

Issue: Compliance-Hearing Decision; Ruling Date: April 4, 2002; Ruling #2002-045;  
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 2002-045  
April 4, 2002

**ISSUE:**

Does the hearing decision (#5357) 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.<sup>1</sup>

**EXPLANATION:**

In his request for review, the grievant challenges the hearing officer's affirmation of the Group I Written Notice issued to him on the grounds of insubordination and unacceptable behavior. The grievant asserts that the Group Notice was improper punishment for merely "speaking his mind" in objecting to the agency's decision to change his schedule. The hearing officer, however, concluded that the grievant did not appropriately voice an objection, but rather objected in a disruptive, insubordinate manner, thus warranting the Group I Written Notice.

Hearing officers are authorized to make "findings of fact as to the material issues in the case"<sup>2</sup> and to determine the grievance based "on the material issues and grounds in the record for those findings."<sup>3</sup> In cases involving disciplinary actions, the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the discipline was both warranted and appropriate under the facts and circumstances.<sup>4</sup>

---

<sup>1</sup> Va. Code § 2.2-1001(5).

<sup>2</sup> Va. Code § 2.2-3005(D).

<sup>3</sup> *Grievance Procedure Manual* § 5.9, page 15.

<sup>4</sup> *Grievance Procedure Manual* § 5.8 (2), page 14.

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, this Department cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case, the grievant's challenges to the hearing officer's decision, when examined, simply contest the hearing officer's conclusions and characterizations regarding the grievant's behavior. Such determinations were entirely within the hearing officer's authority, and this Department cannot conclude that they were without some basis in the record and the material issues in this case.

**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