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APPEAL REVIEW RULING

In the matter of the Department of Corrections
Ruling Number 2021-5173
October 13, 2020

Pursuant to Section 2.2-3006(B) of the Code of Virginia, the Department of Corrections (the “agency”) seeks approval from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management to appeal the final hearing decision in Case Number 11261 on the basis that it is contradictory to law. The Court of Appeals of Virginia 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.”¹ EDR 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.²

EDR finds that at least one of the grounds for appeal raised by the agency is 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 file a notice of appeal with the circuit court in the jurisdiction in which the grievance arose when appropriate. Any such notice must be filed within 30 calendar days of the date the hearing decision becomes final.³ 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.

Christopher M. Grab
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¹ See *Barton v. Va. Dept. of State Police*, 39 Va. App. 439, 446, 573 S.E.2d 319, 323 (2002).

² See, e.g., EDR Ruling No. 2010-2663; EDR Ruling No. 2010-2556; EDR Ruling No. 2008-1866; EDR Ruling No. 2007-1534.

³ For a determination of when a hearing decision is “final,” see *Grievance Procedure Manual* §§ 7.2(d), 7.2(e). While the hearing officer issued the attorneys’ fees addendum on October 9, 2020, both parties still have the opportunity to appeal that determination to EDR. If no such appeal is filed, the hearing decision will be considered final and subject to court appeal. *Id.*