $17,796. Grievant listed taxable interest as $483 and showed a business loss of $846. Grievant drafted a Form 1099–G showing that he was the recipient of unemployment compensation in the amount of $17,796. The Auditor compared the draft tax returns with Grievant's Application for Employment.[2]

Based on these facts, the hearing officer held the following:

Once an application for employment is submitted to a State agency, it becomes a record of that agency. If Grievant intended to falsify the application for employment, then he would have engaged in behavior rising to the level of a Group III offense.

Grievant falsified his application for employment with the Agency. Grievant listed his Starting Salary as $90,000 with the Restaurant even though his compensation was substantially lower than $90,000. Grievant knew or should have known that reporting his salary as $90,000 was false. The Agency has presented sufficient evidence to support the issuance of a Group III Written Notice for falsifying an application for employment. Upon the issuance of a Group III Written Notice, an agency may remove an employee. Accordingly, the Agency's decision to remove Grievant must be upheld.

Grievant argued that he explained to the Agency during the hiring process that his salary depended upon many factors relating to the operation of the Restaurant but he did not intentionally mislead the Agency and the Agency did not rely upon his assertion that his annual salary was $90,000. This argument fails. The Supervisor interviewed Grievant as part of the hiring process and discussed with Grievant the nature of his employment with the Restaurant. The Supervisor was concerned that the Agency could not offer Grievant more than $84,000 per year and that Grievant would be taking a pay cut. Following his discussions with Grievant, the Supervisor believed that Grievant's salary from the Restaurant was $90,000. The Supervisor only learned that Grievant's salary was less than $90,000 when he read the audit report giving rise to the disciplinary

[2] *Id.* at 2 – 3 (footnotes omitted).

action against Grievant. Grievant did not present any credible evidence showing that he received a salary from the Restaurant at the rate of $90,000 per year.

Grievant argued that the Agency violated his right of privacy and acted outside of Agency policy to view the contents of the hard drive of his work computer. Grievant's argument fails. Grievant's draft tax returns were found on the hard drive of the computer owned by the Agency. DHRM Policy 1.75 coverings employees' use of electronic computer systems owned by the Commonwealth of Virginia. This policy provides:

No user shall have any expectation of privacy in any message, file, image or data created, sent, retrieved, received, or posted in the use of the Commonwealth's equipment and/or access. Agencies have a right to monitor any and all aspects of electronic communications and social media usage. Such monitoring may occur at any time, without notice, and without the user's permission.

In addition, except for exemptions under the Act, electronic records may be subject to the Freedom of Information Act (FOIA) and, therefore, available for public distribution.

Under this policy, Grievant had no expectation of privacy when he created a file on the Agency's computer containing his personal tax returns. The Agency owned the personal computer used by Grievant and had the right to take possession of the computer and examine it using whatever means it chose.

Grievant argued that the Agency's policies created a right of privacy. If the Hearing Officer assumes for the sake of argument that the Agency's policies may have created some expectation or right of privacy, the DHRM Policy 1.75 supersedes those policies. DHRM Policy 1.75 states, "Agencies may supplement the policy as necessary, as long as such supplement is consistent with the policy." To the extent the Agency's policies created an expectation of privacy, the Agency's policies would not be consistent with DHRM Policy 1.75 and, therefore, unenforceable.[3]

In the August 2, 2012 hearing decision, the hearing officer upheld the Group III Written Notice with removal.[4] The grievant now seeks administrative review from EDR.

DISCUSSION

By statute, the Office of Employment Dispute Resolution (EDR) through the Department of Human Resource Management has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions … on all

[3] *Id.* at 6 – 7 (footnotes omitted).
[4] *Id*. at 11.

