COMMONWEALTH of VIRGINIA

Department of Human Resource Management
Office of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No. 12043

Hearing Date: February 5, 2024
Decision Issued: February 7, 2024

PROCEDURAL HISTORY

On October 16, 2023, Grievant was issued a Group II Written Notice of disciplinary action, with ten days suspension. The offense was failure to follow instructions or policy, occurring between July 19, 2023, to September 11, 2023.

The Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On December 4, 2023, the Office of Employment Dispute Resolution assigned this grievance to the Hearing Officer. On February 5, 2024, a hearing was held in person, a date that was delayed and continued for good cause from January 31, 2024.

The Agency and Grievant submitted documents for joint exhibits that were accepted into the grievance record, and they will be referred to as Joint Exhibits, by numbered tab. The hearing officer has carefully considered all evidence and argument presented.

APPEARANCES

Grievant
Counsel for Grievant
Agency Representative
Counsel for Agency
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Written Notice?
2. Whether the behavior constituted misconduct?
3. 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)?

4. 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?

BURDEN OF PROOF

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. In all other actions, such as claims of retaliation and discrimination, the employee must present her evidence first and must prove her claim by a preponderance of the evidence. *In this grievance, the burden of proof is on the Agency. Grievance Procedure Manual* (GPM) § 5.8. However, § 5.8 states *"[t]he employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline*." A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Code § 2.2-3000 sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

> It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . .
> To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

Va. Code § 2.2-3005 sets forth the powers and duties of a Hearing Officer who presides over a grievance hearing pursuant to the State Grievance Procedure. Code § 2.2-3005.1 provides that the hearing officer may order appropriate remedies including alteration of the Agency's action. Implicit in the hearing officer's statutory authority is the ability to determine independently whether the employee's alleged situation, if otherwise properly before the hearing officer, justifies relief. The Court of Appeals of Virginia in *Tatum v. Dept. of Agr. & Consumer Serv.*, 41 Va. App. 110, 123, 582 S.E. 2d 452, 458 (2003) (*quoting Rules for Conducting Grievance Hearings*, VI(B)), held in part as follows:

> While the hearing officer is not a "super personnel officer" and shall give appropriate deference to actions in Agency management that are consistent with law and policy ... "the hearing officer reviews the facts *de novo* ... as if no determinations had been made yet, to determine whether the cited actions occurred, whether they constituted misconduct, and whether there were mitigating circumstances to justify reduction or removal of the disciplinary action or aggravated circumstances to justify the disciplinary action."

DHRM Policy 1.60, *Standards of Conduct*, requires employees (among other things) to:

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Meet or exceed established job performance expectations.
- Make work-related decisions and/or take actions that are in the best interest of the agency.
- Comply with the letter and spirit of all state and agency policies and procedures, the Conflict of Interest Act, and Commonwealth laws and regulations.
- Work cooperatively to achieve work unit and agency goals and objectives.
- Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.

Joint Exh. 13.

Under DHRM Policy 1.60, a Group II offense includes acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that seriously impact business operations and/or constitute neglect of duty involving major consequences, insubordinate behaviors and abuse of state resources, violations of policies, procedures, or laws. The *Standards of Conduct*, Joint Exh. 13.

The Offense

The Group II Written Notice, issued by the manager on October 16, 2023, detailed the facts of the offense, and concluded:

> On July 19, 2023, you decided contrary to multiple interactions with several Department of Elections employees regarding the process for quantities and shipment requirements for the Provisional Envelopes. Instead, you instructed [ ] our Procurement Officer to ship the envelopes to State Mail Services (SMS). Neither SMS nor [ ], Election Administration Specialist were notified of the shipment plans or the plans to deliver the envelopes to the localities. On or about September 11, 2023, multiple localities were complaining on the General Registrar's email list about not receiving their envelopes. It was discovered only a handful of localities had put in requests for specific quantities of envelopes which had been fulfilled with the 150,000 that were ordered, and there were no envelopes for other localities. In an attempt to correct this issue, a process was created whereby locations which received large [quantities] of envelopes, would

> send envelopes to other localities which enabled all 133 localities to have at least 500 envelopes prior to the start of early voting on September 22, 2023. As a result of your not following the established process, which had been used for the last two election cycles, the agency incurred a minimum of $1,300 in additional shipping costs due to the use of SMS. Also, the agency will incur a minimum cost of $1,775 in increased printing costs, which does not include shipping and delivery. In addition, a new order had to be placed and will not be available to the localities until after September 22, 2023.
>
> Also, you failed to own and track this process, were dismissive when asked repeatedly for the delivery instructions, and when you were told that if we didn't get them to the printer, we would not have them in time for early voting to start. you stated "that's fine, they can use the old·ones."

