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ADMINISTRATIVE REVIEW

In the matter of the Virginia Department of Health
Ruling Numbers 2024-5706, 2024-5707
June 17, 2024

Both the grievant and the Virginia Department of Health (the "agency") have requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer's decision in Case Number 12062. For the reasons set forth below, EDR will not disturb the hearing officer's decision.

FACTS

The relevant facts in Case Number 12062, as found by the hearing officer, are as follows:[1]

> Prior to his dismissal, the Agency employed Grievant as an Environmental Health Specialist Supervisor in the District. No evidence of prior active disciplinary action was introduced during the hearing. Annual performance evaluations for Grievant showed that the Agency considered Grievant's performance to be satisfactory.
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> The Employee Work Profile for Grievant's position required that he "be able to obtain and maintain a [City] Special Police Commission." Grievant's duties included supervising staff and ensuring compliance and enforcement of Federal and state laws and regulations and local codes and ordinances.
>
> City Police Officer oversees the City's Special Police Officer Program. The Special Police Officer program provides summons training for employees of various agencies across the City charged with enforcing City ordinances, including employees from the Agency. After successfully completing the summons training, the Special Police Officer candidates are read paragraphs (a) through (c) of § 33-38 of the City Code regarding requirements for Special Police Officers. The Special Police Officers are then sworn in as Special Police Officers.
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> Grievant received a Warrant of Appointment as a Special Police Officer for the City on January 28, 2021.

[1] Decision of Hearing Officer, Case No. 12062 ("Hearing Decision"), Apr. 23, 2024, at 2-5 (footnotes omitted).

On September 9, 2023, Grievant was arrested and charged with a misdemeanor for the alleged assault and battery of a family member. Grievant was not taken into custody for the misdemeanor charge.

On Sunday, October 1, 2023, Grievant was arrested on two felony charges related to the domestic situation that had led to the September 9 misdemeanor charge. Following his arrest on October 1, Grievant was taken into custody. Grievant's cell phone was taken away from him. That evening, Grievant called his Father from a phone in the jail. Grievant asked his Father to call Supervisor on Monday morning. Grievant was unable to provide his Father with a phone number for Supervisor.

On Monday, October 2, 2023, Grievant's Father called Supervisor. Grievant's Father identified himself to Supervisor and advised Supervisor that he was calling on Grievant's behalf. Grievant's Father told Supervisor that Grievant would not be available to work that week and that Grievant would not be reachable for the duration of the week. Grievant's Father credibly testified that Supervisor told him that it was no problem, Grievant had plenty of leave, and he, Supervisor, would take care of it. Supervisor testified that Grievant's Father also told him that Grievant's absence related to a domestic situation.

Later that day, Supervisor spoke with District Business Manager and someone from the Agency's human resources staff about the call he had received from Grievant's Father. Supervisor testified that the human resources staff recommended that Supervisor "close the loop" with Grievant and not someone claiming to be Grievant's Father.

On Tuesday, October 3, 2023, Supervisor called Grievant's cell phone and left a message. Supervisor stated:

> Hi [Grievant]. This is [Supervisor]. It's about 12:07. It is Tuesday, October 3rd. Just wanted to give you a quick call. I was wondering if you could give me a call back ASAP. I have a question for you. Just give me a call back as soon as you can. Alright thanks [Grievant], Bye.

On Wednesday, October 4, 2023, Supervisor queried the internet to try to find information related to Grievant's unexpected absence. As a result of his internet search, Supervisor discovered that Grievant had been arrested and taken into custody on October 1, 2023. Supervisor also discovered that Grievant had been charged with a misdemeanor on September 9, 2024.

Grievant was released from custody on the evening of Friday, October 6, 2023.

Agency offices were closed on Monday, October 9, 2023, in observance of a state holiday.

Following his release from custody, Grievant's first regularly scheduled workday was Tuesday, October 10, 2023.

