



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12226

Hearing Date: April 29, 2025
Decision Issued: May 29, 2025

PROCEDURAL HISTORY

On December 3, 2024, Grievant was issued a Group II Written Notice of disciplinary action for unethical behavior and failure to follow instructions. The Written Notice described the nature of the offense as follows:

We are recognizing a pattern of failure to follow instructions, and unethical behavior that violates our Standards of Conduct Policy.

On 10/10/2024 you sent an email, then followed up again on 10/15/2024 to HR Coordinator requesting information from a personnel file on [Employee-1] under false pretense. This was after you were specifically directed at least twice via email from the HR Director to stop interacting on personnel matters with his family due to unauthorized paperwork and protected information and refer them directly to the Human Resources Department. When you send an email to intentionally mislead to gain information and/or paperwork, this calls into question your ethical compass as a leader. You continued to try to advise his family on matters of which you did not have full knowledge, after being directed at least twice in writing to refer them to the HR office.

On 9/25/2024 in an email, you stated your refusal to approve time in Cardinal after the HR Coordinator entered the leave time specifically adhering to DHRM policy team's recommendation.

An Equal Opportunity Employer

On 8/7/2024 while you were serving as my proxy by attending a meeting with the [Board-A], I instructed [Division Chief], your supervisor on what our position was going to be regarding postponing the vote on [Addendum-2] until the October meeting. Instead of honoring that proxy vote, you inserted your own preference and registered a vote opposing my position. This insubordination and your inappropriate communications resulted in a breakdown in our relationships with several other states on the East Coast. While I understand as you stated on your response to the Notice of Intent, that your personal position was opposed to the Administration's, when you are proxy, you must follow the directive of whose vote you are proxy for. You could have attempted to ask for time to caucus if you were in opposition to the directive to get more clarity before voting.

When you are given a directive, you are expected to follow it, regardless of if it is communicated directly from me or via way of your supervisor [Division Chief], any other Chief, the [HR Director], or Deputy Commissioner.¹

On December 30, 2024, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. On February 3, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On April 29, 2025, a hearing was held at Agency offices at Fort Monroe in Hampton Roads, Virginia.

APPEARANCES

Grievant
Grievant's Counsel
Agency's Counsel
Agency Party Designee
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group II 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?

¹ Agency Ex. at 1-3.

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

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

Grievant is Deputy Chief of a Division of the Virginia Marine Resources Commission (the Agency). Grievant has been employed by the Agency for approximately five years.² No evidence of prior active disciplinary action was introduced during the hearing.

As a Deputy Chief, Grievant is in a supervisory role. At the time of the events related to this case, Employee-1 reported to Grievant. Grievant reported to Division Chief. Division Chief reported to a Deputy Commissioner who reported to the Chief Deputy Commissioner. The Chief Deputy Commissioner reported to the Commissioner.³ The Commissioner is the head of the Agency.

Virginia is a member of a Regional Commission comprised of representatives of each participating state. Virginia has three voting members that serve on the Regional Commission and its boards: a member appointed by the Governor, a member appointed by the General Assembly, and Commissioner (in his role as the head of Agency). The purpose of the Regional Commission is to develop policies for the management of near shore fish species.⁴

Due to changing water temperatures, Virginia's harvests of C-Fish had been consistently exceeding its allocation (or quota). The C-Fish quotas for each state were "soft" quotas which meant that there was no monetary penalty for exceeding the quota and a state did not have to "give back" fish the next year if a state exceeded its quota. When a state exceeded an annual soft quota, the state was expected to adjust its regulations to try to meet the soft quota the following year.⁵

One of the Regional Commission's boards, Board-A, had been working for a year on Addendum-2 to the C-Fish management plan to recognize data uncertainty and the impacts of changing water temperatures on the C-Fish fishery. Addendum-2 was

² Hearing Recording at 7:34:57-7:35:29.

³ Hearing Recording at 2:24:27-2:27:43.

