

Issue: Compliance-Hearing Decision; Ruling Date: April 4, 2002; Ruling #2002-024;
Agency: Department of Corrections; Outcome: hearing officer in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2002-024
April 4, 2002

ISSUE:

Does the hearing decision (#5356) comply with the grievance procedure?

RULING:

Yes. This Department finds that the hearing officer neither abused his discretion in his conduct of the hearing nor exceeded his authority under the grievance procedure in deciding this case. This Department's rulings on matters of compliance are final and nonappealable.¹

EXPLANATION:

The grievant claims that the hearing officer abused his discretion or exceeded his authority when he (1) recommended that the agency reissue the Group I Written Notice to state that the grievant was being disciplined for "unsatisfactory attendance" instead of "abuse of sick leave," and (2) admitted past attendance records into the evidence over the grievant's objection.

Recommendation

A hearing officer is authorized to find facts; uphold, reduce, or rescind discipline; and to make recommendations to the parties, as long as his fact findings, orders, and recommendations are based on the material issues and the hearing record.² In this case, the Group I Written Notice provides clear notification of the agency's dissatisfaction with the grievant's attendance record. The hearing officer upheld the Group I Written Notice based on a material issue (the grievant's problematic attendance and leave) and the hearing record (evidence of the grievant's attendance and leave). While the hearing officer found that the grievant's use of leave was not "abusive", he concluded that it was excessive, and that the grievant's attendance was unsatisfactory, a Group I offense under

¹ Va. Code § 2.2-1001(5).

² See *Grievance Procedure Manual* § 5.9, page 15; Rules for Conducting Grievance Hearings § VI A, page 11.

the *Standards of Conduct*. In light of all the above, we must conclude that the hearing officer's recommendation was based upon the material issues and the hearing record, and thus was within his authority.

Admission of Evidence

The technical rules of evidence do not apply at grievance hearings, where evidence is admitted more freely than in court.³ If the evidence offered at hearing is "probative" (that is, would tend to prove or disprove a party's claim), the hearing officer may admit it.⁴

The evidence admitted by the hearing officer at issue here is the agency's record of the grievant's past attendance. Such a record is clearly probative of the agency's claims regarding the grievant's attendance and leave history, which the agency asserted warranted the Group I Written Notice. Thus, the hearing officer acted within his authority under the grievance procedure by admitting those records over the grievant's objection.

APPEAL RIGHTS:

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, and for the reasons discussed in this ruling, the January 18, 2002 hearing decision in this case is now a final hearing decision. This final hearing decision may be appealed to the circuit court in the jurisdiction in which the grievance arose within 30 calendar days from the date of this ruling.

Neil A.G. McPhie, Esquire
Director

³ *Rules for Conducting Grievance Hearings*, § IV (D), page 7.

⁴ *Rules for Conducting Grievance Hearings*, § page 7.