Joint Exh. 7. The discipline included ten days suspension, the maximum allowed for one Group II Written Notice. For circumstances considered, the Written Notice stated:

> In taking this disciplinary action, consideration has been given to your length of state service, your previous performance, your current performance, your work contributions, and your response to the notice of due process. As the Elections and Registration Services (ERS) Supervisor, the purpose of your position is to manage Elections and Registration Services staff and election administration activities. Provides project management and process analysis in the areas of election administration and systems. Ensures compliance with the agency and Boards policies, regulations, and governing laws for the administration of elections in the Commonwealth. Ensures locality support and local compliance. Develops, coordinates, delivers, and maintains current user documentation to ensure the uniformity, fairness, openness, and legality of elections in Virginia. Analyzes and documents technical business processes.
>
> Your supervision of the ERS staff includes providing oversight, project planning, management, and documentation for Election Administration (EA) processes, such as election material orders. A measure of the EA Management is making sure election administration processes are prepared and completed accurately, on time and with particular attention to customer service. The DHRM Policy 1.60, Standards of Conduct outlines Group II Level Offenses includes acts of misconduct, violations of policy, or performance of a more serious nature that significantly impact the agency's services and operations. Examples may include: Failure to follow supervisor's instructions; comply with written policy or agency procedures, therefore, no further mitigation is warranted. Please understand any future incidents of a similar nature could result in further disciplinary actions consistent with DHRM Policy 1.60 "Standards of Conduct," up to and including termination of your employment with the Virginia Department of Elections.

Joint Exh. 7.

After reviewing the evidence presented and observing the demeanor of each testifying witness, the Hearing Officer makes the following findings of fact and conclusions:

The Agency employed the Grievant as elections and registration services supervisor for over four years, without other active disciplinary actions. The Grievant's prior tenure with another agency of the Commonwealth was also free of formal discipline.

The Agency's Director of Operations testified consistently with the offense noted in the Written Notice. For the 2023 election, the Agency developed a new voter registration day of voting provisional ballot envelope. Early voting started September 22, 2023. She testified that the Grievant was considered management, and he was responsible for delivering election materials to the general registrars of all 133 localities. She testified that for new voting forms, the practice is to survey the general registrars to establish the number of forms to send to each general registrar. Joint Exh. 20. In this case, the Grievant elected not to conduct the survey. The Grievant and his supervisor jointly concluded that 150,000 would be the number of envelopes printed, with no specific numbers per locality. It was the Grievant's job responsibility to manage the delivery of these new envelopes to the localities. The Agency issued an Advisory to the general registrars, issued August 23, 2023, stating, among other things:

> Beginning with the 2023 General Election, localities will be required to use the new provisional envelope. ELECT has ordered the new envelopes (including translated versions). **Each locality will automatically be shipped 500 envelopes**, which can be expected to arrive by September 8. Localities can order translated envelopes and, when needed, additional envelopes via the Election Materials Order Link.

(Emphasis in original.) Joint Exh. 15. The Grievant was part of the approval process for this advisory. The Grievant did not coordinate the delivery of the forms as announced in the advisory. Instead, the Grievant directed that the printer deliver all of the new envelopes to State Mailing Services (SMS) rather than ship direct to the localities. A few of the largest localities ordered almost all of the 150,000 stock of envelopes, which orders were shipped by SMS, exhausting the available supply. The Director of Operations testified that the ensuing uncertainty caused confusion, stress, frustration, and panic among the general registrars. Joint Exh. 17, 18. Through coordination with the three localities receiving most of the new envelopes, the Grievant's unit was able to redirect 500 envelopes to each of the other localities before early voting started. The Director of Operations stated that the Grievant's actions and inactions caused the Agency to suffer reputational harm during a political season of high election scrutiny. The Director of Operations did not believe the Grievant acknowledged that he erred or considered the matter serious. The discipline levied to the Grievant was the maximum for a Group II Written Notice, considering mitigating and aggravating factors.