At 6:00 a.m. on October 10, 2023, Grievant sent Supervisor an email with a subject line titled "Oct 10, return to work." In the email, Grievant stated the following:

> Good morning [Supervisor]. I am on full duty today. I apologize for the sudden and unplanned time-off. I had to go out of state for family emergency issues, then I lost my cell phone. I have returned connection with the same cell number. Thank you.

Supervisor testified that he believed that he acknowledged receipt of the email from Grievant. Supervisor did not advise Grievant of any concerns related to Grievant's absences the previous week. Supervisor forwarded the email he received from Grievant to District Business Manager.

During the afternoon of October 10, 2023, District HR Representative and District Business Manager called Grievant. District HR Representative testified that the purpose of the call was to "get [Grievant's] side of the story and to put him on pre-disciplinary leave."

District HR Representative and District Business Manager both testified that when they initially asked Grievant about his absence from work during the period October 2, 2023 through October 6, 2023, Grievant confirmed what he had included in his email to Supervisor, that he had been out of town on a family emergency and did not have his phone. When District HR Representative advised Grievant that they had information that he might have been in custody during that time, Grievant then admitted that he had been in jail.

On November 16, 2023, the agency terminated the grievant's employment though the issuance of three Written Notices: 1) a Group II for failing to report criminal charges, 2) a Group II for providing misleading or false statements, and 3) a Group III for unauthorized absence of three or more work days.[2] The grievant timely grieved the disciplinary actions, and a hearing was held on March 20, 2024.[3] In a decision dated April 23, 2024, the hearing officer determined that the agency had not met its burden of proof with regard to the Group III Written Notice, which was rescinded.[4] However, the hearing officer upheld both Group II Written Notices and the grievant's

[2] Agency Exs. 2-4; *see* Hearing Decision at 1.
[3] *See* Hearing Decision at 1.
[4] *Id*. at 6-7, 11.

termination.[5] The hearing officer further determined that no mitigating circumstances existed to reduce the agency's chosen penalties.[6] The grievant now appeals the hearing decision to EDR.[7] The agency has also submitted an appeal challenging the hearing officer's rescission of the Group III Written Notice.

DISCUSSION

By statute, EDR has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions . . . on all matters related to . . . procedural compliance with the grievance procedure."[8] 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 hearing officer correct the noncompliance.[9] The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.[10] The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy. In addition, EDR has confirmed that DHRM's Policy Administration office concurs in the outcome of this ruling.

Hearing officers are authorized to make "findings of fact as to the material issues in the case"[11] and to determine the grievance based "on the material issues and the grounds in the record for those findings."[12] 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.[13] 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.[14] 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 on 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.

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[5] *Id.* at 7-11.
[6] *Id.* at 10-11.
[7] The grievant styled his submission as a request for reconsideration directed to the hearing officer and a request for administrative review to EDR. While EDR would support a hearing officer's reconsideration of a hearing decision to correct a minor matter or mistake, a formal reconsideration request similar to a full appeal is no longer a part of the grievance procedure, having been eliminated in the 2012 revisions to the Manual. Therefore, the agency's objection to the request for reconsideration was proper. The hearing officer has since notified the parties that she declined to reconsider her decision.
[8] Va. Code §§ 2.2-1202.1(2), (3), (5).
[9] *See Grievance Procedure Manual* § 6.4(3).
[10] Va. Code § 2.2-3006(A); Murray v. Stokes, 237 Va. 653, 378 S.E.2d 834 (1989).
[11] Va. Code § 2.2-3005.1(C).
[12] *Grievance Procedure Manual* § 5.9.
[13] *Rules for Conducting Grievance Hearings* § VI(B).
[14] *Grievance Procedure Manual* § 5.8.