⁴ Hearing Recording at 33:00-36:02, 2:27:43-2:31:27, 2:57:10-2:58:24, 3:10:50-3:11:47.

⁵ Hearing Recording at 3:00:50-3:16:17, 3:17:45-3:19:43.

expected to increase Virginia's C-Fish quota. Addendum-2 also was expected to result in a reduction of the quota for other states, like State-1.⁶

The Regional Commission held a quarterly meeting in early August 2024. Commissioner, Division Chief, and Grievant attended the meeting. Board-A held a quarterly meeting on August 7, 2024. During the August 7, 2024, meeting, the members of Board-A were expected to deliberate and vote on Addendum-2.

Grievant was not a member of the Regional Commission but she attended the August 7th Board-A meeting as Commissioner's designated proxy to Board-A.⁷ The members of Board-A representing State-1 were unable to attend the Board-A meeting in person due to a weather event impacting State-1. On August 7, before the Board-A meeting, Commissioner spoke by telephone with a Board-A member representing State-1. The State-1 board member advised Commissioner that the State-1 board members wanted to postpone the board's deliberation on Addendum-2 until the Board-A meeting in October in order to allow the State-1 members to participate in the meeting in-person rather than remotely. Commissioner told the State-1 Board member that he would support postponement of deliberation on Addendum-2 until the meeting in October. Commissioner testified that he wanted to support the effort to postpone because he would want to receive the same courtesy if the Virginia members were in a similar situation. Commissioner also testified that he wanted to build his relationship and goodwill with the State-1 board members.⁸

The evidence presented showed that if the Board-A deliberation of Addendum-2 was postponed to the Board-A meeting in October, it may have shortened the amount of time that the affected states may have had to adjust their regulations in time for the 2025 season for C-Fish depending upon whether Board-A also voted to adjust the deadline for affected states to adopt implementing regulations.⁹

Commissioner directed Division Chief to instruct Grievant to vote to postpone deliberation on Addendum-2.¹⁰

Before the Board-A meeting began, Division Chief advised Grievant of the Commissioner's instruction that Grievant was to vote to postpone Board-A's deliberation on Addendum-2.¹¹ Grievant did not believe that postponing deliberation on Addendum-2 was in the best interest of Virginia.¹² Grievant did not follow the Commissioner's instruction.¹³ In her capacity as the Commissioner's proxy on Board-A, Grievant voted to oppose the motion to postpone deliberation on Addendum-2 until the October meeting.¹⁴

⁶ Hearing Recording at 3:00:50-3:16:17, 3:17:45-3:19:43.

⁷ Hearing Recording at 33:00-36:02, 3:10:50-3:11:47.

⁸ Hearing Recording at 36:02-42:40.

⁹ Hearing Recording at 3:00:50-3:16:17, 3:17:45-3:19:43 and see Grievant's Ex. at 96-130.

¹⁰ Hearing Recording at 36:02-42:40, 6:15:54-6:17:00, 6:36:33-6:36:49.

¹¹ Hearing Recording at 6:15:54-6:17:00, 6:36:33-6:36:49, 7:12:30-7:13:20, 7:28:29-7:31:04.

¹² Hearing Recording at 7:12:30-7:13:20, 7:28:29-7:33:40.

¹³ Hearing Recording at 6:36:33-6:36:49, 7:12:30-7:13:20, 7:28:29-7:31:04.

¹⁴ Grievant's Ex. at 96-100, 114 and see 6:36:33-6:36:49, 7:12:30-7:13:20, 7:28:29-7:31:04. The motion to postpone deliberation on Addendum-2 until October failed with 4 votes in favor, 7 opposed, 1 abstention, and 1 null. Board-A ultimately voted to approve Addendum-2. See Grievant's Ex. at 98-99.