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, EDR does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.[6]

Length of Hearing

The grievant asserts that he did not have sufficient time to present his case and that the hearing officer unreasonably limited his presentation to three hours. The *Rules for Conducting Grievance Hearings ("Rules")* do not expressly require the hearing officer to grant a party a particular amount of time to present their case. Generally, hearings can be concluded in a day or less but there is no requirement that a hearing last an entire day.[7] However, a hearing should last as long as necessary for the parties to have an opportunity to fully and fairly present their evidence.[8]

Based on the totality of circumstances in this case, we cannot conclude that the hearing officer did not allow the grievant a fair opportunity to present his case. While he may have wished for additional time, we cannot conclude that the amount of time he was granted was insufficient or unfairly prejudiced him, or that additional time would have changed the outcome. The grievant has not specified any additional evidence that might have impacted the decision that he was disallowed from submitting due to the time constraints. Thus, we will not disturb the decision on this basis.

Witness Issues

The grievant complains that he was not able to present all of his witnesses and that his witness list was cut arbitrarily.[9] In his request for administrative review, the grievant provides limited details as to his claims and does not describe what evidence he was denied by having witnesses disallowed. A review of the hearing record in this matter reflects that the hearing officer allowed the grievant to proffer each witness on the witness list at hearing and describe the general topics they would address.[10] The hearing officer sought to hear from certain of these witnesses, but not others. Although it appears the University may have failed to make certain witnesses available at hearing, EDR finds that there was no material witness denied to the

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[5] Va. Code § 2.2-1202.1(2), (3), and (5).
[6] *See Grievance Procedure Manual* § 6.4(3).
[7] *Rules* at III(B). The *Rules* state that "[t]he hearing on a grievance may be divided into one or more sessions, but generally should last no longer than a total of 8 hours."
[8] The *Rules* further state the "hearing may continue beyond 8 hours, however, if necessary to a full and fair presentation of the evidence by both sides." *Id.*
[9] The grievant first presented a witness list of over 40 witnesses, which was reduced by the grievant prior to hearing after a pre-hearing conference based on the hearing officer's discussion that the grievant need not present witnesses as to disciplinary matters not at issue in the case. *See* Reconsideration Decision of Hearing Officer, Case No. 9847-R, Sept. 17, 2012 ("Reconsideration Decision"), at 2 – 3.
[10] Hearing Record at 4:49:16 – 5:02:00. The grievant noted some topics that certain witnesses might have testified to in his response to the Reconsideration Decision. However, the grievant had the opportunity to offer such explanations to the hearing officer during the proffer at hearing. Given that the grievant did not raise these points at that time or in his first request for administrative review, they will not be considered at this late date.

grievant. We will address the issues surrounding one witness, the grievant's brother, with more specificity.

Instead of presenting his brother as a live witness, the grievant submitted a signed affidavit of testimony, which, the hearing officer states in the Reconsideration Decision, was given "less weight" because it was not subject to cross-examination.[11] If the hearing officer knew he was going to give less weight to that affidavit, a better practice may have been to so advise the grievant and provide an opportunity to have that witness testify under oath subject to cross-examination if that was the grievant's choice after being advised of the weight issue.

However, even if this opportunity should have been provided to the grievant, we do not find that remand is necessary to cure any defect in the hearing process. Rather, it is quite possible that the hearing officer may have determined that he need not hear from the grievant's brother because the grievant testified, under oath and subject to cross-examination, as to the same facts.[12] Therefore, any additional live testimony that the grievant's brother could have provided is largely duplicative. Further, it is not likely that the testimony consistent with the affidavit from a family member of the grievant would have had any material effect on the outcome or findings of this case. Consequently, no remand is necessary.

The only Written Notice upheld against the grievant was the one for falsification. Based upon the grievant's proffers during the hearing, except for the issue with the grievant's brother, the only witnesses who were described as having testimony related to the falsification charge testified.[13] Consequently, even if the grievant was not permitted to have other witnesses testify, none of those witnesses would have presented any evidence that would alter the result in this case, making any error in this regard moot.[14]

Hearing Officer Questions

The grievant argues that the hearing officer asked inappropriate questions regarding the University's authority to access University-owned computers and the applicable policies. Based on the hearing officer's questioning, brief testimony regarding state policy occurred.[15] The *Rules for Conducting Grievance Hearings* provides that "the hearing officer may question the

