

Issue: Administrative review of Hearing Officer's decision in Case No. 10255; Ruling
Date: March 5, 2014; Ruling No. 2014-3815; Agency: Department of Corrections;
Outcome: AHO's decision affirmed.



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

ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2014-3815
March 5, 2014

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 10255. For the reasons set forth below, EDR will not disturb the decision of the hearing officer.

FACTS

The grievant was employed by the Department of Corrections as a Probation and Parole officer.¹ On November 21, 2013, the grievant was issued a Group III Written Notice with termination for falsification of documents and failure to follow policy.² He then initiated a grievance challenging the disciplinary action. On January 31, 2014, following a hearing, the hearing officer issued a decision upholding the disciplinary action.³ The grievant has now requested administrative review by 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.”⁴ 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.⁵

In this case, the grievant does not allege that the hearing officer did not comply with the grievance procedure. Instead, he states that he could not afford an attorney for the hearing and did not present any exhibits or witnesses, which he now believes was a mistake. He asks that the case be reviewed by EDR and the termination with cause be removed, allowing him to resign. While the grievant’s regret over his choices is understandable, his lack of an attorney and failure

¹ Decision of Hearing Officer, Case No. 10255 (“Hearing Decision”), January 31, 2014, at 1.

² See Agency Exhibit 1.

³ Hearing Decision at 1, 5.

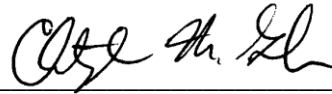
⁴ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁵ See *Grievance Procedure Manual* § 6.4(3).

to introduce witnesses and exhibits are not a basis for relief. EDR has no authority to award a decision in his favor, but instead may only remand a decision where the grievant has shown that the hearing officer has failed to comply with the grievance procedure.⁶ The grievant has not made such a showing here. Accordingly, the grievant's request is denied.⁷

CONCLUSION AND 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.⁸ 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.⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁰



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ *Id.*

⁷ The grievant raises a concern about "slanderous" references being given about him by the agency. Claims regarding alleged defamation may not be addressed through the grievance process, but rather must be raised through a judicial process, if at all.

⁸ *Grievance Procedure Manual* § 7.2(d).

⁹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁰ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).