

Issue: Permission to Appeal Hearing Decision in Case No. 10391 to Circuit Court;
Ruling Date: December 2, 2014; Ruling No. 2015-4056; Agency: University of
Virginia Medical Center; Outcome: Permission granted.



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

APPEAL REVIEW RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2015-4056
December 2, 2014

Pursuant to Va. Code § 2.2-3006(B), the University of Virginia Medical Center (the agency), by counsel, seeks approval from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) to appeal the final hearing decision in Case No. 10391 on the basis that it is contradictory to law. “Once an original hearing decision becomes final, either party may seek review by the circuit court on the ground that the final hearing decision is contradictory to law.”¹ A hearing decision becomes final when either the 15 calendar-day period for filing requests for administrative review has expired and neither party has filed such a request, or all timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.² In addition, pursuant to Section 7.2(e) of the *Grievance Procedure Manual*, in a case where an employee is reinstated by the hearing officer, a hearing decision is not final until all matters regarding a petition for attorneys’ fees are concluded, if applicable.³

In this case, the hearing decision is not yet final. The grievant’s attorney has submitted a petition for attorneys’ fees to the hearing officer and it has yet to be addressed. Further, both parties would have the opportunity to appeal the hearing officer’s fees addendum to EDR. The hearing decision is not final until these matters are concluded and the fees addendum is made part of the final decision.⁴ In the past, EDR has considered an agency’s request for permission to appeal to the circuit court as premature when the request is received prior to a hearing decision becoming final.⁵ However, in the interest of administrative efficiency, we will address the agency’s request at this time.

Because the agency has stated at least one potential basis on which it contends the hearing officer’s decision was arguably contradictory to law and there is no evidence that the agency’s appeal is based on any improper purpose such as to harass or cause delay, its request to appeal is granted. When the case becomes ripe for judicial appeal (i.e., after the hearing decision is final⁶), the agency may file a notice of appeal with the circuit court in the jurisdiction in which

¹ *Grievance Procedure Manual* § 7.3(a).

² *Id.* § 7.2(d).

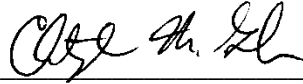
³ *Id.* § 7.2(e).

⁴ *Id.*

⁵ *E.g.*, EDR Ruling No. 2008-1853.

⁶ *See* Va. Code § 2.2-3006(B).

the grievance arose. Any such notice must be filed within 30 calendar days of the date the hearing decision became final.⁷ Approval to proceed with the circuit court appeal in no way reflects the substantive merits of the appeal or addresses the jurisdiction of the circuit court.



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁷ *Id.*; *Grievance Procedure Manual* § 7.3(a).