Group II Written Notice – Failure to report criminal charges

The grievant challenges the hearing officer's determinations regarding this Group II Written Notice on three general grounds: 1) the grievant never performed and was never expected to perform duties related to his commission as a Special Police Officer, 2) the grievant was never informed of a requirement to report criminal charges, and 3) the Written Notice is not properly issued at the Group II level. As related to the first challenge, the grievant argues that "the uncontradicted evidence presented at the hearing was that Grievant never performed, never was asked to perform, and never was expected to perform any job duties involving his powers as a special police officer." While the grievant essentially suggests that the obligation to maintain the commission was not a requirement of his job, also unrebutted is the evidence that his Employee Work Profile required him to "be able to obtain and maintain" the commission.[15] Therefore, we are unpersuaded, as was the hearing officer, as to this argument.[16]

As to the grievant's second argument, that he was unaware of a reporting requirement, the hearing officer found that the grievant knew he was required to maintain the commission and that pending criminal charges made him not qualified to hold that commission.[17] Conclusions as to the credibility of witnesses and the weight of their respective testimony on issues of disputed facts are precisely the kinds of determinations reserved solely to the hearing officer, who may observe the demeanor of the witnesses, take into account motive and potential bias, and consider potentially corroborating or contradictory evidence. Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.[18] Accordingly, we have no basis to dispute these findings by the hearing officer. Because the grievant knew that there were circumstances that affected his commission, it is reasonable for the hearing officer to have determined that the grievant knew or at a minimum should have known that he needed to report the September 9, 2023 misdemeanor charges. We perceive no error with the hearing officer finding that the agency had proved by a preponderance of the evidence that the grievant engaged in misconduct by failing to report the charges, given the special circumstances of his commission.[19]

Lastly, the grievant argues that the agency has not proven that he engaged in misconduct at the Group II level. Again, we find no error with the hearing officer's assessment. The failure to report criminal charges could rise to the level of a Group II for failure to comply with policy.[20] While the grievant now makes a variety of arguments as to why the criminal charges had no actual impact on the agency or his ability to perform his job, the agency could reasonably view the failure

[15] Hearing Decision at 7 (citing Agency Ex. 11 at 1).
[16] *See id.* at 8.
[17] *Id.*
[18] *See, e.g.*, EDR Ruling No. 2020-4976.
[19] Hearing Decision at 8.
[20] Hearing Decision at 7 ("Employees are expected to report circumstances or concerns that may affect satisfactory performance to management." (citing DHRM Policy 1.60, *Standards of Conduct*, at 5)).

to maintain a job requirement or qualification as inherently impactful and therefore something that must be reported. The agency may also reasonably hold the grievant to a higher standard as a supervisor.[21] These are circumstances that would support a Group II violation for failure to report and the hearing officer's application of state policy was correct. Accordingly, EDR has no basis to disturb the hearing officer's determinations with regard to the Group II Written Notice for failure to report criminal charges.

Group II Written Notice – Providing misleading or false statements

The Group II Written Notice was upheld based on the grievant's October 10, 2023 email, which the hearing officer found to have provided "false and misleading information," and that the "nature and purpose of Grievant's conduct was to deceive."[22] The grievant argues that the evidence in the record does not support these findings and that the issuance of the Written Notice at the Group II level exceeded the limits of reasonableness. EDR finds no error in the hearing officer's findings. It cannot reasonably be questioned that the information conveyed in the grievant's email about the nature of his absence was false and misleading. The hearing officer's determinations as to the grievant's email and its intent were factual matters with support in the record. It was reasonable for the hearing officer to find by a preponderance of evidence that the purpose of the grievant's email was to deceive as to the nature of his absence. Accordingly, EDR has no basis to challenge these factual findings. Furthermore, providing such intentionally false and misleading information could be disciplined at the Group III level consistent with how DHRM has historically interpreted the *Standards of Conduct*. Thus, EDR cannot find that the agency's issuance of a Group II Written Notice in this circumstance exceeded the limits of reasonableness.

