

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10431; Ruling
Date: November 4, 2014; Ruling No. 2015-4014; Agency: Virginia Community
College System; Outcome: Hearing Decision in Compliance.



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

ADMINISTRATIVE REVIEW

In the matter of the Virginia Community College System
Ruling Number 2015-4014
November 4, 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 10431. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Number 10431, as found by the hearing officer, are as follows:¹

1. The Virginia Community College System employed Grievant as a Fiscal Technician. She began working for the Agency in 2006. Grievant had prior active disciplinary action. She received a Group III Written Notice with a 30 day work suspension on February 28, 2014. Grievant was suspended from work beginning on March 3, 2014. She returned to work on April 14, 2014.

On April 14, 2014, the Supervisor gave a performance improvement plan to Grievant to outline Grievant’s performance obligation.

2. Grievant was responsible for reconciling P-card accounts of certain employees with the Agency. The due date for January P-card accounts was February 15, 2014. The due date for February reconciliations was March 15, 2014. Grievant was instructed to submit her January and February 2014 P-card reconciliations to Ms. C by April 24, 2014. On April 24, 2014, the Supervisor asked Grievant again to submit the reconciliations. Grievant submitted the January 2014 reconciliation on April 29, 2014 and the February 2014 reconciliation on May 2, 2014.
3. Grievant was instructed to store her P-card reconciliations and purchase order balance sheets on the Q drive of the Agency’s computer system so that they

¹ Decision of Hearing Officer, Case No. 10431 (“Hearing Decision”), September 19, 2014, at 2-3.

would be accessible by other employees. Grievant failed to do so. After the Supervisor asked Grievant to perform the task a second time on April 24, 2014, Grievant completed the task.

4. Grievant was instructed to verify all invoices in AIS, the Agency's computer database, and ensure there were not duplicate invoices. The Supervisor coached Grievant about the importance of not having duplicate invoices in the computer system. Grievant failed to verify invoices. As of April 25, 2014, there remained three duplicate invoices in AIS.

The Agency presented evidence of other incidents supporting its disciplinary action. The Hearing Officer will not discuss those incidents because they were not proven by the evidence or did not rise to the level justifying the issuance of a Group II Written Notice.

On May 12, 2014, the grievant was issued a Group II Written Notice for unsatisfactory work performance, failure to follow her supervisor's instructions, disruptive behavior, and interference with state operations.² She was terminated based on her accumulation of discipline.³ In the hearing decision, the hearing officer assessed the evidence as to whether the grievant engaged in the charged misconduct, concluded that the grievant had failed to follow her supervisor's instructions, and upheld that agency's issuance of a Group II Written Notice with termination.⁴ 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."⁵ 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.⁶

Hearing Officer's Findings of Fact

The grievant's request for administrative review essentially argues that the hearing officer's findings of fact, based on the weight and credibility that he accorded to testimony presented at the hearing, are not supported by the evidence. Hearing officers are authorized to

² Agency Exhibit 6 at 7-9.

³ *Id.* DHRM Policy 1.60, *Standards of Conduct*, states that "[a]n employee who is issued a Written Notice that would normally warrant termination but who is not terminated due to mitigating circumstances should be notified that any subsequent Written Notice for any level offense during the active life of the Written Notice may result in termination." DHRM Policy 1.60, *Standards of Conduct*, § (B)(3)(c).

⁴ Hearing Decision at 3-4.

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

⁶ *See Grievance Procedure Manual* § 6.4(3).

make “findings of fact as to the material issues in the case”⁷ and to determine the grievance based “on the material issues and the grounds in the record for those findings.”⁸ Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action.⁹ Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.¹⁰ Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses’ credibility, and make findings of fact. As long as the hearing officer’s findings are based upon evidence in the record and the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case, the hearing officer assessed the evidence and determined that the “Grievant was instructed to complete her January and February P-card account reconciliations by April 24, 2014” and failed to do so.¹¹ He further concluded that the “Grievant was instructed to move her reconciliations and purchase order balance sheets to the Q drive” and “verify there were no duplicate invoices” and failed to complete these tasks as directed.¹² In her request for administrative review, the grievant broadly disputes the hearing officer’s decision to uphold the discipline. She appears to further argue that agency management was responsible for correcting invoicing errors, that she was unaware of her failure to save reconciliations and balance sheets to the Q drive, and that there is no evidence in the hearing record to support the hearing officer’s statement that “[a]s of April 25, 2014, there remained three duplicate invoices in AIS.”¹³

There is evidence in the record to support the hearing officer’s conclusion that the grievant engaged in the behavior charged on the Written Notice,¹⁴ that the behavior constituted misconduct,¹⁵ and that the discipline imposed by the agency was consistent with law and policy.¹⁶ The hearing officer also explicitly considered the evidence presented by the grievant that “reconciliations should have been completed by other staff in her absence” and that “duplicate invoices may have resulted from the invoices being sent to an auditor before being entered into the system” and determined that these claims did not excuse her failure to follow

⁷ Va. Code § 2.2-3005.1(C).

