



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

ADMINISTRATIVE REVIEW

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2021-5157
October 7, 2020

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 in Case Number 11541. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

On April 20, 2020, the grievant was issued a Group III Written Notice with termination for client abuse.¹ He timely grieved the disciplinary action and a hearing was held on August 24, 2020.² In a decision dated August 25, 2020, the hearing officer determined that the agency had “presented sufficient evidence to show that Grievant engaged in verbal abuse of the Resident thereby justifying the Agency’s decision to issue Grievant a Group III Written Notice,” and thus “the Agency’s decision to remove Grievant must be upheld.”³ The hearing officer further found no circumstances warranting mitigation of the disciplinary action.⁴ The grievant has requested that EDR administratively review the hearing officer’s 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 a party; the sole remedy is that the hearing officer correct the noncompliance.⁶ The Director of DHRM also has the sole authority to make a final determination on whether the hearing

¹ See Decision of Hearing Officer, Case No. 11541 (“Hearing Decision”), August 25, 2020, at 1.

² *Id.*

³ *Id.* at 4.

⁴ *Id.*

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

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

decision comports with policy.⁷ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

The grievance procedure further provides that a request for administrative review submitted to EDR “must refer to a particular mandate in state or agency policy . . . [or] a specific requirement of the grievance procedure with which the hearing decision is not in compliance.”⁸ While EDR does not generally strictly construe this requirement, a grievant must, at the very least, identify the basis on which he believes the decision does not comply with policy or the grievance procedure. Without that information, EDR cannot conduct a review of a hearing decision or the hearing record to determine whether the decision complies with policy and the grievance procedure. In this case, the grievant mailed a letter to EDR stating that he was “requesting a review” of the hearing officer’s decision. EDR received the grievant’s submission on September 9, 2020, the final day on which administrative review could be timely requested,⁹ and as a result we were unable to obtain timely written clarification of the grounds for the grievant’s appeal.¹⁰

The grievant has not explained why he disputes the decision or how the decision allegedly does not comply with policy or the grievance procedure. In the absence of such information or, indeed, any indication as to the basis of the grievant’s appeal, there are no grounds on which to assess his request for administrative review. Nonetheless, EDR has reviewed the hearing decision and the record in this case and found no basis to conclude that the hearing officer’s decision does not comply with policy or the grievance procedure. There is evidence in the record to support the hearing officer’s determination that the grievant engaged in the behavior described on the Written Notice, that his behavior constituted misconduct, that the discipline was consistent with law and policy, and that there were no mitigating circumstances warranting reduction of the discipline.¹¹ Accordingly, EDR declines to disturb the hearing officer’s decision.

CONCLUSION AND APPEAL RIGHTS

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.¹² 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.¹³ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁴

Christopher M. Grab
Director
Office of Employment Dispute Resolution

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

⁸ *Grievance Procedure Manual* 7.2(a).

⁹ Because the decision was issued on August 25, 2020, the final calendar day for EDR to receive an administrative review request from either party was September 9, 2020. See *Grievance Procedure Manual* § 7.2(a) (stating that requests for administrative review must be in writing and received by EDR within 15 calendar days of the date of the original hearing decision).

¹⁰ The grievant has not provided EDR with an email address for electronic correspondence.

¹¹ *E.g.*, Hearing Recording at 12:15-15:02, 20:18-20:50 (nurse’s testimony), 29:07-34:58, 47:38-48:34 (investigator’s testimony); Agency Exs. 3, 6.

¹² *Grievance Procedure Manual* § 7.2(d).

¹³ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁴ *Id.*; see also *Va. Dep’t of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).