

Issue: Harassment; Hearing Date: 10/23/06; Decision Issued: 10/27/06; Agency: DOC; AHO: Carl Wilson Schmidt, Esq.; Case No. 8439; Outcome: Agency upheld in full.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In re:

Case Number: 8439

Hearing Date: October 23, 2006
Decision Issued: October 27, 2006

PROCEDURAL HISTORY

On September 13, 2006, the EDR Director issued Rulings No. 2006-1388 and 1389 qualifying this matter for hearing regarding Grievant's allegation of workplace harassment. On October 23, 2006, a hearing was held at the Agency's regional office.

APPEARANCES

Grievant
Agency Party Designee
Agency Advocate

ISSUE

Whether the Agency failed to comply with State policy?

BURDEN OF PROOF

The burden of proof is on the Grievant to show by a preponderance of the evidence that the relief he seeks should be granted. 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

Neither Grievant nor the Agency submitted any documents or presented sworn testimony.

CONCLUSIONS OF POLICY

No evidence was presented to support any relief to be granted to Grievant.

Grievant argues the Department of Human Resource Management and the Department of Employment Dispute Resolution failed to comply with State policy by failing to include this grievance matter as part of a prior grievance hearing involving disciplinary action issued to Grievant. Neither DHRM, nor EDR are parties to this grievance. No issue involving these parties has been qualified for hearing. Accordingly, the Hearing Officer expresses no opinion regarding Grievant’s assertion.

DECISION

For the reasons stated herein, Grievant’s request for relief is **denied**.

APPEAL RIGHTS

You may file an administrative review request within **15 calendar** days from the date the decision was issued, if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.
2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

Director
Department of Human Resource Management
101 North 14th St., 12th Floor

Richmond, VA 23219

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Director
Department of Employment Dispute Resolution
830 East Main St. STE 400
Richmond, VA 23219

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must give a copy of all of your appeals to the other party and to the EDR Director. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when administrative requests for review have been decided.

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

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

S/Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

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