



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219

Tel: (804) 225-2131  
(TTY) 711

**SECOND ADMINISTRATIVE REVIEW**

In the matter of the Department of Environmental Quality  
Ruling Number 2024-5633  
November 3, 2023

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer's decision(s) in Case Numbers 11958 and 11959. For the reasons discussed below, EDR declines to review the original or remand hearing decision addressing these matters.

PROCEDURAL BACKGROUND

The relevant facts of this consolidated case, as found by the hearing officer, were articulated in EDR's first administrative review and are incorporated herein by reference.<sup>1</sup> In summary, this matter involved a Group II Written Notice issued to the grievant on January 17, 2023, and three additional written notices (two Group IIs and one Group III) with termination issued on March 22, 2023. In his original hearing decision, the hearing officer upheld all four written notices as well as the grievant's termination.<sup>2</sup> Following the grievant's request for administrative review, EDR issued a ruling declining to disturb the hearing decision as to the January Group II Written Notice or the March Group III Written Notice.<sup>3</sup> However, the ruling remanded the matter to the hearing officer for reconsideration of the two Group II Written Notices issued in March.<sup>4</sup> In a Remand Decision dated October 4, 2023, the hearing officer determined that the two Group II Written Notices issued in March were not sustained.<sup>5</sup>

The grievant has requested a second administrative review of the Remand Decision. However, the request challenges the hearing officer's conclusions only as to the upheld Group III Written Notice, which was not within the scope of remand ordered by EDR's first administrative review and was not addressed in the Remand Decision. As such, the agency has objected to EDR's

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<sup>1</sup> EDR Ruling No. 2024-5601, at 1-6 (citing Decision of Hearing Officer ("Original Hearing Decision"), Case Nos. 11958/11959, July 21, 2023).

<sup>2</sup> Original Hearing Decision at 9.

<sup>3</sup> EDR Ruling No. 2024-5601 at 7-13.

<sup>4</sup> *Id.* at 13-18.

<sup>5</sup> Remand Decision of Hearing Officer ("Remand Decision"), Case Nos. 11958/11959, Oct. 4, 2023.

consideration of the grievant's second request as being untimely and/or not compliant with the grievance procedure.

### DISCUSSION

The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** EDR within 15 calendar days of the date of the original hearing decision. **Received by** means delivered to, not merely postmarked or placed in the hands of a delivery service.”<sup>6</sup> Moreover, “[a]dministrative review decisions are final and nonappealable,”<sup>7</sup> and a hearing decision becomes final, “with no further possibility of administrative review” by EDR when “[a]ll timely requests for administrative review have been decided . . . .”<sup>8</sup> In accordance with these standards, EDR Ruling Number 2024-5601 advised the parties that they both would “have the opportunity to request administrative review of the hearing officer’s reconsidered decision on any new matter addressed in the remand decision (*i.e.* any matters not resolved by the original decision).”<sup>9</sup> In other words, the original hearing decision was final upon the issuance of EDR Ruling Number 2024-5601, except for those issues that the ruling identified for reconsideration.

Although the grievant’s second request is timely to request administrative review of the Remand Decision, none of the issues or arguments in his most recent request address the matters determined in the Remand Decision. Instead, they address only the Group III Written Notice, which the hearing officer upheld in his original decision and which was not subject to EDR’s remand. Therefore, the grievant’s second request is essentially tantamount to an untimely request to review issues addressed in the original hearing decision, and finalized upon EDR’s ruling declining to disturb the hearing decision as to those issues. Accordingly, the issues raised in the grievant’s second request for administrative review by EDR will not be considered.

### APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer’s Remand 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.<sup>10</sup> 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.<sup>11</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>12</sup>

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<sup>6</sup> *Grievance Procedure Manual* § 7.2(a).

<sup>7</sup> *Id.* § 7.2(c).

<sup>8</sup> *Id.* § 7.2(d).

<sup>9</sup> EDR Ruling No. 2024-5601 at 18.

<sup>10</sup> *Grievance Procedure Manual* § 7.2(d).

<sup>11</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>12</sup> *Id.*; *see also* Va. Dep’t of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).

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*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution