

**COMMONWEALTH OF VIRGINIA**  
**Department of Employment Dispute Resolution**

**DIVISION OF HEARINGS**

In the matter of: Case No. 12205

Hearing Officer Appointment: December 2, 2024

Hearing Date: February 5, 2025

Decision Issued: February 11, 2025

PROCEDURAL HISTORY, ISSUES  
AND PURPOSE OF HEARING

The Grievant requested an administrative due process hearing to challenge certain actions taken by the management of the Department of Medical Assistance Services (“DMAS” or the “Department” or the “Agency”), reflected in the Grievant’s updated Employee Work Profile (“EWP”) effective August 27, 2024, as described in the Grievance Form A dated September 24, 2024.

Specifically, the actions include the removal of all managerial responsibilities connected directly to the personal supervision of individual team members of the Department’s Community Outreach and Member Engagement Team (“COMET”); the asserted demotion of Grievant’s job title from Outreach and Community Engagement Manager III to Member and Community Engagement Specialist; and the shifting of Grievant’s role from Public Relations and Marketing Manager III to PR Marketing Specialist V. The Grievant is seeking the relief requested in her Grievance Form A, including the immediate restoration of her previous EWP job and role titles as well as managerial components.

The parties duly participated in a first pre-hearing conference call scheduled by the hearing officer on December 5, 2024. The Grievant, the Agency’s representative and the hearing officer participated in the call.

The hearing officer then proposed holding a second prehearing conference call at 11 am on December 20, 2024, but subsequently the Grievant informed the hearing officer that such time was unavailable to her then serving Maryland advocate.

The parties agreed that email is acceptable as a sole means of written communication.

Following the first pre-hearing conference, the hearing officer issued a Scheduling Order entered on December 16, 2024 (the “Scheduling Order”) which is incorporated herein by this reference.

The hearing was first scheduled to begin at 10 am on February 5, 2025. However, on January 18, 2025, the Grievant by email informed the hearing officer that she was changing her advocate and that the new advocate could not be present until 11:30 am. Accordingly, the hearing officer, with the agreement of the parties, by email of January 19, 2025, rescheduled the start of the hearing to 11.30 am on February 5, 2025. Subsequently, the hearing officer issued a Amended Scheduling Order on February 3, 2025, which is attached hereto and incorporated herein by this reference.

At the hearing, both the Agency and Grievant were represented by their respective advocates. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely exhibits 1-9 for the Grievant and exhibits 1-23 for the Agency.<sup>1</sup>

No open issues concerning non-attendance of witnesses or non-production of documents remained by the conclusion of the hearing.

In this proceeding, the Grievant proceeded first at the hearing because the Grievant bears the burden of proving, upon a preponderance of the evidence, that the Agency’s actions challenged by the Grievant did not conform to law, policy and the grievance procedure and were not warranted and appropriate under the circumstances.

### APPEARANCES

Grievant  
Advocate for Grievant (via Zoom)  
Representative for Agency  
Attorney for Agency  
Witnesses

### FINDINGS OF FACT

1. The Agency had previously employed the Grievant under the working title of Outreach and Community Engagement Manager, serving in the role of Public

---

<sup>1</sup> References to the agency's exhibits will be designated AE followed by the exhibit number and references to the Grievant’s exhibits will be designated GE followed by the exhibit number.

Relations and Marketing Manager III within the Community Outreach and Member Engagement Team (“COMET”). AE 1; 16.

2. Around mid-2024, Employee Relations/Human Capital and Development (“HCD”) received written complaints from COMET employees regarding the work environment which included (a) increased workload/assignments with unrealistic turn-around times with no work/life balance; (b) on-going rude and brisk-treatment towards co-workers in meetings by the Grievant; and (c) the Grievant’s unapproachable demeanor which was stressful and often left employees feelings as if they did not matter.
3. Interview notes with COMET employees showed that the Grievant was hard to work with. She was prone to yelling at her team, becoming annoyed and getting angry.
4. Grievant would also point out employees’ (mostly minor or inconsequential) mistakes in public settings, often embarrassing them in front of their peers.
5. While Grievant maintained that she was open to questions, employees who approached her often found her responses condescending and dismissive.
6. Grievant frequently imposed unrealistic deadlines for assignments, causing unnecessary stress for employees.
7. Additionally, some assignments were duplicative or redundant, seemingly assigned solely to create the impression that the Grievant was actively fulfilling her supervisory duties.
8. Overall, employees perceived her demeanor as rude, demeaning and insensitive. *See*, AE 1, 2, 4.
9. The Grievant herself admitted during one of the interviews that “[t]here are areas in communication that [are] a challenge.” Additionally, she recognized that she can “ask a lot of questions of staff which can be off putting for some.” AE 3 at 7.
10. The report found that complaints about a Toxic Work Environment could not be substantiated based upon the examples provided which would show that the Grievant engaged in conduct that created an environment within the unit that interfered with the employee’s ability to perform their job, or created a work environment that adversely affected the employee’s well-being. AE 18.
11. However, the report did find that there were significant challenges with the Grievant/direct report communications. The report highlighted that these “challenges are of concern and if left unattended may lead to a work environment that will have a negative impact on the . . . team’s morale, trust, and productivity.”