On September 25, 2024, HR Coordinator reminded Grievant that she needed to approve time in the Agency's time and leave tracking system.¹⁵ Grievant had not approved leave for Employee-1. Employee-1 had been absent from work after suffering a medical condition in July 2024. Employee-1's medical condition had caused him to be incapacitated. Grievant and Division Chief questioned HR Coordinator's leave entry for Employee-1 that would use Employee-1's sick leave for some period of Employee-1's absence rather than using Employee-1's annual leave for that period. According to Division Chief, he instructed Grievant not to approve the leave entries for Employee-1 until they received clarification from human resources staff regarding the leave entries for Employee-1.¹⁶ Grievant advised HR Coordinator that she had not approved the leave entered for Employee-1 because:

[Employee-1's] family contacted me (specifically his guardian, [Employee-1 family member]) and requested that his annual leave start being used instead of his sick leave, so I did not approve the September time you entered.¹⁷

The HR Coordinator forwarded Grievant's response to HR Director. HR Director then emailed Division Chief and Grievant that same day to advise them as follows:

I admire you all for looking after your employee and his family. To mitigate liability to the State, it is our fiduciary responsibility as leaders to also follow the legal processes and ensure we obtain all proper documentation of guardianship before speaking with anyone other than the employee himself. I understand he is incapacitated, but we must ensure proper legal documentation to also protect our employees' resources and best interest. If I were in [Employee-1's] situation, I would want the Human Resources department and my Supervisory team to ensure proper documentation and protocol before releasing any of my information and/or monetary resources/benefits. This is even more important since [Employee-1] had not updated his ER Contact in the HR system. I have been working with the DHRM Policy team and with legal. The guardianship documentation that we received is currently under review by a Commonwealth Compensation/Benefit Attorney.

Here is what I received back from the DHRM Policy team to my questions regarding the same Policies that you all are quoting to [human resources staff] about using his annual leave vs. sick leave:

(Yes, it's allowed but it's probably not to his financial advantage.) This must be traditional sick leave since you didn't mention any VSDP. Have no idea how long his tenure is but, presumably, he has 100's or 1000's of hours of sick leave and far less annual leave. The sick leave should be burned first

¹⁵ Grievant's Ex. at 8.

¹⁶ Hearing Recording at 6:03:00-6:05:21 and see 7:00:09-7:01:01.

¹⁷ Grievant's Ex. at 7-8.

because the payout limit is more restrictive. Payable at 25% of the balance up to a maximum of \$5000. Obviously, annual leave has payout limits based on service time, but it's not capped at \$5000. You'll need to determine if he needs to apply for disability retirement if this condition extends for six months or so.

I kindly ask for patience and that you all allow the Human Resources Department to follow the proper protocol within the legal SOPs for [Employee-1's] best interest in mind.¹⁸

Division Chief replied to HR Director copying Grievant and HR Coordinator and expressed his disagreement and concerns about the approach HR Director described regarding Employee-1's leave entries.¹⁹

On that same day, September 25, 2024, HR Director replied to Division Chief with a copy to Grievant and Commissioner, among others, instructing that:

All [Division] leaders and employees need to cease conversations about [Employee-1's] personnel and medical situations with anyone and forward the family directly to the Human Resources Department ([HR Coordinator] or I) for any discussions on [Employee-1's] leave and/or medical conditions immediately. Due to [HIPPA] laws and State Policy, this information is protected.²⁰

On October 10, 2024, Grievant sent an email to HR Coordinator requesting a bio or resume from Employee-1's personnel file. HR Director and Division Chief were copied on the email. Grievant specifically requested the information to assist with her preparation of an employee work profile for a temporary position, Grievant wrote:

I am working on a temporary position for someone to help [staff member] while [Employee-1] is on leave which we have funding for through [fund board]. I know in 2007 he switched from a fisheries specialist to the Director of [program], could you please look through his file and see if he has a bio, cover letter or a resume from that time that I could use to help formulate an EWP and announcement?²¹

After receiving no reply, Grievant requested the information again on October 15, 2024.