⁸ *Grievance Procedure Manual* § 5.9.

⁹ *Rules for Conducting Grievance Hearings* § VI(B).

¹⁰ *Grievance Procedure Manual* § 5.8.

¹¹ Hearing Decision at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *E.g.*, Hearing Recording at 20:00-21:19 (testimony of Director T), 32:15-32:46, 34:40-36:09 (testimony of Supervisor); Agency Exhibit 3 at 11; Agency Exhibit 4 at 11-14.

¹⁵ *See* DHRM Policy 1.60, *Standards of Conduct*, Attachment A (stating that “[f]ailure to follow supervisor’s instructions or comply with written policy” is misconduct that typically warrants the issuance of a Group II Written Notice).

¹⁶ *See id.*

instructions.¹⁷ There is evidence in the record to support the hearing officer's findings regarding those arguments.¹⁸

Furthermore, EDR has not identified any evidence presented by the grievant that would show she may have been unaware of her failure to save certain files to the Q drive. In the absence of such information, there is no basis to conclude that the hearing officer's decision on this point was in error. The grievant's assertion that evidence in the record does not support a finding that three duplicate invoices were present in AIS on April 25, 2014 is similarly unpersuasive. At the hearing, the grievant's supervisor testified that she reviewed the grievant's progress on the performance improvement plan on that date and found that three duplicate invoices were present.¹⁹ The grievant's performance improvement plan evaluation from April 25 indicates the same.²⁰ While the grievant may disagree with the hearing officer's assessment of the evidence, determinations of disputed facts of this nature are precisely the sort of findings reserved solely to the hearing officer. There is nothing to indicate that the hearing officer's consideration of the instructions given to the grievant and her subsequent failure to carry out those instructions was in any way unreasonable or not based on the actual evidence in the record.

The grievant further disputes the hearing officer's statement that "[t]he Agency presented evidence of other incidents supporting its disciplinary action. The Hearing Officer will not discuss those incidents because they were not proven by the evidence or did not rise to the level justifying the issuance of a Group II Written Notice."²¹ In stating this conclusion, it appears the hearing officer was merely explaining that the agency presented other evidence besides that which was set forth in his findings of fact and that he relied on in reaching his decision. In particular, we note that the discipline issued to the grievant listed the charged misconduct as unsatisfactory work performance, failure to follow her supervisor's instructions, disruptive behavior, and interference with state operations.²² The hearing officer, however, found only that the grievant had failed to follow her supervisor's instructions.²³ In effect, it appears the hearing officer determined that the remainder of the evidence presented by the agency either did not demonstrate that the grievant's work performance was unsatisfactory, that she engaged in disruptive behavior, or that she interfered with state operations, or that the evidence on these points did not support the issuance of a Group II Written Notice.²⁴

Weighing the evidence and rendering factual findings is squarely within the hearing officer's authority. EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the

¹⁷ Hearing Decision at 4.

¹⁸ See Hearing Recording at 59:44-1:08:39, 1:15:35-1:16:30 (testimony of Supervisor), 2:14:10-2:14:45 (testimony of Employee M).

¹⁹ *Id.* at 34:40-36:09 (testimony of Supervisor).

²⁰ Agency Exhibit 4 at 13-14.

²¹ Hearing Decision at 3.

²² Agency Exhibit 6 at 7-9.

²³ See Hearing Decision at 3-4.

²⁴ For example, Attachment A to DHRM Policy 1.60, *Standards of Conduct*, states that "disruptive behavior" and "unsatisfactory work performance" would ordinarily be classified as Group I offenses.

version of facts adopted by the hearing officer, as is the case here.²⁵ Because the hearing officer's findings are based upon evidence in the record and address the material issues of the case, EDR cannot substitute its judgment for that of the hearing officer. For these reasons, we decline to disturb the hearing decision.

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.²⁶ 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.²⁷ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.²⁸



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²⁵ See, e.g., EDR Ruling No. 2012-3186.

²⁶ *Grievance Procedure Manual* § 7.2(d).

²⁷ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

²⁸ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).