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ADMINISTRATIVE REVIEW

In the matter of the Department of Motor Vehicles
Ruling Number 2020-5004
November 21, 2019

The grievant has requested that the Office of Employment Dispute Resolution ("EDR")[1] at the Virginia Department of Human Resource Management ("DHRM") administratively review the hearing officer's decision in Case Number 11377. For the reasons set forth below, EDR will not disturb the hearing officer's decision.

FACTS

The relevant facts in Case Number 11377, as found by the hearing officer, are as follows:[2]

> The Department of Motor Vehicles [the "agency"] employed Grievant as a Program Specialist I at one of its locations. She began working for the Agency in December 2013. Grievant's Supervisor described Grievant's work as "exceptional." No evidence of prior disciplinary action was introduced during the hearing.
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> The Agency provided Grievant with a Travel Card to use for business travel expenses. On April 17, 2018, Grievant signed an agreement providing:
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> > I will follow the established procedures for the use of the Card. Failure to do so may result in either revocation of my privilege or other disciplinary action, up to and including termination of employment.
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> Grievant opted to receive her statements electronically.

[1] The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as "EDR" in this ruling. EDR's role with regard to the grievance procedure remains the same.

[2] Decision of Hearing Officer, Case No. 11377 ("Hearing Decision"), September 9, 2019, at 2-6 (internal citations omitted).

Grievant used the Card from April 23, 2018 to April 27, 2018 while on a business trip for the Agency. After Grievant returned from her trip, Grievant submitted a Travel Expense Reimbursement Voucher detailing expenses of $1,164.91. The Voucher included per diem in the amount of $221.25 for which Grievant did not have to pay the Bank. The Agency paid her $1,167.56 to reimburse her for the travelling expenses she incurred on the trip.

Grievant counted her receipts and on June 5, 2018, wrote a check in the amount of $1,152.56 made payable to the Bank. She placed the check in an envelope and believed it would be mailed to the Bank. A Family Member intercepted the check and removed it from its envelope. The Family Member altered the check by writing the Family Member's name on the check as the payee. The Family Member negotiated the check, deposited the money into the Family Member's account and used the money to benefit the Family Member. Grievant did not know that the Family Member altered the check when it was altered.

On September 18, 2018, Grievant was notified by Ms. B that her statement was 91 to 120 days past due. Grievant did not reply to Ms. B's email.

On October 15, 2018, Ms. F sent Grievant an email notifying Grievant that her Card account was past due as of June 14, 2018 and that "We will take this out of your paycheck if you do not repay by close of business today October 15, 2018." Grievant replied that "the payment of my travel card expenses is not an oversight and that she made payment by check to the Bank on June 5, 2018. Grievant attached a photo of her carbon copy to the check she wrote. The carbon copy was dated June 5, 2018 and showed the Bank name and the amount of the check as $1,152.56.

On October 22, 2018, Ms. F emailed Grievant and asked for an update. Ms. F said, "we are at a crucial point at how we need to proceed according to policy." Grievant replied that she had contacted the Bank and was awaiting a response.

On November 6, 2018, Ms. F emailed Grievant as a follow-up. On November 13, 2018, Grievant replied that the Bank was still investigating the matter, Ms. F would receive a detailed letter, and that Grievant did not understand what was taking so long. Ms. F wrote Grievant that the investigation was taking far too long and that she would be forced to escalate the matter.

On November 15, 2018, Grievant responded to Ms. F with an apology for the delay and said she had spoken with Barbara and that Grievant had been provided with a reference number of 18195.

On November 16, 2018, Ms. F asked Grievant to send her a copy of the front and back of the check if payment was made and the check was cashed. Grievant replied that she would check with the Bank to see if that was something she could request online or in person. Grievant said she would get it to Ms. F as soon as possible. Grievant did not provide a copy of the check to Ms. F.

On November 16, 2018, The Senior Card Account Manager of the Bank sent Grievant an email asking if the check was cashed at the bank and, if so, to send her a copy of the front and back of the check.

On November 26, 2018, Ms. F sent Grievant a follow-up email indicating, "If you do not have them, we will move forward according as outlined in the previous email.

On November 28, 2018, the Supervisor met with Grievant and asked Grievant to "level" with him and tell him what was really going on. Grievant told the Supervisor, "I took care of it" and "I just don't know what is going on." Grievant said that if she paid the bill, it would be "double paying." After that discussion, the Supervisor began to suspect Grievant was not telling him the truth. The Supervisor did not feel comfortable discussing human resource issues with HR staff in front of Grievant.