On October 15, 2024, HR Director replied to Grievant that:

I am curious the business need for a personal resume and/or bio. We would normally not build a job around a "person," but rather an operational need. If we could potentially find the original EWP from when [Employee-1]

¹⁸ Grievant's Ex. at 6-7.

¹⁹ Grievant's Ex. at 5-6

²⁰ Grievant's Ex. at 5.

²¹ Agency Ex. at 114.

began? And/or a job posting or any other operational memo of proposal in the decision-making process when his position was moved to [Agency], shouldn't that suffice for your operational needs now?²²

In reply to HR Director's email, Division Chief requested that HR Director call him. HR Director testified that when she called Division Chief, he told her that Grievant was requesting the resume pursuant to a request she had received from Employee-1's legal guardians for information to include in an obituary because Employee-1's condition had worsened.²³ Division Chief and Grievant both testified that Grievant requested the information for two purposes, the business purpose of developing a work profile for a temporary position that would perform some of Employee-1's job duties and for a secondary purpose to provide information to Employee-1's legal guardians to potentially include in an obituary for Employee-1.²⁴ HR Director and human resources staff did not provide Grievant with a copy of a resume (or application) from Employee-1's personnel file.

On December 3, 2024, the Agency issued Grievant a Group II Written Notice of disciplinary action for unethical behavior and failure to follow instructions.

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."²⁵

Whether Grievant engaged in the behavior alleged and whether the behavior constituted misconduct

Allegations related to a failure to follow instructions during the Board-A meeting

The preponderance of the evidence showed that Grievant failed to follow supervisory instructions during the Board-A meeting on August 7, 2024, when she did not follow the Commissioner's instruction to vote to postpone deliberation of Addendum-2 but instead voted contrary to that instruction and opposed a motion to postpone deliberation on Addendum-2 until the Board-A meeting in October.

Grievant admitted that, before the Board-A meeting began, Division Chief gave her the instruction from Commissioner to vote to postpone deliberation on Addendum-2. Grievant also admitted that she did not follow that instruction. Grievant testified that if she were faced with the same situation, under the same circumstances, she would again not follow the instruction she had been given because according to Grievant postponing the vote on Addendum-2 "did not make sense for the constituents of Virginia." Grievant

²² Agency Ex. at 113.

²³ Hearing Recording at 4:34:17-4:38:17.

²⁴ Hearing Recording at 6:12:31-6:13:34, 6:36:49-6:38:32, 7:02:18-7:04:11.

²⁵ See DHRM Policy 1.60, Standards of Conduct.

testified that she had been working on Addendum-2 for a year and had consistently advised other Board-A members of her support for Addendum-2. Grievant argued that Board-A's adoption of Addendum-2 was important and beneficial to Virginia because it would allow Virginia to have a larger C-Fish soft quota than if Addendum-2 was not adopted and the previous soft quota was maintained. Grievant argued that postponement of deliberation on Addendum-2 would shorten the timeframe in which affected states would have to adopt regulations to effectuate Addendum-2. Grievant testified that Commissioner did not provide her with an explanation or reason for his instruction to postpone at the time he gave the instruction.²⁶ Grievant also appeared to argue that Division Chief, and possibly Commissioner, should have known that she would not follow the instruction she had been given because, according to Grievant, she told Division Chief that if Commissioner wanted to make that vote he could come and sit at the table for the Board-A meeting.²⁷

Although Commissioner could have provided more explanation of his reasoning to Division Chief and Grievant, his failure to do so did not relieve Grievant of her responsibility to follow the instruction she was given. If Grievant was unclear as to the instruction, she could have asked Commissioner for clarification. Based on Grievant's testimony, however, she understood the instruction she was given, she just did not agree with it. Grievant was not serving on Board-A in a personal or private capacity. Grievant was serving on Board-A in her capacity as an employee of the Agency and as Commissioner's designated proxy to Board-A. With respect to Virginia's participation on Board-A, decisions about policy and priorities were the Commissioner's to make, not Grievant's. Whether or not Grievant agreed with postponing the vote on Addendum-2, she was given a lawful instruction by someone with authority to give her that instruction. An Agency is entitled to have its instructions followed, unless following the instructions would place the employee in imminent danger, cause irreparable harm, or violate law or policy. There was no evidence that following Commissioner's instruction would place Grievant in imminent danger, would cause irreparable harm, or would violate law or policy.

