

Issue: Compliance-agency permission to appeal hearing decision; Ruling Date: March 26, 2002; Ruling #2002-064; Outcome: director grants approval to pursue appeal.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**APPEAL REVIEW RULING OF DIRECTOR**

In the matter of Virginia Department of Agriculture and Consumer Services Case No. 5331  
March 26, 2002

Pursuant to Va. Code 2.2-3006(B), the Virginia Department of Agriculture and Consumer Services (VDACS) seeks approval from the Director of this Department to appeal the final hearing decision in Case No. 5331 on the basis that it is contradictory to law. Because there is no evidence that VDACS' appeal is based on any improper purpose such as to harass or cause delay, its request is granted. VDACS may now file a notice of appeal with the Circuit Court in the jurisdiction in which the grievance arose. Any such notice must be filed within 30 days of the Department of Human Resource Management's March 8, 2002 ruling,<sup>1</sup> which held that the hearing officer's decision did not violate state or agency policy.

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. Note that the circuit court "shall award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits" of the agency's appeal.<sup>2</sup>

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Neil A.G. McPhie, Esquire  
Director

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<sup>1</sup> Va. Code § 2.2-3006(A)("In grievances initiated by state employees, the Director of the Department of Human Resource Management shall determine within sixty days of the [hearing] decision whether the decision is consistent with policy"); *Grievance Procedure Manual* §§ 7.2(a)(2), 7.2(d), and 7.3.

<sup>2</sup> Va. Code § 2.2-3006(D).