

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10511; Ruling
Date: March 13, 2015; Ruling No. 2015-4112; Agency: University of Virginia;
Outcome: Hearing Officer's Decision Affirmed.



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

ADMINISTRATIVE REVIEW

In the matter of the University of Virginia
Ruling Number 2015-4112
March 13, 2015

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 10511. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Number 10511, as found by the hearing officer, are as follows:¹

The University of Virginia employs Grievant as a Housekeeping employee.

Grievant began his shift at approximately 6:00 a.m. on September 2, 2014. At approximately 6:15 a.m., Grievant was assigned to work in Building R. He was not as familiar with that building compared to other buildings he had worked. He believed he would have to carry three sets of keys while working in the building in order to access all of the doors. Grievant spoke with a co-worker, Ms. C, and asked her if she could open the doors for him as had been done on a prior day so that he would not have to carry a third set of keys. Ms. C said it was not her job to open doors for him and gave him the third set of keys. Ms. C spoke in an argumentative manner that upset Grievant. Grievant decided to leave his duty post and go to the human resource department to discuss his concerns. He did not approach his supervisor and ask for permission to leave Building R, he simply left.

Grievant arrived at the human resource department before any human resource employees began working. He waited outside of the human resource department’s building until he was able to speak with an employee. They discussed the incident and several other matters Grievant raised as concerns.

¹ Decision of Hearing Officer, Case No. 10511 (“Hearing Decision”), February 24, 2015, at 2.

At approximately 8:40 a.m., Grievant called the Housekeeping Manager and told her about his interaction with Ms. C. Grievant said he was upset because Ms. C would not unlock doors for him and he had to carry a third set of keys. Grievant did not ask the Housekeeping Manager for permission to remain away from his duty post. The Housekeeping Manager believed Grievant would be returning to work. Grievant did not perform any work duties prior to his shift ending at 2:45 p.m.

On September 23, 2014, the grievant was issued a Group II Written Notice for leaving work without permission and disruptive behavior and suspended for three workdays.² The grievant timely grieved the disciplinary action³ and a hearing was held on February 6, 2015.⁴ In a decision dated February 24, 2015, the hearing officer determined that the agency had presented sufficient evidence to show that the grievant left work without permission and upheld the Group II Written Notice and three-workday suspension.⁵ 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.”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 either party; the sole remedy is that the hearing officer correct the noncompliance.⁷

In his request for administrative review, the grievant generally disagrees with the hearing officer’s decision to uphold the Written Notice and argues that the University should have disciplined Ms. C for “bullying and harassing” other co-workers before the incident at issue in this case occurred. The grievant appears to claim that, had the University disciplined Ms. C, he would not have encountered her on September 2 and thus would have had no need to leave his assigned post and go to the human resource department. The grievant raised the same assertion at the hearing.⁸ Having reviewed the hearing record, EDR cannot conclude that the hearing officer erred by not reducing or rescinding the discipline based on this argument. The University presented evidence to show that the grievant engaged in the behavior described in the Written Notice,⁹ that the behavior constituted misconduct,¹⁰ and that the discipline was consistent with

² Agency Exhibit 1 at 1-2.

³ Agency Exhibit 2 at 1-2.

⁴ See Hearing Decision at 1.

⁵ *Id.* at 3-4.

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

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

⁸ See Hearing Recording at 1:55:15-1:55:43.

⁹ See, e.g., Agency Exhibits 5, 6, 8.

¹⁰ See Agency Exhibit 4 at 4-5.

law and policy.¹¹ It appears the hearing officer simply concluded that, regardless of Ms. C's behavior, the grievant was not justified in leaving work without first obtaining permission from his supervisor, even though "it [was] understandable that he might seek assistance from human resource staff" to address the issue with Ms. C.¹² While the grievant may disagree, EDR cannot conclude that the hearing officer's conclusion on this point is inconsistent with the evidence in the record or is otherwise in error.¹³ Accordingly, EDR will not disturb the hearing decision on this basis.

CONCLUSION AND APPEAL RIGHTS

For the reasons stated above, we decline to disturb the hearing officer's decision. 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.¹⁴ 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.¹⁵ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁶



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¹¹ See DHRM Policy 1.60, *Standards of Conduct*, Attachment A (stating that "leaving work without permission" is misconduct that would typically warrant the issuance of a Group II Written Notice).

¹² Hearing Decision at 3.

¹³ To the extent the grievant's request for administrative review can be construed as an argument that the hearing officer should have directed the University to discipline Ms. C, the *Grievance Procedure Manual* provides that a hearing officer does not have the authority to "[take] any adverse action against an employee," except to uphold or reduce disciplinary action(s) challenged in a grievance. *Grievance Procedure Manual* § 5.9(b). The question of whether Ms. C should or could have been disciplined was not before the hearing officer for adjudication.

¹⁴ *Grievance Procedure Manual* § 7.2(d).

¹⁵ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁶ *Id.*; see also *Va. Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).