

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10054; Ruling Date: June 10, 2013; Ruling No. 2013-3629; Agency: Virginia Polytechnic Institute and State University; Outcome: Hearing Decision in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**ADMINISTRATIVE REVIEW**

In the matter of Virginia Polytechnic Institute and State University  
Ruling Number 2013-3629  
June 10, 2013

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) administratively review the hearing officer’s decision in Case Number 10054. For the reasons set forth below, EDR will not disturb the hearing officer’s decision.

FACTS

The relevant facts in Case Number 10054, as found by the hearing officer, are as follows:<sup>1</sup>

Virginia Tech employs Grievant as a Surgery Technician at one of its schools. She has been employed since December 10, 2010. No evidence of prior active disciplinary action was introduced during the hearing.

Grievant wanted to become a licensed veterinary technician (LVT) to obtain a higher paying position with the Agency. A Second University offered a distance learning program enabling students to become LVTs. Grievant took courses that required her to demonstrate she had learned how to complete certain medical procedures. The Second University provided Grievant with preprinted forms called “Task Verification” forms which she was to complete as she performed patient procedures and treatments using the University’s facilities and patients. The Agency employed staff to serve as mentors for employees studying to become LVTs. Grievant’s Mentor was a licensed veterinary technician whose job duties included reviewing the preprinted forms submitted by Grievant. The Mentor was to review, approve, and sign the form and return it to Grievant so that Grievant could send it to the Second University.

On August 1, 2012, Grievant submitted four Task Verification forms to the Mentor for the Mentor to approve and sign. The Mentor reviewed the forms and noticed that several procedures appeared to have been witnessed by an employee who was not working on the dates of the procedures. The Mentor made

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<sup>1</sup> Decision of Hearing Officer, Case No. 10054 (“Hearing Decision”), May 20, 2013, at 2-3 (citations omitted).

a copy of the forms and returned them to Grievant without her signature. The Mentor asked Grievant to verify the accuracy of the documents submitted. On August 2, 2012, Grievant re-submitted the forms but the forms contained several different patient names and services on dates were not rendered for those patients.

The Agency concluded that Grievant had submitted forms on August 1, 2012 and August 2, 2012 that contained the name of patients who had never received services from the hospital. For those who were actually patients, Grievant had not rendered services to them on the dates claimed. During a due process meeting, Grievant was asked about the source of the patient names. Grievant responded, "I made them up."

In the hearing decision, the hearing officer assessed the evidence as to whether the grievant engaged in falsification of records by writing fabricated information on the Task Verification forms, finding in the affirmative, and upheld the agency's issuance of a Group II Written Notice of disciplinary action.<sup>2</sup> The grievant now appeals the hearing decision to EDR.

### 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."<sup>3</sup> 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 either party; the sole remedy is that the hearing officer correct the noncompliance.<sup>4</sup>

#### *Hearing Officer's Consideration of the Evidence*

The grievant's request for administrative review claims that the hearing officer "did not sufficiently weigh the evidence presented by the grievant and through the witnesses of the employer at the hearing." Specifically, the grievant argues that there is no connection between the completion of the Task Verification forms and the grievant's employment, and that as a result the disciplinary action should not have been upheld. Hearing officers are authorized to make "findings of fact as to the material issues in the case"<sup>5</sup> and to determine the grievance based "on the material issues and grounds in the record for those findings."<sup>6</sup> Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action.<sup>7</sup> Thus, in disciplinary actions the hearing officer has the authority to determine whether

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<sup>2</sup> Hearing Decision at 3-4.

<sup>3</sup> Va. Code § 2.2-1202.1(2), (3), and (5).

<sup>4</sup> See *Grievance Procedure Manual* § 6.4(3).

<sup>5</sup> Va. Code § 2.2-3005.1(C).

<sup>6</sup> *Grievance Procedure Manual* § 5.9.

<sup>7</sup> *Rules for Conducting Grievance Hearings* ("Rules") § VI(B).

the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.<sup>8</sup> Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses' credibility, and make findings of fact. As long as the hearing officer's findings are based upon evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case, there is sufficient evidence in the record to support the hearing officer's conclusion that there was a "nexus between Grievant's behavior and her position with the Agency" sufficient to support disciplinary action for falsification of records.<sup>9</sup> At the hearing, for example, the grievant's mentor testified that her responsibilities as a part of the mentorship program were part of her job duties at the agency.<sup>10</sup> The grievant's supervisor stated that the grievant completed Task Verification forms and other documentation of medical procedures for the LVT program while at work.<sup>11</sup> Most importantly, the grievant's mentor explained that, as part of the LVT program, the grievant had performed medical procedures in the past during work hours using the agency's facilities and patients, and that the grievant claimed to have completed the fictitious procedures at issue on the Task Verification forms during work hours and using the agency's facilities and patients.<sup>12</sup> While there is also evidence in the record that completion of the Task Verification forms was not part of the grievant's work duties and that the agency did not create the forms or maintain a record of complete forms,<sup>13</sup> it is clear from the hearing officer's decision that he considered all of the evidence in determining that the connection between the falsified records and the grievant's position with the agency was sufficient to support the disciplinary action.<sup>14</sup>

Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.<sup>15</sup> Because the hearing officer's findings are based upon evidence in the record and address the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer, and we decline to disturb the hearing decision.

### CONCLUSION AND APPEAL RIGHTS

For the reasons stated above, EDR will not disturb the hearing decision in this case. 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

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<sup>8</sup> *Grievance Procedure Manual* § 5.8.

<sup>9</sup> Hearing Decision at 4.

<sup>10</sup> Hearing Record at 37:40.

<sup>11</sup> Hearing Record at 1:30:00.

<sup>12</sup> Hearing Record at 38:05; Hearing Record at 41:30 through 49:40; Hearing Record at 1:02:30.

<sup>13</sup> Hearing Record at 1:06:15 through 1:10:00.

<sup>14</sup> See Hearing Decision at 4.

<sup>15</sup> See, e.g., EDR Ruling No. 2012-3186.

been decided.<sup>16</sup> 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.<sup>17</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>18</sup>



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<sup>16</sup> *Grievance Procedure Manual* § 7.2(d).

<sup>17</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>18</sup> *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).