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ADMINISTRATIVE REVIEW

In the matter of George Mason University
Ruling Number 2021-5177
December 8, 2020

George Mason University (the “university”) 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 11496. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

On September 12, 2019, the university issued a Written Counseling to the grievant and transferred him to a new assignment.¹ The grievant timely filed a grievance challenging these actions.² EDR qualified the grievance for a hearing,³ which took place on September 15, 2020.⁴ In a decision dated October 9, 2020, the hearing officer rescinded the Written Counseling and directed the university to “restore Grievant to his position duties prior to the issuance of the Written Counseling.”⁵ The university 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.”⁶ 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.⁷ 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. 11496 (“Hearing Decision”), October 9, 2020, at 4-5.

² See *id.* at 1.

³ EDR Ruling No. 2020-5023.

⁴ Hearing Decision at 1. The hearing in this matter was delayed due to the COVID-19 pandemic. See Exec. Order No. 51 (2020), *Declaration of a State of Emergency Due to Novel Coronavirus (COVID-19)*.

⁵ Hearing Decision at 9.

⁶ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁷ See *Grievance Procedure Manual* § 6.4(3).

decision comports with policy.⁸ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

In its request for administrative review, the university has not made arguments about the hearing officer's compliance with the grievance procedure or application of policy; it instead "requests an administrative review to clarify" the hearing officer's order of relief.⁹ The university argues that "[i]t is unclear from the decision what the Hearing Officer meant by 'restore Grievant to his position duties prior to the issuance of the Written Counseling,'"¹⁰ and explains that its business needs have changed since September 2019 such that the grievant cannot be returned to the exact job duties he held at that time.¹¹

Because the university has not raised any matters relating to the hearing officer's compliance with the grievance procedure or application of policy, EDR finds no grounds to disturb the decision or the hearing officer's order of relief. The question of the proper way to implement an order or relief is not a question for EDR, but rather, as established by the Code of Virginia, a matter left to the circuit court. Section 2.2-3006(D) of the Code of Virginia provides that, if there is a dispute about the implementation of a hearing decision, "[e]ither party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision of a hearing officer." As a result, EDR does not have the authority to address the university's implementation of the decision in this ruling. The parties must direct issues of implementation to the circuit court with jurisdiction over this matter.

In addition to its request for clarification of the hearing officer's order of relief, the university has signaled its interest in an EDR-led facilitation with the parties to identify a possible resolution to its concerns regarding implementation.¹² Section 8.11 of the *Grievance Procedure Manual* states that "EDR may facilitate a resolution to a grievance and/or the matter(s) related thereto upon the agreement of both parties." A successful facilitation in this case could remove the need for an appeal to the circuit court and reduce the time, expense, and other burdens involved in reaching a satisfactory outcome that complies with the hearing officer's order of relief. The parties should contact EDR to confirm their willingness to participate in a facilitation discussion and receive further information about arranging an EDR facilitation.

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.¹³ Within 30 calendar days of a final hearing decision, either party may appeal the final

⁸ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁹ Request for Administrative Review at 1-3. The university has clearly stated that it is not appealing "that part of the decision ordering the University to rescind the Written Counseling," which prompted the grievant's reassignment. *Id.* at 1 n.1.

¹⁰ *Id.* at 1 (quoting Hearing Decision at 9).

¹¹ *Id.* at 2-3.

¹² EDR initially delayed issuance of this ruling in anticipation of the parties moving forward with such a request to facilitate and/or resolve the matter on their own. EDR has received no further information from the parties in this regard and, accordingly, we issue this ruling in response to the university's request for administrative review.

¹³ *Grievance Procedure Manual* § 7.2(d).

decision to the circuit court in the jurisdiction in which the grievance arose.¹⁴ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁵

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¹⁴ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁵ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).