

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10172, 10173;
Ruling Date: November 4, 2013; Ruling No. 2014-3749; Agency: Department of
Social Services; Outcome: Hearing Decision in Compliance.



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

ADMINISTRATIVE REVIEW

In the matter of the Department of Social Services
Ruling Number 2014-3749
November 4, 2013

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 Numbers 10172/10173. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The grievant was employed by the Department of Social Services (“agency”).¹ On April 25, 2013, the grievant was issued a Group II Written Notice of disciplinary action for failure to follow instructions.² On May 7, 2013, the grievant received a Group II Written Notice with removal for unsatisfactory work performance.³ The grievant timely grieved the disciplinary actions and a hearing was held on October 1, 2013.⁴ On October 3, 2013, the hearing officer issued a decision upholding the disciplinary actions.⁵ The grievant has now requested an administrative review from 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

¹ Decision of Hearing Officer, Case Nos. 10172/10173 (“Hearing Decision”), October 3, 2013, at 2.

² *Id.* at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 6.

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


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

The grievant's request for administrative review challenges the hearing officer's finding that the grievant's failure to attend a meeting rose "to the level of a Group II 'failure to follow instructions' offense" under DHRM Policy 1.60, *Standards of Conduct*. While the grievant concedes that he missed the meeting, he asserts that his actions were inadvertent and therefore warranted only a Group I Written Notice. The grievant alleges that the hearing officer erred in rejecting this argument.⁸

The Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy.⁹ The grievant has requested such a review. Accordingly, the grievant's policy claims will not be addressed in this review. To the extent the grievant has raised his arguments as a violation of the grievance procedure or *Rules for Conducting Grievance Hearings*, we find none. EDR will not disturb the hearing officer's decision on this basis.

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.¹⁰ 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.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹²



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⁸ See Hearing Decision at 4-5.

⁹ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

¹⁰ *Grievance Procedure Manual* § 7.2(d).

¹¹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹² *Id.*; see also *Va. Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).