

Issue: Compliance/Hearing Decision; Ruling Date: December 18, 2002; Ruling #2002-228; 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 Department of Corrections/ No. 2002-228
December 18, 2002

The grievant timely requested this Department to administratively review the hearing officer's November 25, 2002 hearing decision in Case No. 5574. She claims that (1) the hearing officer's decision is inconsistent with Department of Human Resource Management (DHRM) Policy 1.60, *Standards of Conduct*, because it failed to address the agency's alleged noncompliance with that policy on August 1, 2002; and (2) the hearing officer refused to allow the grievant's representative to question witnesses about the alleged noncompliance with policy.

FACTS

The grievant is a Registered Nurse with the Department of Corrections (DOC). On September 12, 2002, the grievant received a Group III Written Notice for falsification of state records.¹ The Written Notice stated that for the week of June 5-11, 2002, the grievant submitted a timesheet reflecting that she had worked 40 hours, when she in fact had worked 44.9 hours.

The grievant challenged the Written Notice on October 1, 2002, claiming that: (1) she did not falsify her time sheets; (2) the agency did not issue the discipline in a timely manner; (3) DOC's investigation was not complete; and (4) the Superintendent subjected her to a hostile work environment. The grievance proceeded to hearing on November 22, 2002. The hearing officer issued his decision on November 25th, reducing the Group III Written Notice to a Group II and recommending that the agency take steps to issue discipline in a more timely manner.²

The grievant also expressed concern about a meeting with the facility's Superintendent on August 1, 2002. In that meeting, the grievant and Superintendent had a disagreement that resulted in the grievant's removal from the facility. The

¹ The Written Notice was not accompanied by suspension, demotion, or removal.

² See Hearing Decision, Case No. 5574, November 25, 2002. The hearing officer reduced the discipline because of the grievant's long service to the Commonwealth, her prior discipline and performance records, the fact that her actions had not been intended to cost the state money, her intent to comply with overtime policy, and her reliance on her supervisor's instructions.

Superintendent also sent a letter to the DOC Central Office, recommending that the grievant be terminated. The grievant filed a grievance on August 1, challenging the Superintendent's actions.³ The grievant attempted to submit evidence related to the August 1 incident and grievance at the November 22 hearing on the October 1 grievance, claiming that the August 1 removal from the facility was a violation of state policy. The hearing officer refused to admit the evidence, claiming that it was not relevant to the issues in the October 1 grievance, the subject of the hearing.

DISCUSSION

Hearing officers are authorized to make "findings of fact as to the material issues in the case"⁴ and to determine the grievance based "on the material issues and the grounds in the record for those findings."⁵ In terminations due to discipline, the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the termination was both warranted and appropriate under all the facts and circumstances.⁶

At hearing, the hearing officer *may exclude evidence that is irrelevant, immaterial, insubstantial, privileged, or repetitive.*⁷ 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 claims that the hearing officer "repeatedly refused to allow [the grievant's] representative to ask a single question" about the August 1, 2002 meeting with the Superintendent and a related letter from the Superintendent to DOC Central Office. The hearing officer concluded in his decision that the dispute between the grievant and the Superintendent was not relevant to the issue of whether the grievant's discipline was warranted. Indeed, the meeting and related letter were the subjects of *another* grievance filed August 1, 2002. The grievance before the hearing officer in this case was filed October 1, 2002 and concerned *only* the circumstances surrounding the grievant's Group III Written Notice issued on September 12, 2002. The hearing officer has considerable discretion in making determinations about the relevancy and admissibility of evidence, and in light of the above, this Department cannot find that he abused that discretion in this case.

³ During this Department's investigation, the grievant noted that the DOC resolved her August 1 grievance at the agency level. She claims that the Agency Head acknowledged that the Superintendent did not have the authority to discipline the grievant and that the grievant could be reinstated to her facility.

⁴ Va. Code § 2.2-3005(D)(ii).

⁵ *Grievance Procedure Manual* § 5.9, page 15.

⁶ *Grievance Procedure Manual* § 5.8(2), page 14.

⁷ *Rules for Conducting Grievance Hearings*, pages 7 (emphasis added).

The grievant's remaining claims are largely based on the hearing officer's interpretation of the *Standards of Conduct*. The crux of the grievant's argument is policy interpretation, which is not appropriate for this Department to address upon administrative review. The Director of DHRM has the authority to assure that hearing decisions are consistent with state human resource policies,⁸ and the grievant has properly requested an administrative review by DHRM. If DHRM finds that the hearing officer's interpretation of policy was not correct, its authority is limited to directing the hearing officer to reconsider his decision in accordance with its interpretation of policy.⁹

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this Department finds that the hearing officer did not abuse his discretion under the grievance procedure in deciding this case. Furthermore, it would not be appropriate for this Department to determine whether the hearing officer's November 25, 2002 decision is inconsistent with policy.

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided.¹⁰ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹² This Department's rulings on matters of procedural compliance are final and nonappealable.¹³

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⁸ Va. Code § 2.2-3006 (A); *Grievance Procedure Manual* § 7.2 (a)(2), page 18.

⁹ *Id.*

¹⁰ *Grievance Procedure Manual*, § 7.2(d), page 20.

¹¹ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a), page 20.

¹² *Id.*

¹³ Va. Code § 2.2-1001 (5).