Mitigation

The grievant argues that the hearing officer erred by not reducing the disciplinary action issued based on mitigating factors. By statute, hearing officers have the power and duty to "[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by [EDR]."[23] The *Rules for Conducting Grievance Hearings* ("*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."[24] More specifically, in disciplinary grievances, if the hearing officer finds that (1) the employee engaged in the behavior described in the Written Notice, (2) the behavior constituted misconduct, and (3) the agency's discipline was consistent with law and policy, then the agency's discipline must be upheld and

[21] *See, e.g.*, DHRM Policy 1.60, *Standards of Conduct*, at 9 (listing "when the facts and circumstances associated with the employee's actions negatively impact the employee's credibility as a supervisor/manager of subordinates" as an aggravating factor that may support a higher-level offense).
[22] Hearing Decision at 9-10.
[23] Va. Code § 2.2-3005(C)(6).
[24] *Rules for Conducting Grievance Hearings* § VI(A).

may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.[25]

Because reasonable persons may disagree over whether and 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. Indeed, the "exceeds the limits of reasonableness" standard is high.[26] Where the hearing officer does not sustain all of the agency's charges and finds that mitigation is warranted, they "may reduce the penalty to the maximum reasonable level sustainable under law and policy so long as the agency head or designee has not indicated at any time during the grievance process . . . that it desires a lesser penalty [to] be imposed on fewer charges."[27] EDR, in turn, will review a hearing officer's mitigation determination for abuse of discretion[28] and will reverse the determination only for clear error.

On appeal, the grievant cites to seven potential mitigating circumstances. Two of these have already been addressed above (lack of notice to report criminal charges; the grievant's "actual job duties" not involving issues related to his Special Police Officer commission). As to one other factor, the grievant argues that the agency did not produce evidence of any other employee disciplined for similar circumstances. However, to the extent the grievant wanted to argue that there was inconsistent discipline, the grievant had the burden of proof to establish such a mitigating factor, not the agency.[29]

The grievant also argues that his length of service, prior work performance, and lack of previous discipline are mitigating factors. Though it cannot be said that length of service and prior satisfactory work performance are *never* relevant to a hearing officer's decision on mitigation, it

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[25] *Id.* at § VI(B)(1).

[26] The federal Merit Systems Protection Board's approach to mitigation, while not binding on EDR, can serve as a useful model for EDR hearing officers. *E.g.*, EDR Ruling No. 2012-3102; EDR Ruling No. 2012-3040; EDR Ruling No. 2011-2992 (and authorities cited therein). The Board's similar standard prohibits interference with management's judgment unless, under the particular facts, the discipline imposed is "so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion." Parker v. U.S. Postal Serv., 819 F.2d 1113, 1116 (Fed. Cir. 1987) (citations and internal quotation marks omitted). On the other hand, the Board may mitigate discipline where "the agency failed to weigh the relevant factors, or the agency's judgment clearly exceeded the limits of reasonableness." Batten v. U.S. Postal Serv., 101 M.S.P.R. 222, 227 (M.S.P.B. 2006), *aff'd*, 208 Fed. App'x 868 (Fed. Cir. 2006).

[27] *Rules for Conducting Grievance Hearings* § VI(B)(1).

[28] "An abuse of discretion can occur in three principal ways: 'when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment.'" Graves v. Shoemaker, 299 Va. 357, 361, 851 S.E.2d 65, 66-67 (2020) (quoting Landrum v. Chippenham & Johnston-Willis Hosps., Inc., 282 Va. 346, 352, 717 S.E.2d 134, 137 (2011). The "abuse-of-discretion standard includes review to determine that the [exercise of] discretion was not guided by erroneous legal conclusions, because a court also abuses its discretion if it inaccurately ascertains [the] outermost limits of the range of choice available to it." Lambert v. Sea Oats Condo. Ass'n, 293 Va. 245, 253, 798 S.E.2d 177, 182 (2017) (internal quotation omitted) (alterations in original); *see also* United States v. Jenkins, 22 F.4th 162, 167 (4th Cir. 2021) (A tribunal abuses its discretion "when it acts arbitrarily or irrationally, fails to consider . . . recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law.").