At the end of November or the beginning of December 2018, Grievant learned that the Family Member altered the check. Grievant was upset and embarrassed by the Family Member's action.

On December 5, 2018, the Supervisor sent Grievant an email, "Please get with your bank and provide the cancelled check today."

On December 5, 2018, Grievant sent the DMV Controller an email indicating that it was "ok for you to set up a payroll deduction for the amount we discussed."

On December 5, 2018, the DMV Controller met with Grievant. Grievant told the DMV Controller that her payment did not post to her account but cleared her checking account. Grievant said she had filed a fraud claim with the Bank.

On December 7, 2018, Grievant met with the Supervisor. Grievant told the Supervisor that someone who worked at the Bank intercepted her check. Grievant said there was bank video of the person who cashed the check and that the person was of Middle Eastern descent.

On December 7, 2018, the Supervisor sent Grievant an email reminding Grievant she was obligated to pay her Card balance in full each month. He asked her for an explanation regarding why she had not complied with policy governing

payment of the Card balance. He asked her for any mitigating circumstances she wanted the Agency to consider. The Agency considered this its first due process allegation against Grievant.

On December 12, 2018, Grievant submitted to the Supervisor a "document as my response to your letter of allegation dated December 7, 2018." Grievant wrote that following surgery on May 31, 2018, she asked family members to handle tasks for her including taking her outgoing mail to her mailbox. She said the check was posted to her account on June 30, 2018 and $1,152.56 was deducted from her account. Grievant wrote:

> Between the dates of 11/29/2018 and 12/3/2018, I discovered, through my bank, that my check [number] for $1,152.56 was cashed by an individual, not [the Bank]; in fact, the check itself had been altered to make it payable to an individual. I initiated a fraud claim through my bank and must now complete a myriad of claim procedures and criminal complaint procedures to initiate a criminal charge against this individual.

On December 14, 2018, the Agency deducted $291.89 from Grievant's paycheck. On December 31, 2018, the Agency deducted $291.89 from Grievant's paycheck. On January 16, 2019, the Agency deducted $291.89 from Grievant's paycheck. On February 1, 2019, the Agency deducted $291.89 from Grievant's paycheck for a total of $1,167.56.

On January 3, 2019, the Supervisor reminded Grievant that she had not provided a copy of her cancelled check despite being asked for it by numerous people. He said "this matter can be resolved in a matter of minutes if the requested documentation (cancelled check and statement) are provided." He asked Grievant to provide a copy of the check and her bank statement by January 7, 2019.

On January 15, 2019, Mr. A, a human resource division employee, met with Grievant regarding her ongoing refusal to provide documents. Grievant told Mr. A that an African American had cashed the check and that they were reviewing the video to find out the identity of that person. Mr. A sent Grievant an email after the meeting:

> I spoke with [name] about your concern with jeopardizing any ongoing investigation. He's free at 2:00 tomorrow afternoon to contact [County] and get their blessing on your sharing information that shows you attempted to comply with policy (e.g. bank statement and check). Please bring your copy of the complaint and the investigator's business card with you to [name] office at 2:00 tomorrow. I can't imagine [County] law enforcement

> would want to prevent you from sharing information that helps you establish that you followed policy but, assuming there are concerns, hopefully [name] will be able to fully address them.
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> On January 16, 2019, Grievant sent Mr. A an email stating:
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> It was my plan to contact the investigator to inquire about sharing documents I had given as evidence when I filed the report; it was not necessary to have [name] contact them on my behalf. However, per the advice of an attorney, I do not want to compromise the criminal investigation.
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> On February 8, 2019, the Assistant Commissioner sent Grievant an email:
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> What we need now is the opportunity to evaluate your explanation of the problem you encountered when you attempted to pay off the travel card balance. Please provide the name of your attorney so we can have our representative from the Office of the Attorney General reach out to him or her. Also, please provide the name of the [County] detective you referenced as working on the case as a result of the criminal complaint you filed. Without the benefit of this information, the potential for serious disciplinary action remains. Please provide these no later than close of business Monday, February 11, 2019.

On February 11, 2019, the Assistant Commissioner contacted the County Police Department and learned that Grievant had not filed a criminal complaint and that there was no criminal investigation by the County.

On March 5, 2019, the Supervisor sent Grievant a second Due Process letter setting forth the Agency's allegations against her. The Supervisor indicated that:

> At this point, DMV is losing confidence in the accuracy of your story. If you have information we have requested (copy of the cancelled check, a bank statement, the name of the attorney and the name of the investigator), please provide it to us immediately. Without valid information corroborating your representations about the forgery and criminal investigation, DMV can no longer accept your story as true.