There were “consistent challenges in areas of communication amongst the team.”  
*Id.*

12. Pursuant to the investigation, the Grievant's working title was changed to Member & Community Engagement Specialist with her role being altered to PR Marketing Specialist V. AE 17.
13. However, her pay band, salary and other benefits had not been affected by the change in her job duties. The Grievant had not been removed from COMET. This change was in accordance with the Reassignment Within the Pay Band provision of DMAS Salary Administration Plan where employees may be reassigned within their current pay band based on staffing and operational units. The Grievant's position is still within the same assigned Salary Range, with her base salary not changing.
14. As explained by DMAS Chief of Staff and the Division Director, as well as being covered in the “Second Step Grievance Response” and the “Third Step Grievance Response,” the Grievant's temporary reassignment was to minimize the agency operational impact of the unit in meeting the mission of delivering critical services to the public, in accordance with DMAS Salary Administration Plan. AE 13.
15. In her updated EWP, the Grievant was assigned additional tasks and responsibilities to make up for the approximately 20% of direct report personnel management duties which were removed. This was in accordance with DMAS policies and DHRM Policy 1.60 Standards of Conduct.
16. However, the Grievant continued to maintain substantial management duties in her updated EWP. For example, she continued to “[m]anage and facilitate the Medicaid Member Advisory Committee,” “manag[e] the member recruit process, coordinating with DMAS staff” and “[m]anage and facilitate Community Stakeholder Meetings.”
17. As in her previous EWP, the Grievant also continued to (1) work on outreach-centered strategic initiatives amongst external stakeholders; (2) collaborate with other state agencies and governmental entities; (3) assist other divisions within DMAS with promotional efforts and outreach and education opportunities; and (4) work cooperatively to achieve Division and agency goals in her updated EWP.
18. The Grievant's team of five members was to be reassigned to the Division Director. The Grievant was to have no contact with her team members and all communication was to go through the Division Director instead. The Grievant continued to work in the same division such that management of the projects that fell under her portfolio of work would continue to flow to her with updates.

19. The continued temporary re-assignment of the Grievant from supervision of COMET would last until management/supervision coaching was successfully completed, lasting approximately 6 months from the first training session being held. AE 22.
20. As provided in a Confidential Memorandum to the Grievant, the Agency Director specifically qualified this matter for a hearing.
21. The Agency Director also clarified that the steps which the Agency took in addressing the operational impact with significant revision of communication within COMET were “necessary and preventative in ensuring unit operational needs were met without disrupting the critical mission of the agency.”
22. The investigation conducted by Employee Relations/HCD was thorough and impartial. The conclusions reached were reasonable. AE 18.
23. Due to the numerous factors considered to substantiate the Agency’s operational decision, the primary intent of the management action taken by the Agency is deemed to not be disciplinary but for effective operational reasons.
24. The Agency’s actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.
25. The Agency’s actions concerning this grievance were reasonable and consistent with law and policy.
26. The testimony of the Agency witnesses was credible and consistent. The demeanor of such witnesses was open, frank and forthright.

#### APPLICABLE LAW, ANALYSIS AND DECISION

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).

*Va. Code § 2.2-3000(A)* 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.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60. The Standards of Conduct (the “SOC”) provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serves to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

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; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4<sup>th</sup> Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, management is given 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. Accordingly, 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 is not a “super-personnel officer” and 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. *Id.*

The grievance statutes and procedure reserve management the exclusive right to manage the affairs and operations of state government. *See*, Va. Code § 2.2-3004(B). Accordingly, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out and the reassignment or transfer of employees within the agency generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state policy may have been misapplied or unfairly applied. Va. Code § 2.2-3004(A); Grievance Procedure Manual §§ 4.1(b), (c).

Where an agency has taken informal disciplinary action against an employee, a hearing cannot be avoided for the sole reason that a Written Notice did not accompany the disciplinary action. Rather, even in the absence of a Written Notice, a hearing is required where the grieved management action resulted in an adverse employment action against the grievant. *See* Grievance Procedure Manual § 4.1(b). Additionally, the primary intent of the management action

must have been disciplinary (i.e., taken primarily to correct or punish perceived poor performance). See, e.g., EDR Ruling Nos. 2007-1516, 2007-1517; EDR Ruling Nos. 2002-227, 2002-230; see also Va. Code §2.2-3004(A) (stating that grievances involving “transfers and assignments . . . resulting from formal discipline or unsatisfactory job performance” may qualify for a hearing).