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[11] Reconsideration Decision at 3.
[12] *E.g.,* Hearing Record at 3:27:45 – 3:37:30.
[13] *See* Hearing Record at 4:49:16 – 5:02:00, 5:21:50 – 5:43:15, 5:52:00 – 6:02:07. The only other witness who may have had material testimony, Mr. W, would have testified to the same topic as another witness, Mr. H, making his testimony duplicative. The grievant has described another witness as offering testimony on the alleged requirement of "progressive discipline." Whether state policy's "requirement" of "progressive discipline" was followed, and if there is such a requirement, need not have witness testimony as policy will speak for itself. Further, DHRM's review of this decision can address the extent to which this portion of policy was followed.
[14] *Accord* Reconsideration Decision at 2 – 3. For these same reasons, the question of whether an adverse inference ought to have been considered as to the failure of the University to make available the other witnesses who were ordered to appear is moot. These witnesses would have presented testimony on matters that have no relevance to the Written Notice upheld and, consequently, there would be no material impact on the outcome of the hearing even if such adverse inferences were considered.
[15] Hearing Record at 5:54:50 – 5:55:30.

witnesses."[16] The *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 be taken to avoid appearing as an advocate for either side."[17] Based on a review of the record, we find the hearing officer's questions to be relevant and reasonable. Both parties had the opportunity to further inquire of the witness on the topic raised. Consequently, we find nothing inappropriate with the hearing officer's conduct in questioning a witness about a pertinent and potentially controlling policy.

Appearance of Bias

The grievant alleges that the hearing officer was biased. It appears the grievant makes this argument, in part, because some of the hearing officer's factual findings and conclusions supported the University's position in this case, he was biased against the grievant. The grievant also cites the above-referenced procedural arguments as evidence of the hearing officer's alleged bias.

The *Rules for Conducting Grievance Hearings (Rules)* provide that a hearing officer is responsible for:

> [v]oluntarily disqualifying himself or herself and withdrawing from any case (i) in which he or she cannot guarantee a fair and impartial hearing or decision, (ii) when required by the applicable rules governing the practice of law in Virginia, or (iii) when required by EDR Policy No. 2.01, Hearing Officer Program Administration.[18]

Similarly, EDR Policy 2.01 states that a "hearing officer must voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot guarantee a fair and impartial hearing or decision or when required by the applicable rules governing the practice of law in Virginia."[19]

As to the EDR requirement of a voluntary disqualification when the hearing officer "cannot guarantee a fair and impartial hearing," the applicable standard is generally consistent with the manner in which the Virginia Court of Appeals reviews recusal cases.[20] The Court of Appeals has indicated that "whether a trial judge should recuse himself or herself is measured by whether he or she harbors 'such bias or prejudice as would deny the defendant a fair trial.'"[21] EDR has found the Court of Appeals standard instructive and has held that in compliance reviews by EDR on the issue of a hearing officer's failure to recuse (disqualify) himself, the

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[16] *Rules for Conducting Grievance Hearings* § IV(C).
[17] *Id.*
[18] *Rules* at II.
[19] EDR Policy 2.01, p. 3.
[20] While not always dispositive for purposes of the grievance procedure, EDR has in the past looked to the Court of Appeals and found its holdings persuasive.
[21] Welsh v. Commonwealth, 14 Va. App. 300, 315 (1992). ("In the absence of proof of actual bias, recusal is properly within the discretion of the trial judge." *See* Commonwealth of Va. v. Jackson, 267 Va. 226, 229; 590 S.E.2d 518, 520 (2004)).

appropriate standard of review is whether the hearing officer has harbored such actual bias or prejudice as to deny a fair and impartial hearing or decision.[22] The party moving for recusal has the burden of proving the hearing officer's bias or prejudice.[23]

In this particular case, there is no such evidence. The mere fact that a hearing officer's findings align more favorably with one party than another will rarely if ever standing alone constitute sufficient evidence of bias.[24] This is not the extraordinary case where bias can be inferred from a hearing officer's findings of fact. Further, to suggest that the hearing officer's findings primarily supported the University avoids the actual findings in this case: the hearing officer rescinded two of the disciplinary actions.[25] Similarly, the grievant's procedural concerns, dispensed with previously, offer no basis that the hearing officer was in any way biased in this matter. Therefore, EDR finds no reason to disturb the hearing officer's decision for this reason.