On March 7, 2019, Grievant sent the Supervisor an email and attached a copy of her bank statement showing the check had cleared her account.

> On April 8, 2019, Grievant admitted that there was no investigator handling a criminal complaint and that there was no criminal complaint.

On April 10, 2019, the agency issued to the grievant a Group III Written Notice of disciplinary action with removal for failing to comply with state policy related to the Bank of America State Travel Card, and for providing false information to the agency in connection with its investigation of that alleged violation.[3] The grievant timely grieved her termination, and a hearing was held on September 9, 2019.[4] In a decision dated October 4, 2019, the hearing officer determined that the Group III Written Notice issued to the grievant "must be upheld" because "[r]epeatedly making untruthful statements to an agency's employees is a Group III offense."[5] The hearing officer also found no mitigating circumstances meriting reduction of the disciplinary action.[6]

The grievant now appeals the hearing decision to EDR.

DISCUSSION

By statute, EDR has 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."[7] 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.[8] The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.[9] The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

In her request for administrative review, the grievant argues that (1) under state policies, her conduct did not merit discipline at the level of a Group III Written Notice; (2) the discipline she received was not free from unlawful discrimination and/or retaliation; and (3) the hearing officer improperly failed to consider factors that should have warranted mitigation of the discipline imposed.

Hearing officers are authorized to make "findings of fact as to the material issues in the case"[10] and to determine the grievance based "on the material issues and the grounds in the record for those findings."[11] Further, in cases involving discipline, the hearing officer reviews the

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[3] Agency Ex. 1. For the proposition that providing false information to an employer is independent grounds for termination, the Written Notice cited Hearing Decision No. 2009-8915, which addressed a law enforcement officer's false statement in contravention of the agency's high value placed on honesty. *See id.* at 7.
[4] Hearing Decision at 1.
[5] *Id.* at 7.
[6] *Id.* at 8-9.
[7] Va. Code §§ 2.2-1202.1(2), (3), (5).
[8] *See Grievance Procedure Manual* § 6.4(3).
[9] Va. Code § 2.2-3006(A); Murray v. Stokes, 237 Va. 653, 378 S.E.2d 834 (1989).
[10] Va. Code § 2.2-3005.1(C).
[11] *Grievance Procedure Manual* § 5.9.

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.[12] 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.[13] 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.

Level of Discipline

The grievant contends that, contrary to the hearing officer's analysis, her conduct was not comparable to falsification of state records, an act that would typically merit a Group III Written Notice under DHRM Policy 1.60, *Standards of Conduct*.[14] The grievant further argues that her conduct involved "a personal matter" with no nexus to the agency's functioning that would support discipline at the Group III level.[15] For the reasons below, EDR will not disturb the hearing decision on this basis.

The hearing officer found that the grievant "intentionally and repeatedly misl[e]d Agency employees in response to their questions about the overdue travel card account."[16] This finding is supported by evidence in the record. After first notifying the grievant of the outstanding balance on September 18, 2018, the agency followed up approximately one month later to advise that it would deduct the amount from the grievant's paychecks if she did not pay the balance.[17] On November 13, 2018, the grievant said a bank representative was investigating why her payment by check had not posted to her account.[18] In discussing the matter with her supervisor, the grievant indicated that a video existed showing an individual cashing her check.[19] In a letter to her supervisor dated December 12, 2018, the grievant wrote that she "initiated a fraud claim through [her] bank and must now complete a myriad of claim procedures and criminal complaint procedures to initiate a criminal charge against" the individual who had cashed her check to Bank of America.[20] On January 7, 2019, the grievant wrote that she could not produce to agency management a copy of her bank statement and cancelled check because they "are part of an active fraud claim and criminal investigation. I was told that the criminal investigation can take upwards of 6 to 12 months to complete [and] that the progress on my fraud claim coincides directly with the criminal investigation . . . ."[21] On January 16, 2019, the grievant wrote to

[12] *Rules for Conducting Grievance Hearings* § VI(B).
[13] *Grievance Procedure Manual* § 5.8.
[14] *See* Hearing Decision at 7; DHRM Policy 1.60, Attachment A, *Examples of Offenses Grouped by Level*, at 1.
[15] *See* Request for Administrative Review at 1.
[16] Hearing Decision at 7.
[17] Agency Ex. 7, at 1-2.
[18] *Id.* at 7.
[19] *See* Hearing Recording 6:25:30-6:26:20 (Grievant's testimony).
[20] Grievant's Ex. 7, at 2.
[21] Grievant's Ex. 8, at 5.