The procurement officer testified to her responsibility for placing the purchase order for the new envelopes. It was a custom order, a non-standard size, with dyed paper, and printing on both sides. The envelope design was ready on July 6, 2023, but the printer could not provide a quote without the number and shipping quantities—directions from the Grievant. The

procurement officer had several conversations with the Grievant and obtained the Grievant's written confirmation on July 19, 2023, for the 150,000 quantity and shipment to SMS. Joint Exh. 25. The scope of the procurement function ends when the order is received by the designated recipient—SMS in this case.

The elections support staffer testified that he is the Agency's "mailman," supervised by the Grievant. He is responsible for orders for quantities less than 1,000. He coordinated the redistribution of the envelopes from the three large localities that had ordered almost the entire supply of 150,000. He created the shipping labels for the three localities to ship boxes of 500 count to all the other localities in time for the start of early voting.

The administrative supervisor testified that she backs up the procurement officer and also acts as the human resources liaison with the Agency's designated human resources director at DHRM. She testified that typically for new orders, the printer is directed to drop ship the orders directly to the localities. It is a procedure that repeated itself for new forms, and a process with which the Grievant was experienced. The Grievant told the administrative supervisor that he was electing not to do a survey of the localities for quantities. The Grievant's team is responsible for supplying the localities with the quantities. The administrative supervisor testified that having the new envelopes sent to SMS was a deviation from the Agency's process of drop shipping from the printer, and she advised the procurement officer to get the decision in writing from the Grievant. She was aware of the advisory that stated each general registrar could expect a shipment of 500. The procurement function was complete when the envelope order was delivered to SMS. She became aware on September 11, 2023, that the general registrars had not received the envelopes. The administrative supervisor testified to well-known limitations of SMS for handling distribution, especially the rollout of a new form.

The administrative supervisor testified to her involvement in the disciplinary process and her advice that the Grievant's misconduct of a more serious nature justified a Group II Written Notice. The Grievant's actions and inactions caused reputational damage to the Agency; extra time and work for the affected agencies; and created a potential threat to voting. The extra shipping, alone, was in excess of $1,500. Joint Exh. 31, 32 and 33. On cross-examination, the administrative supervisor testified that the ten days suspension was consistent with other Group II Written Notices the Agency had issued. She was not aware that ten days suspension is the maximum discipline for Group II offenses.

The Grievant testified that he has been in the same role at the Agency for four years, with good annual reviews and no discipline. Instead of the practice of surveying the general registrars for the quantities of the new envelope, he elected not to survey the registrars. He considered the survey method confusing. He and his supervisor looked at past statewide election experience with provisional ballots and concluded that 150,000 was an ample order. The Agency has a materials order form with which the general registrars can order forms, including the new provisional ballot envelope. Joint Exh. 35.

The Grievant adopted in whole his written statement, Attachment A, with his grievance. Joint Exh. 1. Within that statement, the Grievant explained:

> I made a decision which I thought was best at the time, based on already established procedures for localities to order election materials and what I knew of this specific scenario. […], the Procurement Officer, and […], her supervisor, informed me during our multiple interactions of how these materials were shipped in the past and I was being asked for my opinion on how to proceed. If this were an official instruction or agency policy, then there would have been no need to have my input, the policy/procedure should have just been followed as it always had. This was not the case. As the supervisor responsible for the ordering and delivery of election materials, I was being asked to make a decision, which I did. Further, I was not aware of any official procurement procedure or policy for the ordering and delivery of election materials at the time.

The Grievant further explained his view of the advisory sent to localities:

> Although I did instruct election materials to be shipped to State Mail Services, instead of having them sent directly to localities, the advisory sent to localities on August 23, 2023, did mention that there would be a defined amount shipped directly to each locality. As mentioned in my official response, I believed this was a decision made by either our policy staff, who directed the work of the provisional envelope redesign workgroup, or by Agency leadership. Either way, I believed that this decision had been communicated to our procurement staff to ensure the accurate delivery of the envelopes.

Joint Exh. 1 (Attachment A). The Grievant did not provide SMS with any distribution instructions for the envelopes. The Grievant admitted in his hearing testimony that he was part of the approval process of the advisory sent to the localities advising that a shipment of envelopes would be automatically sent to them.