Improper Collection of Evidence

Exhibits used against the grievant as to the charge of falsification were personal tax documents of the grievant that were stored on his University computer.[26] The grievant asserts that the University violated various laws and/or policies in accessing his University computer to obtain this information. Because of the allegedly improper collection methods, the grievant argues that those documents should not be admissible evidence against him. In short, the grievant alleges that he had an expectation of privacy in the University computer and that interest, which the grievant argues is protected by certain laws and policies, was violated. The hearing decision found otherwise and we agree.

Principal in the hearing officer's analysis was the language included in DHRM Policy 1.75, which clearly delineates that there is no such privacy interest in state-owned computers and that employee use is and may be monitored.[27] Based on this policy, we are not persuaded by the grievant's varied arguments against the University's access of his University computer. The University appears to have had the right to access the computer and the grievant was or should have been aware that his use of the computer was not private.[28] Consequently, the hearing officer properly accepted and considered the exhibits collected from the grievant's University computer.[29]

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[22] *See, e.g.*, EDR Ruling No. 2011-2807.
[23] *See Jackson*, 267 Va. at 229, 590 S.E.2d at 519-20.
[24] *C.f.*, Al-Ghani v. Commonwealth No. 0264-98-4, 1999 Va. App. LEXIS 275 at * 12-13 (May 18, 1999)("The mere fact that a trial judge makes rulings **adverse** to a defendant, standing alone, is insufficient to establish **bias** requiring recusal.")
[25] Hearing Decision at 11.
[26] *See* Hearing Decision at 4.
[27] *See* Hearing Decision at 6 – 7; Reconsideration Decision at 5.
[28] *Accord* Keck v. Commonwealth of Virginia, No. 3:10cv555, 2011 U.S. Dist. LEXIS 115795, at *35-37 (E.D. Va. Sept. 9, 2011), *adopted by*, 2011 U.S. Dist. LEXIS 112695 (E.D. Va. Sept. 30, 2011), *aff'd*, 470 F. App'x 127 (4th Cir. 2012).
[29] The grievant is free to raise his arguments on this issue and as to the related allegations of law violations to the Circuit Court as potential errors of law. *See Grievance Procedure Manual* § 7.3(a).

Findings of Fact and Witness Testimony

In his request for administrative review, the grievant raises numerous challenges, some of which, at varying extents, challenge the hearing officer's findings of fact and assessments of witness testimony and evidence. Hearing officers are authorized to make "findings of fact as to the material issues in the case"[30] and to determine the grievance based "on the material issues and grounds in the record for those findings."[31] 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.[32] 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.[33] Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based upon evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

Based on a review of the grievant's administrative review request and the record in this case, EDR cannot find that the hearing officer abused his discretion or otherwise did not have record evidence to support the relevant and material factual determinations in the hearing decision. Nothing the grievant has presented in his lengthy request for administrative review raises more than potentially disputed questions of fact. For example, a central question of this case surrounds whether the grievant's claimed salary in a prior position was false.[34] Based upon a review of the hearing record and the grievant's arguments on appeal, he has made some potentially reasonable arguments to challenge the hearing officer's findings as to the intent, meaning, and/or circumstances of his claim of a $90,000 salary in a prior job.[35] However, there is other evidence in the record, or indeed, a lack of evidence as the case may be, that the grievant did not receive a salary in the amount claimed.[36] Further, given the difficulties with the business venture,[37] it is unclear why the grievant supplied the precise figure of $90,000 as a salary for his application. In short, EDR cannot find fault with the hearing officer's factual determination as to the falsity of the grievant's claimed salary.

While the grievant may disagree with the findings, the hearing officer has the sole authority to weigh the evidence and determine questions of disputed facts based upon the record.

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[30] Va. Code § 2.2-3005.1(C).
[31] *Grievance Procedure Manual* § 5.9.
[32] *Rules for Conducting Grievance Hearings* § VI(B).
[33] *Grievance Procedure Manual* § 5.8.
[34] *See* Hearing Decision at 6; Reconsideration Decision at 1 – 4.
[35] *E.g.*, Hearing Record at 3:31:30 – 3:37:30.
[36] *E.g.*, Hearing Record at 3:20:20 – 3:20:27, 3:31:30 – 3:37:30; *see also* Reconsideration Decision at 1 – 2 ("Despite presenting over a hundred pages of documents as part of his request for reconsideration, Grievant cannot present one business record showing that he was paid at a rate of $90,000 from the Restaurant.").
[37] *See* Hearing Decision at 2 – 3.

Therefore, because EDR cannot find that the hearing officer's findings are not based upon evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings. Consequently, we have no basis to disturb the hearing officer's decision on these grounds.

State Application Arguments

The grievant has also employed a number of arguments as to why he did not actually falsify a state application. For instance, he states that he did not sign the application(s) submitted prior to accepting the job with the University because they were submitted electronically. He also states that the version he did sign on his first day of work could not be a "state application" because there was no position to apply for as he already filled it. The hearing officer's conclusions were not supportive of these arguments and we agree.

Inasmuch as the hearing officer's determinations in this regard are issues of fact, as discussed above, EDR cannot substitute its judgment for that of the hearing officer with respect to findings that have support in the record. Although the grievant is utilizing a creative line of argument, EDR does not believe it is reasonable to argue that simply because the application submitted electronically was not manually signed that the grievant was somehow free to submit inaccurate and/or falsified information with it. Similarly, the grievant's arguments as to the effectiveness or propriety of signing an application post-employment rather than pre-employment are unpersuasive and we have no reason to disturb the hearing officer's decision on these grounds.

Nor do we view the principles of due process to have been violated in the terms of the Written Notice. It cannot reasonably be argued that the grievant did not know he was being charged with falsifying specific information to the University on his application or that he did not have a fair opportunity to respond to those charges. The grievant claimed a salary at a prior job that the hearing officer found to be inaccurate and falsified. We have no basis to dispute these findings as there is record evidence to support the hearing officer's conclusions.

Improper Motive

The grievant raised a number of issues under the heading of "improper motive," including discrimination, retaliation, hostile work environment, and nepotism. While it is not clear that evidence was submitted concerning all of these issues at hearing, EDR has reviewed nothing to support these allegations in the grievant's request for administrative review beyond the matters already addressed by the hearing officer. For instance, the grievant's central argument under this theory of improper motive appears to surround his stated participation in, reporting, and/or not covering up of complaints of sexual harassment. The hearing officer addressed this issue in the original decision[38] and EDR has no basis to disturb his determinations or otherwise intervene. The grievant has not presented anything in his administrative review

[38] Hearing Decision at 10.

request that raises any issues requiring remand or reconsideration of the issues by the hearing officer.

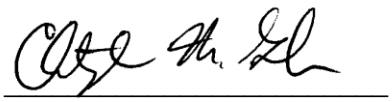
Inconsistent Discipline

The grievant submitted evidence regarding a prior hearing involving a University employee who falsified records. The grievant believes that he was treated differently, in that he lost his job, than the employee in that case. The hearing officer addressed this argument in the hearing decision, distinguishing that case from the grievant's.[39] We have no basis to dispute the hearing officer's determination in this regard.

CONCLUSION AND APPEAL RIGHTS

As stated above, EDR finds no basis to disturb the hearing officer's decision. No portion of the *Grievance Procedure Manual* or *Rules for Conducting Grievance Hearings* has been violated such that a remand is necessary. This ruling has not addressed certain policy-based and legal challenges to the hearing decision. Such matters are more properly addressed by DHRM[40] and the Circuit Court,[41] if such an appeal is eventually filed, respectively. To the extent there are any other issues raised by the administrative review request to which the grievant may argue there is no direct response found in this ruling, the grievant's request is denied.

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.[42] 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.[43] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[44]



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[39] Hearing Decision at 9.
[40] Va. Code § 2.2-3006(A); *Grievance Procedure Manual* § 7.2(a).
[41] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[42] *Grievance Procedure Manual* § 7.2(d).
[43] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[44] *Id.*; *see also* Virginia Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).