agency human resources staff: "It was my plan to contact the investigator to inquire about sharing documents I had given as evidence when I filed the report . . . . However, per the advice of an attorney, I do not want to compromise the criminal investigation."[22] But on April 8, 2019, the grievant admitted that she "certainly could not and did not initiate a criminal complaint. No investigator was assigned."[23] At the hearing, the grievant testified that she "never opened up a fraud claim."[24]

These instances go beyond omissions of "not disclosing negative information about a personal matter involving a family member."[25] The grievant made several affirmative statements related to her travel card account that were false or misleading, and the hearing officer reasoned that "[u]ntruthfulness is similar to and consistent with falsifying records which is a Group III offense."[26] While this general analogy may not fit each and every circumstance of employee dishonesty, EDR perceives no error in its application here. An employee's untruthfulness implicates agency functions by compromising management's ability to trust the employee. Thus, the effect of the grievant's conduct as a whole was not limited to the financial implications of her unpaid travel card balance. Here, the hearing officer properly determined that it was within the agency's discretion to conclude it no longer had confidence in the grievant's honesty based on the extent of her untruthfulness. Further, the grievant's misleading statements did not serve simply to keep personal matters private from her employer; they affected whether and when the agency would hold the grievant responsible for paying her balance. Accordingly, even if the grievant did not in fact falsify state records, it was not unreasonable for the hearing officer to analogize that offense to the grievant's sustained, affirmative fabrications about her travel card account in this case.

Discrimination/Retaliation Allegations

To prevail at a hearing on a claim that the agency's disciplinary action was motivated by prohibited discrimination, a grievant must ultimately prove by a preponderance of the evidence that the nondiscriminatory business reason the agency cites for its disciplinary action is a pretext for discrimination.[27] Similarly, to show that the agency's discipline was motivated by prohibited retaliation, a grievant must ultimately prove by a preponderance of the evidence that, but for her

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[22] *Id.* at 1.

[23] Grievant's Ex. 10, at 7. In the same letter, the grievant wrote: "I regret making the statements about the fraud claim on my personal check. . . . I am sorry that [the agency] feels that its trust in me has been eroded." *Id.*at 8. The grievant testified that she fabricated the fraud and criminal investigations because "I really just wanted to keep it private. I was embarrassed about it. . . . I was not a person who talked about my private affairs . . . but especially things like finances." Hearing Recording at 5:23:07-5:25:22 (Grievant's testimony).

[24] Hearing Recording at 6:18:00-6:18:12, 6:24:55-6:25:15 (Grievant's testimony).

[25] Request for Administrative Review at 1.

[26] Hearing Decision at 7. In her request for administrative review, the grievant interprets the hearing decision to rely on the agency's Employee Code of Conduct, which requires employees to "[a]ct with honesty and integrity at all times." *See* Agency Ex. 19. Even assuming that version of the Code of Conduct in the record was not in effect until after the grievant's separation, DHRM Policy 1.60, *Standards of Conduct*, requires employees to "[p]erform assigned duties and responsibilities with the highest degree of public trust." Thus, to the extent that the grievant contends she was not obligated to act with honesty and integrity at all times, EDR finds this argument unpersuasive.

[27] *See* Strothers v. City of Laurel, 895 F.3d 317, 327-28 (4th Cir. 2018).

engagement in an activity protected from such retaliation, the agency would not have taken its disciplinary action against her.[28]

Here, the grievant, an African-American woman, contends that her Group III Written Notice with removal constituted disparate treatment in comparison with discipline imposed on other agency employees – particularly two employees who are allegedly white men – who also violated their travel card agreements. She further contends that she engaged in a protected activity for retaliation purposes by alleging discrimination on March 15, 2019. As evidence that discrimination and/or retaliation motivated the level of discipline she received, the grievant produced evidence about a Black History Month event at the agency in February 2019, to which the grievant had suggested inviting a guest speaker whose comments at the event allegedly offended some attendees.

The hearing officer explicitly considered this evidence but reasonably concluded that it did not meet the grievant's burden to prove prohibited discrimination or retaliation. With respect to the two proffered comparator employees, the hearing officer found that they were not similarly situated to the grievant and, thus, were not comparators whose circumstances could support an inference of discrimination.[29] This finding is supported by evidence in the record. One of the employees was disciplined for using his travel card for non-reimburseable purchases and for paying his balance only every other month. The other employee was similarly disciplined for using his travel card for non-reimburseable purchases and carrying a balance on his card, and also for transporting alcohol in his state vehicle. Both employees received Group II Written Notices; neither Written Notice cited dishonesty or untruthfulness by the employees. By contrast, the grievant's Group III Written Notice detailed the grievant's extended efforts to mislead the agency about why her account had a balance, including fabricating a criminal investigation.