As it turned out, after the entire stock of envelopes was delivered to SMS and not automatically sent to each of the 133 localities, a few large localities ordered large quantities of the envelopes. Without other instructions, SMS satisfied the orders, exhausting the supply. The Grievant explained:

> … there were multiple localities that had submitted orders for materials which far surpassed what we had anticipated the need would be based on prior elections. These large orders were not something we could have been prepared for, however, once the issue was discovered, we put a process in place to ensure that each locality would have the necessary election materials in order to comply with law.

Analysis

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management

which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI (*Rules*); *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

As long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. DHRM Policy 1.60. As long as it acts within law and policy, the Agency is permitted to apply exacting standards to its employees.

EDR's *Rules* provide that "a hearing officer is not a 'super-personnel officer'" therefore, "in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy." *Rules* § VI(A).

As previously stated, the agency's burden is to show upon a preponderance of evidence that the discipline of the Grievant was warranted and appropriate under the circumstances. Pursuant to applicable policy, management has the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior.

EDR's *Rules* provide that in disciplinary grievances, if the hearing officer finds that:

> (i) the employee engaged in the behavior described in the Written Notice,
> (ii) the behavior constituted misconduct, and
> (iii) the agency's discipline was consistent with law and policy,
>
> the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.

Rules § VI(B).

In sum, the grievance hearing is a *de novo* review of the evidence presented at the hearing, as stated above. The Agency has the burden to prove that the Grievant is guilty of the conduct charged in the written notice. Such decision for discipline falls within the discretion of the Agency so long as the discipline does not exceed the bounds of reasonableness. Based on the testimony, manner, tone, and demeanor of the testifying witnesses, I find that the Agency has reasonably proved by a preponderance the misconduct and that the offense is properly a Group II Written Notice.

By a preponderance of the evidence, the Agency has proved the conduct described in the Written Notice and that it was misconduct. However, I find that the Written Notice presumes a broader scope of policy and procedure than proved. The Agency has failed to prove that there is either policy and procedure that requires a survey of the local registrars for quantities, or policy and procedure that requires the printer to drop ship the materials to the localities. There is no

evidence that the Grievant was specifically given supervisory instructions on these matters. The testimony is not in conflict that such practices were merely just that—prior practices. The Grievant had the authority to make the decisions he made—not to survey the registrars and to have the distribution of the new envelopes handled by SMS. I find, however, that the Grievant was fully aware of the advisory sent to the localities, and he actually was part of the process approving such communication. The Grievant disregarded that written advisory and made no effort to complete the distribution of the new envelopes as promised in the advisory. When directing the order of envelopes to SMS, he neglected the concomitant responsibility to direct SMS to distribute the envelopes to the 133 localities. When the Grievant elected to deviate from prior practices, he also assumed the risk of unintended consequences. I do not find that such responsibility fell to the procurement staff or anyone else. When the few large orders for the new envelopes came to SMS (an unintended consequence), without other direction from the Grievant, SMS filled the orders and exhausted the supply. The Grievant had not provided SMS with any instruction to ship the promised 500 to each of the 133 localities. I find incredible the Grievant's testimony that the procurement staff—not he—had that responsibility.

I find credible the Agency's evidence that its reputation was damaged during a period of high scrutiny of elections and election procedure. I also find that there was meaningful cost in time, labor, and expense to remedy the situation. The Grievant's conduct of action and inaction on honoring the promised automatic delivery of the envelopes to each of the 133 localities is both unsatisfactory work performance and, to the extent of disregarding the advisory, failure to follow policy and procedure. While the offense is a single, isolated lapse of behavior, the seriousness of ensuring the integrity of elections fully justifies the Agency's discretionary decision of considering the offense a Group II level.

The Grievant's admission largely establishes the essential facts of the offense. The offense falls within the scope of a Group II Written Notice—performance of a more serious nature that significantly impacts the agency's services and operations. Accordingly, I find that the Agency has met its burden of showing the Grievant's misconduct as charged in the Written Notice. Therefore, unless otherwise mitigated, I find that the Group II discipline is consistent with policy.

Mitigation

As with all mitigating factors, the grievant has the burden to raise and establish any mitigating factors. *See e.g.*, EDR Rulings Nos. 2010-2473; 2010-2368; 2009-2157, 2009-2174. *See also Bigham v. Dept. of Veterans Affairs*, No. AT-0752-09-0671-I-1, 2009 MSPB LEXIS 5986, at *18 (Sept. 14, 2009) citing to *Kissner v. Office of Personnel Management*, 792 F.2d 133, 134-35 (Fed. Cir. 1986). (Once an agency has presented a *prima facie* case of proper penalty, the burden of going forward with evidence of mitigating factors shifts to the employee).

