

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10843; Ruling
Date: September 15, 2016; Ruling No. 2017-4414; Agency: Department of
Corrections; Outcome: AHO's decision affirmed.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2017-4414
September 15, 2016

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) administratively review the hearing officer’s decision in Case Number 10843. For the reasons set forth below, EDR will not disturb the hearing officer’s decision.

FACTS

The grievant was employed by the Department of Corrections (“agency”) as a Corrections Lieutenant.¹ On June 16, 2016, the grievant was issued a Group III Written Notice with termination for “[f]raternalization with an offender’s family member.”² The grievant timely initiated a grievance to challenge the disciplinary action, and a hearing was held on August 18, 2016.³ In a decision dated August 23, 2016, the hearing officer upheld the disciplinary action and termination.⁴ The grievant has now requested administrative review of the hearing decision.

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.”⁵ 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 either party; the sole remedy is that the hearing officer correct the noncompliance.⁶

Inconsistency with Agency Policy

In his request for administrative review, the grievant appears to assert that the hearing officer’s decision is inconsistent with state and agency policy. The Director of DHRM has the

¹ Agency Exhibit 2 at 1.

² Agency Exhibit 1.

³ Decision of Hearing Officer, Case No. 10843 (“Hearing Decision”), August 23, 2016, at 1; Agency Exhibit 2 at 1.

⁴ Hearing Decision at 1, 5.

⁵ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁶ See *Grievance Procedure Manual* § 6.4(3).

sole authority to make a final determination on whether the hearing decision comports with policy.⁷ Accordingly, the grievant's policy claims will not be discussed in this ruling.

Hearing Officer's Consideration of the Evidence

The grievant's request for administrative review essentially challenges the hearing officer's findings of fact and determinations based on the weight and credibility that he accorded to evidence presented and testimony given at the hearing. Hearing officers are authorized to make "findings of fact as to the material issues in the case"⁸ and to determine the grievance based "on the material issues and grounds in the record for those findings."⁹ Further, in cases involving discipline, the hearing officer reviews the evidence *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.¹⁰ 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.¹¹ 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 upon 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.

The grievant's request for administrative review appears to challenge the hearing officer's finding that he engaged in inappropriate conduct with an offender's mother.¹² Specifically, the grievant asserts that the hearing officer relied on statements made by an incarcerated offender and his mother, which "could have been a setup." The grievant also appears to argue that, because there are no voice recordings proving his alleged statements to the offender's mother, the hearing officer made "false statements" regarding his conduct.

EDR's review of the hearing record indicates that there was sufficient evidence to support the hearing officer's findings regarding the grievant's conduct.¹³ In particular, the agency presented evidence that, among other things, the grievant knew the offender's mother, spent time with the offender and his mother at the facility, obtained the mother's telephone number through the offender, and had contact with the mother after becoming aware of her relationship to the offender.¹⁴ Though the grievant may disagree with the hearing officer's assessment of the evidence, conclusions as to the credibility of witnesses and evidence are precisely the kinds of determinations reserved solely to the hearing officer. Weighing the

⁷ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁸ Va. Code § 2.2-3005.1(C).

⁹ *Grievance Procedure Manual* § 5.9.

¹⁰ *Rules for Conducting Grievance Hearings* § VI(B).

¹¹ *Grievance Procedure Manual* § 5.8.

¹² See Hearing Decision at 4.

¹³ See, e.g., Agency Exhibits 3, 4, 5, 6, 8, 12.

¹⁴ *Id.* The grievant did not testify at hearing. See Hearing Decision at 4.

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.¹⁵ Because the hearing officer's findings of facts with regard to these issues are based upon evidence in the record and address the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings. Accordingly, we decline to disturb the decision on this basis.

CONCLUSION AND APPEAL RIGHTS

For the reasons stated above, EDR declines to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided.¹⁶ 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.¹⁷ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁸



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¹⁵ See, e.g., EDR Ruling No. 2012-3186.

¹⁶ *Grievance Procedure Manual* § 7.2(d).

¹⁷ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁸ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).