With respect to the grievant's involvement in the Black History Month event and her allegation of discrimination, the hearing officer concluded that evidence regarding that episode did not sufficiently call into question the agency's cited basis for issuing a Group III Written Notice: violation of the travel card requirements and untruthfulness to agency management in relation to the travel card account.[30] Again, the hearing decision's findings in this regard are based on evidence in the record and the material issues of the case. In testimony, the grievant's supervisor confirmed in detail the agency's cited justification for terminating the grievant's employment, denying that discrimination motivated the decision and expressing how highly he had thought of the grievant as an employee prior to increasing suspicions of her untruthfulness.[31] 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. Thus, the hearing officer was entitled to accept the supervisor's testimony as persuasive as to whether the agency's motive

[28] *See* Felt v. MEI Techs., Inc., 584 Fed. App'x 139, 140 (4th Cir. 2014) (citing Univ. of Tex. S.W. Med. Ctr. v. Nassar, 570 U.S. 338 (2013)).
[29] Hearing Decision at 8-9.
[30] *Id.* at 8.
[31] Hearing Recording 2:43:58-2:44:50, 2:46:10-2:50:30, 3:12:05-3:12:55, 3:35:10-3:35:40 (Supervisor's testimony).

for issuing the grievant a Group III Written Notice with removal was discriminatory or retaliatory. 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.[32]

Mitigation

Finally, the grievant argues that the hearing officer failed to properly consider mitigating factors that caused the agency's disciplinary action to exceed the limits of reasonableness. Primarily, the grievant cites (1) her "exceptional work performance," including positive assessments by her supervisor; and (2) disparities, some allegedly discriminatory, between the severity of her discipline and other employees with travel cards.

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]."[33] 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."[34] 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 may not be mitigated, unless, under the record evidence, the discipline exceeds the limits of reasonableness.[35]

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.[36] Where the hearing officer does not sustain all of the agency's charges and finds that mitigation is warranted, he or she "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

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[32] *See, e.g.*, EDR Ruling No. 2020-4976.
[33] Va. Code § 2.2-3005(C)(6).
[34] *Rules for Conducting Grievance Hearings* § VI(A).
[35] *Id.* § VI(B).
[36] 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).

charges."[37] EDR, in turn, will review a hearing officer's mitigation determination for abuse of discretion[38] and will reverse the determination only for clear error.

In this case, as explained above, the hearing officer appropriately sustained the agency's charges of untruthfulness constituting misconduct. Thus, he appropriately upheld the agency's conclusion, in its discretion, that the grievant's untruthfulness had irreparably compromised management's trust in her going forward, notwithstanding her positive performance up to that point. Further, as discussed above, record evidence supports the hearing officer's conclusion that the agency's disciplinary approach to other employees with travel-card infractions did not present a basis under the mitigation standard to reduce the grievant's penalty for untruthfulness. The grievant disagrees, arguing that her offense arose from personal considerations and should not have outweighed her contributions to the agency as a whole. However, even if the hearing officer had found the grievant's view of the discipline to be the more reasonable one, he nevertheless lacked authority to mitigate the penalty by substituting his own judgment for the agency's discretion to maintain an effective workforce.[39] Thus, EDR cannot say that the hearing officer abused his discretion in finding that the agency's Group III Written Notice with removal was within the bounds of reasonableness. As such, EDR will not disturb the hearing officer's decision on this basis.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision. 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.[40] 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.[41] Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.[42]

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[37] *Rules for Conducting Grievance Hearings* § VI(B)(1).
[38] "'Abuse of discretion' is synonymous with a failure to exercise a sound, reasonable, and legal discretion." Black's Law Dictionary 10 (6th ed. 1990). "It does not imply intentional wrong or bad faith … but means the clearly erroneous conclusion and judgment—one [that is] clearly against logic and effect of [the] facts … or against the reasonable and probable deductions to be drawn from the facts." *Id.*
[39] *See* Va. Code § 2.2-3004(B); *Rules for Conducting Grievance Hearings*§ VI(B)(2).
[40] *Grievance Procedure Manual* § 7.2(d).
[41] Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).
[42] *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).