Under Virginia Code § 2.2-3005, the hearing officer has the duty to "receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [DHRM]." 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.

Regarding the level of discipline, the Agency had leeway to impose discipline along the permitted continuum, and the evidence from the Agency is that the seriousness and potential damage to voting was appropriately a Group II. While agencies are encouraged to follow progressive discipline, an agency is not required to do so within its discretionary management.

Given the nature of the Written Notice, as decided above, I find no evidence or circumstance that allows the hearing officer to reduce the discipline. The agency has proved (i) the employee engaged in the behavior described in the written notices, (ii) the behavior constituted misconduct, and (iii) the discipline was consistent with law and policy. Thus, the discipline of a Group II Written Notice must be upheld absent evidence that the discipline exceeded the limits of reasonableness. *Rules* § VI.B.1.

Up to ten days suspension is the permitted disciplinary action for a Group II Written Notice. A hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. There is no evidence of another situation or similar offense treated differently. This was not a situation outside the Grievant's control. Here, given the inherent level of trust incumbent with the Grievant's position as elections and registration services supervisor, the nature of the offense has implications of aggravating circumstances.

The Grievant reasonably argues that, for first time discipline, the maximum penalty for a Group II Written Notice is unduly harsh. The Grievant had a good tenure with the agency and had a record of satisfactory work performance. Regardless, under the *Rules*, however, an employee's length of service and satisfactory work performance, standing alone, are not sufficient for a hearing officer to mitigate disciplinary action. *Thus, the hearing officer lacks authority to reduce the discipline on these bases.* On the issue of mitigation, the Grievant bears the burden of proof, and he lacks proof of sufficient circumstances for the hearing officer to mitigate discipline.

On the issue of mitigation, EDR has ruled:

> Importantly, because reasonable persons may disagree over whether or to what extent discipline should be mitigated, a hearing officer may not simply substitute his or her judgment on that issue for that of agency management. Rather, mitigation by a hearing officer under the *Rules* requires that he or she, based on the record evidence, make findings of fact that clearly support the conclusion that the agency's discipline, though issued for founded misconduct described in the Written Notice, and though consistent with law and policy, nevertheless meets the *Rules* "exceeds the limits of reasonableness" standard. This is a high standard to meet, and has been described in analogous Merit System Protection Board case law as one prohibiting interference with management's discretion unless under the

> facts the discipline imposed is viewed as unconscionably disproportionate, abusive, or totally unwarranted.

EDR Ruling #2010-2483 (March 2, 2010) (citations omitted). EDR has further explained:

> When an agency's decision on mitigation is fairly debatable, it is, by definition, within the bounds of reason, and thus not subject to reversal by the hearing officer. A hearing officer "will not freely substitute [his or her] judgment for that of the agency on the question of what is the best penalty, but will only 'assure that managerial judgment has been properly exercised within tolerable limits of reasonableness.'"

EDR Ruling 2010-2465 (March 4, 2010) (citations omitted).

Under the EDR's Hearing *Rules*, the hearing officer must give the appropriate level of deference to actions by Agency management that are found to be consistent with law and policy, even if he disagrees with the extent of the disciplinary action. There is no evidence of disparate treatment or a retaliatory motive for the level of discipline. In light of the applicable standards, the Hearing Officer finds no basis that provides any authority to reduce or rescind the disciplinary action.

DECISION

For the reasons stated herein, the Agency's Group II Written Notice must be upheld and I have no authority to mitigate it. Thus, the Group II Written Notice, with suspension, is upheld.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

> Office of Employment Dispute Resolution
> Department of Human Resource Management
> 101 North 14th St., 12th Floor
> Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

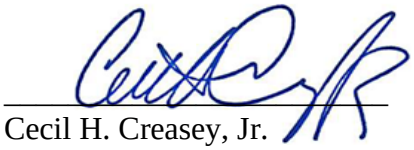
You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.[1]

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

I hereby certify that a copy of this decision was sent to the parties and their advocates shown on the attached list.



Cecil H. Creasey, Jr.
Hearing Officer

[1] Agencies must request and receive prior approval from EDR before filing a notice of appeal.