

Issue: Reconsidered Administrative Review Ruling for Case No. 11255; Ruling Date: January 2, 2019; Ruling No. 2019-4830; Agency: Virginia Commonwealth University; Outcome: Request denied.



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

RECONSIDERED ADMINISTRATIVE REVIEW

In the matter of Virginia Commonwealth University
Ruling Number 2019-4830
January 2, 2019

In Case Number 11255, the hearing officer upheld the issuance of a Group I Written Notice by Virginia Commonwealth University (the “University”) to the grievant for unsatisfactory work performance.¹ The grievant requested administrative review of the decision from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”). On December 14, 2018, this Office issued a ruling declining to disturb the hearing officer’s decision.² EEDR received an email submission from the grievant on December 17, 2018, in which he requests reconsideration of the administrative review ruling on the basis that “information that [he] mentioned in [his] appeal letter wasn’t addressed” in the ruling.

In general, EEDR does not conduct reconsiderations of its administrative review rulings, absent substantial grounds of just cause and/or in cases, if warranted, when the procedural posture is amenable to such reconsideration.³ Reconsideration of administrative review rulings is not provided for under the grievance procedure, and entertaining such requests could disrupt potential circuit court appeal deadlines over which EEDR has no control.⁴ As such, in the absence of just cause, EEDR does not reconsider its administrative review rulings.

In his request for reconsideration, the grievant appears to primarily reiterate arguments that EEDR considered in its prior administrative ruling: namely, that the Written Notice was issued for two separate instances of misconduct, that the hearing officer determined one of the incidents did not justify disciplinary action, and that he had been counseled prior to the issuance of the Written Notice about his conduct during the second incident. The grievant appears to further cite several additional issues with the decision that were not previously raised, relating to an alleged “[t]ime lapse between write ups” and a lack of “other problems after meeting with Supervisor.”

¹ Decision of Hearing Officer, Case No. 11255 (“Hearing Decision”), Nov. 5, 2018, at 1, 4-6.

² EEDR Ruling No. 2019-4813.

³ EEDR does, when the situation warrants, address requests for reconsideration of its rulings on compliance and qualification. As EEDR’s rulings on compliance and qualification are final, *see* Va. Code § 2.2-1202.1(5), there are no opportunities for a party to appeal. Thus, EEDR entertains such requests for reconsideration to address, for example, any mistakes made in the original ruling, to ensure accurate determinations of the pertinent issues with finality. For parties appealing a hearing officer’s decision, however, administrative review by EEDR is not the final appeal step. Rather, both parties have the right to request legal appeals from the Circuit Court. *See* Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁴ *See id.*

To the extent the grievant is attempting to challenge new issues in the hearing decision, the *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** the reviewer within 15 calendar days of the date of the original hearing decision. **Received by** means delivered to, not merely postmarked or placed in the hands of a delivery service.”⁵ Further, the November 5, 2018 hearing decision clearly advised the parties that any request they may file for administrative review must be received by the reviewer within 15 calendar days of the date the decision was issued.⁶ Consequently, EEDR is unable to review new or additional grounds of appeal at this time, as the submission is untimely.

Furthermore, EEDR directly addressed the grievant’s contention that he had been counseled by management for the same misconduct that was later addressed through the issuance of the Written Notice in its prior administrative review ruling. Based on a review of the hearing record, this Office found that there was “no basis to conclude that the University’s issuance of the disciplinary action to address the grievant’s interaction with the student was inconsistent with the *Standards of Conduct*.”⁷ EEDR has carefully considered the grievant’s arguments on this point and finds that he has not presented evidence in his request for reconsideration of any just cause for EEDR to reconsider its prior decision.⁸ While the grievant may disagree with EEDR’s analysis of this issue, such disagreement is not, by itself, a justification for this Office to reconsider its decision.

For these reasons, the grievant’s request for reconsideration is denied. The grievant has stated no grounds warranting reconsideration of EEDR Ruling Number 2019-4813, 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 The hearing decision in this case became a final hearing decision following the issuance of EEDR’s administrative review ruling on **December 14, 2018**. 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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⁵ *Grievance Procedure Manual* § 7.2.

⁶ Hearing Decision at 6-7.

⁷ EEDR Ruling No. 2019-4813.

⁸ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁹ *Grievance Procedure Manual* § 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).