

Issue: Reconsidered Administrative Review Request in Case No. 10485; Ruling Date: March 5, 2015; Ruling No. 2015-4102; Agency: University of Virginia; Outcome: Request denied.



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

RECONSIDERED ADMINISTRATIVE REVIEW

In the matter of the University of Virginia
Ruling Number 2015-4102
March 5, 2015

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management reconsider its previously issued administrative review of the hearing officer's decision in Case Number 10485. For the reasons set forth below, EDR declines to alter its original ruling.

PROCEDURAL HISTORY

On May 27, 2014, the grievant was issued a Group II Written Notice.¹ In the hearing decision in Case Number 10485 concerning the grievant's challenge to the disciplinary action, the hearing officer concluded that the grievant had failed to follow a supervisor's instructions and upheld the Written Notice on that basis.² The grievant appealed the hearing decision to EDR. In responding to the grievant's appeal, in EDR Ruling Number 2015-4096, the hearing officer's decision was upheld.³ The grievant now asks EDR to reconsider its ruling on the bases discussed below.⁴

DISCUSSION

Timing of Administrative Reviews

The grievant argues that EDR Ruling Number 2015-4096 was premature. In submitting his appeal to EDR, the grievant also appealed to the DHRM Director and requested reconsideration of the hearing decision from the hearing officer. The grievant cites to a superseded version of the *Grievance Procedure Manual* in support of his claim that the hearing officer should have addressed the request for reconsideration prior to EDR issuing its administrative review ruling.

¹ See Decision of Hearing Officer, Case No. 10485 ("Hearing Decision"), January 23, 2015, at 1.

² *Id.* at 6-9.

³ The grievant's appeal to the DHRM Director on the basis of alleged inconsistencies with state and/or agency policy is also still pending.

⁴ The grievant informed EDR that he would be presenting additional information in conjunction with his request for reconsideration of EDR's ruling by close of business on March 4, 2015. As of that time, EDR had received no additional information from the grievant.

While requests for reconsideration of hearing decisions used to be contemplated as part of the grievance procedure, with the issuance of the current version of the *Grievance Procedure Manual* on July 1, 2012, such requests were effectively eliminated.⁵ The grievant is relying on a provision of the grievance procedure that no longer exists. The grievance procedure currently in effect does not provide for a request for reconsideration and, as such, EDR's ruling was not premature. Further, the grievant's claims in his request for reconsideration, which are also largely raised in either or both of his administrative review requests to EDR and DHRM, have already been addressed in EDR Ruling Number 2015-4096 or will be in DHRM's review.

Timeliness of Agency Response

The grievant claims that the agency submitted its rebuttal to his request for administrative review untimely and, thus, EDR inappropriately considered it in issuing EDR Ruling Number 2015-4096. As provided in Section 7.2(a) of the *Grievance Procedure Manual*, the opposing party has 10 calendar days following the conclusion of the original 15-day appeal period (for requesting administrative review) to submit a rebuttal to a request for administrative review. In this case, the original hearing decision was issued on January 23, 2015. As such, the 15-day appeal would run past February 7th (15 calendar days following the issuance of the decision) to February 9th, as parties are given until the next business day if the 15-day period for requesting administrative review falls on a weekend or holiday.⁶ Because the original 15-day appeal period concluded February 9th, the agency had until February 19th to submit its rebuttal. The agency's rebuttal was received on February 16th and, therefore, was timely by the express provisions of the *Grievance Procedure Manual*. The grievant's claim is without merit. Furthermore, even if EDR had not received or considered the agency's rebuttal, with due respect to the agency, the result of the review in EDR Ruling Number 2015-4096 would not have changed.

Failure of the Hearing Officer to Respond to Request for Reconsideration

The grievant has also pointed out that the hearing officer has not issued a response to his request for reconsideration. As stated above, such requests are not contemplated under the currently applicable version of the *Grievance Procedure Manual*. There will be no reconsideration from the hearing officer forthcoming.

Grievant's Request for "De Novo" Review

While not specifically mentioned as a ground for reconsideration, in the grievant's concluding requests, he references a "de novo" review by EDR of the hearing decision. However, EDR's review is not de novo. Rather, EDR's authority is limited to reviewing hearing decisions for compliance with the grievance procedure.⁷ If the hearing officer's exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in

⁵ See *Grievance Procedure Manual* § 7.2.

⁶ E.g. EDR Ruling No. 2009-2274.

⁷ *Grievance Procedure Manual* § 7.2(a).

favor of a party; the sole remedy is that the action be correctly taken.⁸ As such, even were there to be further review in this case by EDR, it would not be de novo.

CONCLUSION AND APPEAL RIGHTS

For the reasons stated above, the grievant's request for reconsideration is denied. The grievant has stated no grounds warranting reconsideration of EDR Ruling Number 2015-4096, which will stand as issued.

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.⁹ 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.¹⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹¹



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⁸ See *Grievance Procedure Manual* § 6.4(3).

⁹ *Id.* § 7.2(d).

¹⁰ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹¹ *Id.*; see also *Va. Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).