

Issue: Permission to Appeal to Circuit Court; Ruling Date: July 26, 2017; Ruling No. 2018-4592; Agency: Department of Corrections; Outcome: Permission granted.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution¹

APPEAL REVIEW RULING

In the matter of the Department of Corrections
Ruling Number 2018-4592
July 26, 2017

Pursuant to Va. Code § 2.2-3006(B), the Department of Corrections (the agency) seeks approval from the Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management to appeal the final hearing decision in Case Number 10987 on the basis that it is contradictory to law. The Virginia Court of Appeals has held that in judicially challenging a hearing officer's decision as contradictory to law, a party must identify a “constitutional provision, statute, regulation or judicial decision which the [hearing] decision contradicts.”² EEDR rulings typically grant agency requests for permission to appeal when the agency has demonstrated at least one potential basis for contending that the hearing decision is contradictory to law, and when there is no evidence that the agency’s appeal is based on any improper purpose such as to harass or cause delay.³

EEDR finds that at least one of the objections raised by the agency is arguably based on law. There is also no evidence of any intent to harass or cause delay on the part of the agency. The court can make the ultimate determination as to whether any of the stated objections meet the statutory “contradictory to law” grounds for judicial appeal.

Accordingly, the agency’s request to appeal is granted. The agency may now file a notice of appeal with the circuit court in the jurisdiction in which the grievance arose. Any such notice must be filed within 30 calendar days of the date the hearing decision became final.⁴ Approval to proceed with the circuit court appeal in no way reflects the substantive merits of the appeal or addresses the jurisdiction of the circuit court.

A handwritten signature in black ink, appearing to read "Chris M. Grab", written over a horizontal line.

Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. The *Grievance Procedure Manual* has now been updated to reflect this Office’s name post-merger as the Office of Equal Employment and Dispute Resolution.

² See *Barton v. Va. Dept. of State Police*, 39 Va. App. 439, 446, 573 S.E.2d 319, 323 (2002).

³ See, e.g., EDR Ruling No. 2010-2663; EDR Ruling No. 2010-2556; EDR Ruling No. 2008-1866; EDR Ruling No. 2007-1534.

⁴ For a determination of when a hearing decision is “final,” see *Grievance Procedure Manual* §§ 7.2(d), 7.2(e).