

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10462; Ruling
Date: December 15, 2014; Ruling No. 2015-4050; Agency: Virginia State University;
Outcome: Remanded to AHO.



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

ADMINISTRATIVE REVIEW

In the matter of Virginia State University
Ruling Number 2015-4050
December 15, 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 10462. For the reasons set forth below, EDR remands the hearing decision for additional consideration consistent with this ruling.

FACTS

The grievant is employed by Virginia State University (the “University”).¹ On August 18, 2014, the grievant received a Group II Written Notice for failing to follow instructions regarding internet use and for abuse of state time.² The grievant initiated a grievance challenging the disciplinary action, as well as other University conduct, on August 20, 2014.³ A hearing was held on October 30, 2014.⁴ In his November 5, 2014 decision, the hearing officer found that the University had failed to show that the grievant’s conduct warranted a Group II Written Notice and reduced the Written Notice to a Group I offense for abuse of state time.⁵ The grievant has now requested an administrative review.

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 a party; the sole remedy is that the action be correctly taken.⁷

¹ See Decision of Hearing Officer, Case No. 10462 (“Hearing Decision”), November 5, 2014, at 2.

² Agency Exhibit 1.

³ Agency Exhibit 2.

⁴ Hearing Decision at 1.

⁵ *Id.* at 1, 4-5.

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

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

Inconsistency with State and Agency Policy

The grievant appears to challenge the hearing officer's application of state and agency policy. The Director of DHRM has the sole authority to make a final determination on whether the hearing decision comports with policy.⁸ The grievant has requested such a review. Accordingly, his policy claims will not be addressed in this review.

Hearing Officer's Consideration of Issues Raised

The grievant also challenges the hearing officer's failure to address several issues raised in his grievance. In particular, the grievant argues the hearing officer erred in failing to address his claims that the University improperly opened his personal mail, threatened him with termination for delinquent state taxes, rescinded his teleworking privileges, and threatened to place him on probation.

A hearing decision must address all issues raised in a grievance that are qualified by either the agency head or EDR.⁹ In addition to challenging the Group II Written Notice in his August 20, 2014 grievance, the grievant also challenged these issues regarding his mail, threats of termination and return to probationary status, and removal of his telework privileges.¹⁰ At the qualification stage of the management resolution steps, the University qualified the grievance without indicating that it intended to exclude these four issues from its qualification decision.¹¹ EDR therefore deems the University to have qualified these additional four claims for hearing.

As these issues were qualified, the grievant is correct that the hearing officer erred in failing to address them in the hearing decision. However, with respect to the grievant's claims regarding his mail and the alleged threats, there would be no benefit in remanding these issues for further consideration by the hearing officer, as there would be no effectual relief available for the hearing officer to grant.¹² In contrast, should the hearing officer find that the University acted unlawfully or improperly exercised its discretion in rescinding the grievant's telework privileges, he might be able to order that those privileges be restored or that decision be reconsidered. As effectual relief would potentially be available to address this issue, the hearing decision is remanded to the hearing officer for consideration of the grievant's claim regarding telework privileges.

⁸ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁹ See *Rules for Conducting Grievance Hearings* § V(C).

¹⁰ See Agency Exhibit 2 at 3-5.

¹¹ Agency Exhibit 2 at 2. The Grievance Form A asks agencies to indicate, at the qualification stage, whether a grievance is being qualified in full, qualified in part, or not qualified. In this case, the University did not check the box for partial qualification and did not otherwise advise the grievant that it was not qualifying any of the issues raised in the grievance.

¹² See *Rules for Conducting Grievance Hearings* §§ VI(C), (D). For example, the hearing officer could not devise a remedy that would undo the University's past actions, nor would the hearing officer be able to award damages to the grievant.

CONCLUSION

For the foregoing reasons, EDR remands the decision to the hearing officer for further consideration consistent with this ruling. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, the hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided, and if ordered by an administrative reviewer, the hearing officer has issued his remanded decision.¹³ 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.¹⁴ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁵



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¹³ *Grievance Procedure Manual* § 7.2(d).

¹⁴ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁵ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).