[29] *Grievance Procedure Manual* § 5.8; *Rules for Conducting Grievance Hearings* § VI(B)(1).

will be an extraordinary case in which they could adequately support a hearing officer's finding that an agency's disciplinary action exceeded the limits of reasonableness.[30] The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant that length of employment becomes. Here, these factors are not so extraordinary that it would clearly justify mitigation of the agency's decision to issue the two Group II Written Notices upheld for conduct that was determined by the hearing officer to be terminable due to its severity.

Lastly, the grievant cites to the agency's conduct of trying to "cobble together an argument" to support discipline against the grievant. While we understand and appreciate the grievant's argument, EDR cannot find that this factor supports mitigation or suggests that the hearing officer's decision not to mitigate was improper. The circumstances of this case are unusual, and it is not surprising that the agency managers involved would not have experience in addressing the particular situation and would therefore have sought guidance that resulted in much discussion and consideration.

In assessing mitigating factors, a hearing officer "will not freely substitute [their] 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.'"[31] EDR has found no specific evidence of mitigating factors presented in the record that were not adequately addressed in the decision or that would support a different result. Thus, EDR has no basis to conclude that the hearing officer's determination regarding mitigation was in any way unreasonable or not based on the evidence in the record. Accordingly, we decline to disturb the decision on these grounds.

Group III Written Notice – Unauthorized absence for three or more work days

The hearing officer determined that the agency did not meet its burden to prove that the grievant engaged in misconduct alleged on this Written Notice.[32] The agency's appeal essentially argues that the grievant's leave was never approved and therefore his absence was not authorized. For the reasons described below, we find that the hearing officer's determination that the agency did not meet its burden to establish misconduct at the Group III level is proper.

The analysis in this ruling implicates the *Standards of Conduct* language regarding absences without authorization or approval in Attachment A: "For emergency circumstances that may not provide for an advanced leave request, the employee must notify the supervisor (or designee) as quickly as possible prior to the start of the work day. The agency should consider (among other things) the circumstances necessitating the leave and whether the employee could

[30] *See* EDR Ruling No. 2013-3394; EDR Ruling No. 2008-1903; EDR Ruling 2007-1518.
[31] EDR Ruling No. 2014-3777 (quoting *Rules for Conducting Grievance Hearings* § VI(B)(1) n.21).
[32] Hearing Decision at 6.

have anticipated the need for the time off." [33] The record does not suggest that the grievant could have anticipated being placed in custody, or that he had any presumed way to contact his employer to advise them of his absence while in custody. He asked his father to contact his supervisor, which the father did, to notify the supervisor that the grievant would not be at work. Under the circumstances, it is not clear what else was within the grievant's control to accomplish. It is hard to argue that the grievant engaged in misconduct as to the requirement to provide notification of the absence.[34]

"Supervisors are encouraged to approve leave requests provided there is no adverse impact on operational business needs."[35] Any adverse impact on the agency does not appear to have been the basis for the agency's decision to not approve the grievant's absence. EDR is unable to discern record evidence that would substantiate such a basis. Nevertheless, the agency's position is that the grievant's absence was not approved. The apparent basis for that decision is discussed further below.

This hearing involved significant amounts of testimony, argument, and disagreement about the grievant's father's call to the grievant's supervisor, what was said on the call by both participants, and the meaning of that conversation. Even if the supervisor initially approved a leave request on the call, that does not mean that the agency cannot revisit the determination. We do not read state policy to say that a supervisor's approval of leave is an irrevocable decision in such a circumstance. For example, the *Annual Leave* policy provides that "[a]pproval of leave may be rescinded if the needs of the agency change."[36] Obviously where new facts are discovered, an agency can and should reassess previous determinations. Here, the specific circumstances for the leave were not disclosed initially[37] and there would be a basis to reconsider any leave approval made during the supervisor's call with the grievant's father, if indeed that could be construed to have occurred.