The Agency’s actions concerning the Grievant can rightfully be categorized as reassignment of the Grievant. Accordingly, the Grievant has the burden of proving that the reassignment was (a) adverse and (b) disciplinary. If the hearing officer finds that it was, the agency will then have the burden of proving that the action was nevertheless (c) warranted and appropriate. EDR Ruling No. 2014-3721.

An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Adverse employment actions include any agency actions that have an adverse effect on the terms, conditions, or benefits of one’s employment. See, e.g., *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

Depending on all the facts and circumstances, a reassignment or transfer with significantly different responsibilities can constitute an adverse employment action. See *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 376 (4th Cir. 2004); *Boone v. Goldin*, 178 F.3d 253, 256 (4th Cir. 1999); see also *Edmonson v. Potter*, 118 Fed. Appx. 726, 729 (4th Cir. 2004). Just because a new job assignment is less appealing to the employee does not constitute an adverse employment action. EDR Ruling No. 2014-10218.

In EDR Ruling No. 2014-10218, the Grievant’s former position as Court Service Unit Director and his new assignment as Assistant Certification Manager had significantly different EWP’s. Approximately 80% of his core responsibilities had changed; the only two similar areas being supervisory and operational administrative duties. In addition, the Grievant’s new EWP indicated that he now worked in a different setting and as part of a different chain of command. The number of employees within his chain of command had also decreased dramatically.

Conversely, the Grievant’s former position and her current assignment had largely similar EWP’s. The current EWP’s comments highlighted that “[t]he EWP was . . . updated to modify the Core Responsibilities and redistribute the 20% of time that was previously designated for Performance Management.” Accordingly, Performance Management was arguably the only major Core Responsibility that was changed, with other Core Responsibilities being only slightly modified. Indeed, the Grievant still oversaw various important management responsibilities.

Importantly, the Grievant had not been removed from COMET. Although she had no direct personal supervisory contact with her team members, she was still working in the same division and the management of the projects that fell under her portfolio of work would continue to flow to her with updates.

Furthermore, the modifications to the Grievant's EWP would only last for approximately the next 6 months until completion of her management/supervision coaching. Unlike in EDR Ruling No. 2014-10218, in which the Grievant's reassignment was permanent, the Grievant's reassignment in this case was temporary.

Additionally, in EDR Ruling No. 2014-3721, the Grievant's reassignment reduced the Grievant from Pay Band 6 to Pay Band 5. While the Grievant's reassignment could not rightly be considered a demotion (because it was not accompanied by a reduction in salary), it clearly was a tangible change in his employment. Conversely, the Grievant's reassignment in this case was in accordance with the Reassignment Within the Pay Band provision of DMAS Salary Administration Plan where employees may be reassigned within their current pay band based on staffing and operational units. Specifically, the Grievant's position is still within the same assigned Salary Range, with her base salary not changing.

The hearing officer finds that Grievant had not established that her reassignment to a new role was an adverse employment action. The changes in her responsibilities were not so significant as to constitute an adverse employment action.

Whether the Grievant's reassignment was primarily to punish or correct the grievant's behavior or performance is a factual determination that a hearing officer should make. See, EDR Ruling No. 2014-3721

In this proceeding, the Agency's actions were consistent with law and policy. As provided in the DMAS Salary Administration Plan, the Grievant's temporary reassignment was to minimize the agency operational impact of the unit in meeting the mission of delivering critical services to the public. COMET had lost team members, at least in part due to Grievant's management style, and management was justifiably concerned about additional losses, which it could ill afford. Even if the Agency's removal of the Grievant's personnel management duties constituted an adverse employment action, such removal was ultimately for operational reasons, not for disciplinary reasons.

Additionally, the hearing officer finds that the Grievant has failed to provide any probative evidence for any misapplication and/or unfair application of policy and has failed to carry her burden of proof.

### DECISION

The Grievant has not sustained her burden of proof in this proceeding and the action of the Agency in removing the Grievant's managerial responsibilities and concerning all issues grieved in this proceeding is affirmed as warranted and appropriate under the circumstances. Accordingly, the Agency's action concerning the Grievant is hereby 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 and 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](mailto: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.<sup>2</sup>

ENTER: 02/11/25

*John Robinson*

---

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by e-mail transmission).

---

<sup>2</sup> Agencies must request and receive prior approval from EDR before filing a notice of appeal.