Further, Division Chief testified that he gave Grievant the instruction from Commissioner and that although she was surprised by that instruction, she did not tell him how she was going to vote.²⁸ Even if as Grievant asserted, Grievant had made a statement to Division Chief that if Commissioner wanted to make that vote, Commissioner could come and sit at the table, such a statement did not relieve her of her responsibility to follow the instruction she had been given unless or until she was provided with different instructions. Had she made such a statement, such behavior also would have been misconduct.

The Agency has met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct during the Board-A meeting on August 7, 2024, when she did not follow the Commissioner's instruction to vote to postpone deliberation of Addendum-2.

²⁶ Hearing Recording at 7:12:30-7:13:20, 7:28:29-7:33:40.

²⁷ Hearing Recording at 7:13:16-7:14:00.

²⁸ Hearing Recording at 6:15:54-6:17:20.

Allegations related to Grievant's request for Employee-1's resume

The preponderance of the evidence showed that when Grievant failed to be forthcoming with HR Coordinator and HR Director as to the full purpose for her request for information from the Agency's personnel file for Employee-1, Grievant did not meet the Agency's reasonable expectations and, as such, her performance was unsatisfactory.

HR Director and Commissioner are responsible for ensuring that the Agency's employees' personnel files are securely maintained and disclosed in accordance with law and policy. Although Grievant was Employee-1's supervisor, Grievant did not have authority to disseminate any portion of the personnel file maintained by the Agency's Human Resources department.²⁹

The Agency argued that Grievant engaged in unethical behavior when, on October 10, 2024, and October 15, 2024, Grievant requested that HR Coordinator provide Grievant with a copy of Employee-1's resume from his personnel file under what the Agency argued was the false pretense of requesting such information to help formulate the employee work profile and job announcement for a temporary position.

Grievant and Division Chief both testified that Grievant had two purposes for requesting the resume. One purpose was the purpose that Grievant disclosed to HR Coordinator when she made the request that she wanted the resume to help her develop a work profile and job announcement. Grievant's second, undisclosed purpose for requesting the resume was to provide information to Employee-1's legal guardians to use to prepare an obituary for Employee-1. Grievant testified that she only disclosed the single purpose related to the development of a work profile to HR Coordinator because she did not feel that it was her place to tell anyone else that Employee-1's condition was worsening. According to Grievant she had a business need for the resume to develop the work profile and she intended to use some of the information from the resume to develop a timeline that could be shared with the family for the obituary.

The Agency did not provide Grievant with a copy of a resume or application from Employee-1's personnel file, so this Hearing Officer cannot determine whether Grievant would have disseminated the resume or other documents to Employee-1's legal guardians.

Grievant's expressed concern about protecting Employee-1's privacy by not sharing information regarding his condition with other Agency employees may be understandable. When Employee-1's legal guardians asked Grievant for information that she did not have and that she would need to acquire from Employee-1's personnel file, however, it was reasonable for the Agency to expect that, as a supervisor in the Agency, Grievant would either direct Employee-1's legal guardians to HR Director for the information or, if Grievant was going to request that information from HR Coordinator, that she would be forthcoming about all of the reasons for her request, particularly after HR Director had made clear that personnel matters related to Employee-1 should be referred

²⁹ See DHRM Policy 6.05, Personnel Records Disclosure; DHRM Policy 6.10, Personnel Records Management, and Agency Ex. at 109-110.

to human resources staff. The preponderance of the evidence showed that Grievant's behavior did not meet the Agency's reasonable expectations and was unsatisfactory.