"[I]f an agency does not approve requested leave but the employee still takes the requested time off from work, the employee may be subject to the absence being designated as unauthorized; and the employee will not be paid for the time that was not worked. . . . Unauthorized absences involving three or more consecutive work days is normally grounds for discharge barring mitigating factors particularly if the employee fails to advise or notify the supervisor of the need for the absence."[38] As already discussed, the grievant provided notice to his supervisor of the fact of the absence through his father, just not the reason for the absence. The agency takes the position that the grievant's absence was never approved and so his absence was unauthorized. However, it

[33] DHRM Policy 1.60, *Standards of Conduct*, Att. A at 3.
[34] "State employees must follow the established workplace procedures for requesting approval to use leave." *Id.* It is unclear what workplace procedure the grievant failed to follow in this regard.
[35] DHRM Policy 1.60, *Standards of Conduct*, Att. A at 3. This premise is generally consistent with language in the *Annual Leave* policy, which states, "[w]hen practical, and for as long as the agency's operations are not adversely affected, an agency should attempt to approve an employee's request for annual leave. However, supervisors may deny the use of annual leave because of agency business requirements." DHRM Policy 4.10, *Annual Leave*, at 6.
[36] DHRM Policy 4.10, *Annual Leave*, at 6.
[37] *See* Hearing Decision at 4.
[38] DHRM Policy 1.60, *Standards of Conduct*, Att. A at 3.

appears that the agency's decision not to approve the absence was because the grievant never requested to use leave himself and that the grievant's father could not request leave for him.[39] Whether policy would allow a family member to request leave for an employee in extenuating circumstances is a reasonable question, but not one we need to address in this ruling. The grievant's father provided notification of the grievant's absence. It cannot be said that the agency was not aware from that point that the grievant had a need for leave. Furthermore, given the father's exchange with the supervisor,[40] it is not clear that the grievant would have understood some additional action was needed to request leave beyond the process of submitting an actual report of leave in the appropriate leave-reporting system upon his return to work. We cannot find that the grievant failed to comply with policy by not personally submitting a leave request while he was in police custody. Rather, once the grievant was available, he could report his leave via standard procedures and then the agency could decide whether to approve it. However, the agency placed the grievant on pre-disciplinary leave the day he returned to work, before he would have had a reasonable opportunity to submit such a report.[41] To say that the grievant's absence was not authorized because he never personally submitted an official leave request is hard to reconcile with these facts.[42] Therefore, the hearing officer's determination was that the stated basis for the agency's decision to not approve the grievant's absence was unsupported by a preponderance of the evidence, and thus, rescission of the Group III Written Notice was the proper result.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision in this matter.[43] Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing decision becomes a final hearing decision once all timely requests for administrative review have been decided.[44] 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.[45] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[46]

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[39] Hearing Decision at 6; *see* Hearing Recording at 3:32:50 – 3:35:55 (testimony of supervisor); 7:34:55 – 7:40:57 (testimony of human resources representative).
[40] Hearing Decision at 4.
[41] *Id*. at 5.
[42] The grievant was released from custody on the evening of Friday, October 6, 2023. Hearing Decision at 4. The grievant did not contact the agency during the weekend or the state holiday on Monday, October 9, 2023. *See* Hearing Decision at 5. The grievant reported for work (remotely) the next business day following his release and was placed on pre-disciplinary leave that afternoon following a meeting with human resources staff. *Id.*
[43] To the extent the parties' requests for administrative review raise any arguments not explicitly address in this ruling, EDR has thoroughly reviewed the hearing record and concludes that no basis for remand is apparent.
[44] *Grievance Procedure Manual* § 7.2(d).
[45] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[46] *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).