

Issue: Compliance-Hearing Officer Decision; Ruling Date: January 10, 2002; Ruling #2002A and 2002B; Agency: University of Virginia; Outcome: Hearing officer in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULINGS OF DIRECTOR

In the matter of the University of Virginia/ No. 2002A & 2002B
January 10, 2002

The grievant has challenged the hearing officers' decisions in the above captioned grievances. The grievant claims that the hearing officers exceeded the scope of their authority and/or abused their discretion in two separate hearing decisions.

FACTS

Grievance #1

The University of Virginia employed the grievant.¹ On October 1, 1999, the grievant received a Group I Written Notice for "unsatisfactory job performance."² She challenged the Written Notice by initiating a grievance on October 22, 1999 (Grievance 1). Grievance 1 advanced to hearing and on February 17, 2000, the hearing officer issued a decision which held that the "issuance of the Group I notice was appropriate."

On March 1, 2000, the grievant delivered to the hearing officer a document identified by her as a "Motion to Reconsider or Reopen." On March 3, 2000, the hearing officer held that "I have carefully reviewed the motion filed on behalf of the Grievant and find no basis on which to reconsider my decision reached on February 17, 2000, nor to reopen the proceedings and, therefore, decline to do so."³ On February 29, 2000, the grievant requested that this Department review the hearing officer's decision.

Grievance #2

On October 21, 1999, the grievant was issued a Group I Written Notice for "Disruptive behavior/insubordination" in the form of "continuing argumentative comments, derailments, interruptions, and inappropriate responses when given work assignments and during exchanges."⁴ The grievant challenged the October 21st Written Notice by initiating a grievance on October 22, 1999 (Grievance 2). Grievance 2

¹ Since initiating these grievances, employment was terminated.

² The October 1st Written Notice further asserts that the "Employee was instructed to complete some data entry for payroll accounting. The assignment remained incomplete upon its submission. (Employee refuses to admit there were errors in data entry, maintaining that she was given inadequate information.)" (Parenthesis in original).

³ March 3, 2000 Reconsideration Decision.

⁴ The October 22nd Written Notice further asserted: "Such distractions as attempting to turn the delivery of work assignments into discussions about our poor communication are extremely disruptive. Specific comments and arguments in the past couple of days are attached."

proceeded to hearing on February 21, 2000, and was presided over by a different hearing officer than the one who adjudged Grievance 1.

On March 17, 2000, the hearing officer upheld the October 21st Written Notice finding that the “charge of disruptive behavior has been amply proven.” On March 29, 2000, the grievant appealed the hearing decision to the Director of this Department.⁵

DISCUSSION

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and “[r]ender final decisions in 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, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁷

Grievance #1

The grievant challenges the hearing officer’s conclusions regarding her behavior in his decision. Her challenges, when examined, simply contest the weight and credibility that the hearing officer accorded to the testimony of the various witnesses at the hearing, the resulting inferences that he drew, the characterizations that he made, or the facts he chose to include in his decision. Such determinations were entirely within the hearing officer’s authority. As long as the hearing officer’s findings are based upon evidence in the record and the material issues of the case, this Department cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case the hearing officer was charged with determining whether a Group I Notice for alleged poor job performance was warranted. The Group Notice was based on the grievant’s “refus[al] to admit there were errors in data entry.” The hearing decision found that the grievant characterized her failure to complete assigned work as “nit picking.”⁸ He further held that “[t]here was substantial evidence, both oral and written, that [her supervisors] both felt that they were spending far more time in debates and confrontation with Grievant regarding her job assignments than was warranted.”⁹ The hearing officer observes that “based upon the record and [his] own observation of Grievant, at the hearing,” management “spent too much time debating with Grievant and not enough time . . . carrying out her work assignments.”¹⁰ The hearing officer concludes “even after being told that [her supervisor] was not interested in blaming anyone but

⁵ In response to the grievant’s request, this Department temporarily stayed the issuance of this ruling for a reasonable amount of time.

⁶ Va. Code § 2.2-1001(2), (3), and (5).

⁷ See *Grievance Procedure Manual* § 6.4(3), page 18.

⁸ Hearing Decision, p. 7.

⁹ Hearing Decision, p. 8.

¹⁰ Hearing Decision, p. 8.

simply wanted the task done, Grievant continued to debate issues she felt strongly about, rather than carrying out her job assignments.”¹¹

In this case, the hearing decision was based on the record evidence and the material issues of the case, thus, this Department finds no error.

Grievance #2

In Grievance 2, the grievant objects to the hearing decision because she alleges that the facts “are wrong.” The grievant also objects to the hearing decision’s incorporation of a written statement of fact that the agency had supplied him following a tape recorder malfunction. As with Grievance 1, the grievant’s challenges to the hearing officer’s decision in Grievance 2 primarily contest the weight and credibility that the hearing officer accorded to the testimony of the various witnesses at the hearing, the inferences he drew, the characterizations he made, and the facts he chose to include in his decision.

Beginning with the hearing officer’s decision to incorporate into his opinion a statement of fact provided by the agency, this Department concludes that the hearing officer did not err. It appears that as a result of a tape recording error, a portion of a witness’s testimony was not recorded. After contacting this Department for guidance on how to proceed given the tape malfunction, the hearing officer decided that he would provide a written statement of fact to preserve the record. The hearing officer requested that both the grievant and agency submit a proposed statement of fact. The agency submitted a proposed statement but the grievant did not. The hearing officer noted that the testimony in question “[i]n most respects . . . merely corroborated testimony” of another agency witness. The hearing officer reviewed his notes and then adopted the agency’s statement of fact as accurate and correct. The grievant objects because she did not receive a copy of the agency’s proposed statement of fact.

While the hearing officer certainly could have ordered the parties to exchange their proposed statements of fact, the failure to do so was by no means error. To the contrary, it would seem that the grievant’s expectations were not reasonable. It appears that the grievant wanted an opportunity to reply to the agency’s proposal and transform what began as a recording problem into a briefing opportunity complete with rebuttals. The hearing officer, appropriately, appears to have never contemplated such an enlargement of the hearing process. Moreover, the grievant cannot complain that she had been slighted when she failed to submit her own proposed statement of fact.

As to the grievant’s contention that the hearing officer’s recitation of fact is incorrect, this Department finds no error. As with Grievance 1, Grievance 2 is based on the grievant’s alleged propensity to argue with her supervisors. The hearing officer concluded that the grievant engaged in a “pattern of behavior that included argument,

¹¹ Hearing Decision, p. 9.

nitpicking, [and] unnecessary debate.”¹² As with Grievance 1, the hearing decision in Grievance 2 was based on the record evidence and the material issue of the case, thus this Department finds no error.

CONCLUSION

For the reasons discussed above, this Department finds that the hearing officers in these two grievances neither abused their discretion in their conduct of the hearings nor exceeded their authority in deciding these cases. This Department’s rulings on matters of compliance are final and nonappealable.¹³

Sincerely,

Neil A. G. McPhie, Esquire
Director

William G. Anderson, Jr.
Employment Relations Consultant

¹² Hearing Decision, p. 7.

¹³ Va. Code § 2.2-1001(5).