Allegations related to time/leave approval

The Written Notice referenced Grievant's alleged "refusal to approve time in Cardinal." There was limited information presented regarding this allegation. To the extent information was presented, it showed that Division Chief instructed Grievant to not approve the time until Division Chief and Grievant received further clarification from human resources staff. There was no evidence presented that Grievant continued to refuse to approve the time after the email exchange and clarification provided by HR Director on September 25, 2024. The Agency has not met its burden of proving by a preponderance of the evidence that Grievant engaged in misconduct with respect to this allegation and this Hearing Officer will not consider this allegation further.

Whether the Agency's discipline is consistent with law and policy

Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action."³⁰ Failure to follow instruction or policy is a Group II offense.

Grievant, at times, appeared to argue that her misconduct did not rise to the level of a Group II offense. Grievant, at times, argued that even if she had followed the Commissioner's instruction, the motion to delay deliberation on Addendum-2 would have failed because there was insufficient support among other Board-A members to support such a motion. Grievant also disputed Commissioner's assessment that Grievant's failure to follow his instruction may have adversely impacted his efforts to build relationships with the State-1 representatives. The Agency does not need to prove that a motion to postpone would have succeeded or that Commissioner's relationships with State-1 representatives were adversely impacted in order to discipline Grievant at the Group II level. The nature of the misconduct of failure to follow instructions is serious and significant as by its nature such misconduct undermines organizational structure, efficiency, and trust. A failure to follow instructions is a Group II level offense.

Grievant argued that the Agency's disciplinary action was retaliation for her submission of a grievance on October 23, 2024.³¹ Grievant also appeared to argue that the Agency's actions were discriminatory and reflective of on-going harassment. In support of her argument, Grievant testified that her work environment has had adverse impacts on her mental health and provided a letter from a health care provider as support for her assertions.³² The Agency showed that it had business reasons for its discipline of Grievant based on Grievant's misconduct and Grievant offered no evidence that would suggest that those reasons were mere pretext for retaliation, discrimination or harassment.

³⁰ DHRM Policy 1.60, Standards of Conduct.

³¹ Grievant Ex. at 149-152.

³² Hearing Recording at 7:23:48-7:24:44 and Grievant's Ex. at 156.

The Agency's discipline was consistent with law and policy. The Agency has met its burden.

Mitigation

Grievant argued that the discipline should be reduced because, according to Grievant, the Agency did not apply discipline consistently when it issued formal discipline to Grievant but did not formally discipline Division Chief. Based on the evidence presented, it appeared that Division Chief received counseling, including a memorandum of expectations moving forward, related to his alleged failure to timely address Grievant's and other staff's behavior and for not addressing directly and privately with HR Director any disagreement or questions he had regarding the guidance she provided about Employee-1's leave.³³ Although Division Chief observed Grievant's misconduct, there was no evidence to suggest that Division Chief engaged in the same or similar misconduct. When Commissioner directed Division Chief to instruct Grievant to vote to postpone the deliberation on Addendum-2, Division Chief followed the instruction he was given.³⁴ When HR Director questioned Grievant's request for a resume from Employee-1's personnel file, Division Chief was forthcoming with HR Director as to the full purpose for Grievant's request.³⁵ The Agency's decision to address the behavior of Division Chief and Grievant differently does not exceed the limits of reasonableness in this case.

Virginia 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 Human Resource Management..."³⁶ Under the Rules for Conducting Grievance Hearings, "[a] hearing officer must give deference to the agency's consideration and assessment of any 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. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to Grievant of a Group II Written Notice is **upheld**.

³³ Grievant's Ex. at 131-134.

³⁴ Hearing Recording at 43:40-45:01, 6:15:54-6:17:00, 6:36:33-6:36:49.

³⁵ Hearing Recording at 4:34:17-4:38:17, 6:12:31-6:13:34, 6:36:49-6:38:32.

³⁶ Va. Code § 2.2-3005.

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.³⁷

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

³⁷ 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.