

Issue: Administrative Review of Hearing Officer's decision in Case No. 9947; Ruling
Date: April 17, 2013; Ruling No. 2013-3562; Agency: Virginia Department of
Transportation; Outcome: Remanded to AHO.



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

ADMINISTRATIVE REVIEW

In the matter of the Virginia Department of Transportation
Ruling Number 2013-3562
April 17, 2013

The agency has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review for a second time the hearing officer's decision and remand decision in Case Number 9947. For the reasons set forth below, EDR remands the case to the hearing officer for further consideration and clarification.

FACTS

The hearing officer's findings in his December 4, 2012 decision in Case Number 9947,¹ as recounted in EDR's first administrative review in this case (EDR Ruling Number 2013-3504), are hereby incorporated by reference. In EDR Ruling Number 2013-3504, the hearing officer was directed to provide further consideration of all of the alleged violations addressed in the agency's Group II Written Notice and due process letter, as the first decision improperly limited the focus of the case to only events occurring on February 19, 2012.

The hearing officer issued a remand decision on March 5, 2013. In this remand decision, the hearing officer found the agency's administrative review request to be "improperly filed and untimely" due to the fact that the agency did not provide a copy of the review request to the hearing officer as required by the *Rules for Conducting Grievance Hearings*, Section VII(A).² Subsequently, the agency initiated a second request for administrative review, alleging that the hearing officer did not adhere to the remand directives of EDR. The agency asserts that EDR has already directed the hearing officer to consider on remand his decision on the merits of this case, and by issuing a remand decision related to procedural compliance, the hearing officer has not abided by EDR's directive.

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

¹ Decision of Hearing Officer, Case No. 9947, December 4, 2012 ("Hearing Decision").

² Remand Decision, Case No. 9947, March 5, 2013 ("Remand Decision") at 1.

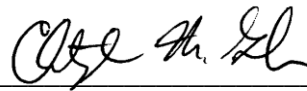
matters related to procedural compliance with the grievance procedure.”³ If the hearing officer’s exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁴

In this instance, by issuing a remand decision on the basis of a procedural matter rather than upon the merits of the case, the hearing officer has not followed EDR’s directive on remand. While the hearing officer may be correct in his assertion that the agency failed to provide him with a copy of its request for administrative review as required by the *Rules for Conducting Grievance Hearings*, nevertheless, this omission does not invalidate the agency’s request for review. To the extent the hearing officer even has authority to address such a procedural abnormality, EDR’s determinations of compliance with the grievance procedure are final.⁵ EDR accepted and considered the agency’s first administrative review request as properly filed. As such, the hearing officer is compelled to adhere to the directives of this Office as expressed in administrative rulings such as EDR Ruling No. 2013-3504.

This case is again remanded to the hearing officer for further clarification and consideration of all of the alleged violations addressed in the agency’s Group II Written Notice and due process letter, as directed in EDR Ruling Number 2013-3504.

APPEAL RIGHTS

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.⁶ 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.⁷ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁸



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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

⁴ See *Grievance Procedure Manual* § 6.4(3).

⁵ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).

⁶ *Grievance Procedure Manual* § 7.2(d).

⁷ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁸ *Id.*; see also *Virginia Dep’t of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).