

Issue: Compliance/Administrative Review of Hearing Decision; Ruling Date: March 17, 2003; Ruling #2003-014; Agency: Department of Transportation; Outcome: Hearing officer in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation/ No.2003-014
March 17, 2003

The grievant has requested that this Department administratively review the hearing officer's December 31, 2002 decision in Case #5559/5560. The grievant claims that (1) the hearing officer's written decision contains incorrect findings of fact and (2) the hearing officer did not fully grant the requested relief. Specifically, the grievant claims that the decision: (1) incorrectly states that she listed illness among her reasons for not scheduling any meetings in relation to a Group I Written Notice she received and (2) fails to address the restoration of her leave status despite the hearing officer's removal of a Group II Written Notice.¹

For the reasons set forth below, this Department concludes that based on the record, the hearing officer acted in accordance with the grievance procedure and neither abused his discretion nor exceeded his authority.

FACTS

The grievant had been issued a Group I Written Notice for unsatisfactory job performance based on her alleged failure to schedule a meeting as instructed. She had also been issued a Group II Written Notice for failure to follow her supervisor's instructions.² The hearing officer upheld the Group I Written Notice but removed the Group II. On January 10, 2003 the grievant requested administrative reviews by the hearing officer and this Department. On January 16, 2003, the hearing officer issued his Reconsideration Decision affirming his original decision.³

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 . . . on all matters related to procedural compliance with the grievance procedure."⁴ If the hearing officer's exercise of authority is not in compliance with the

¹ See Administrative Review Request for Reconsideration dated January 10, 2003. See also fax to this Department dated January 27, 2003.

² See Decision of Hearing Officer, Case No. 5559/5560 issued December 31, 2002 for a full discussion of the facts surrounding this grievance.

³ See Reconsideration Decision Case No. 5559/5560-R issued January 16, 2003.

⁴ Va. Code § 2.2-1001(2), (3), and (5).

grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁵

Hearing officers are authorized to make “findings of fact as to the material issues in the case”⁶ and to determine the grievance based “on the material issues and grounds in the record for those findings.”⁷ Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action. Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.⁸

Alleged Error in the Findings of Fact

The grievant asserts that the hearing officer erred by stating that she had not scheduled a meeting due to illness. The original hearing officer’s decision states that the grievant offered numerous excuses for why she had not scheduled a meeting as instructed, including illness.⁹ However, the hearing officer upheld the Group I because the grievant “simply did not intend to schedule the meeting within the time frame directed by her supervisor.”¹⁰ The reference to illness did not affect his ultimate finding that the discipline was merited because the grievant had not scheduled and never intended to schedule a meeting as required. Thus, even if the statement about illness was erroneous, the error was harmless.

Leave Status

The grievant asserts that the hearing officer erred by not altering her leave status once he ordered the Group II Written Notice removed from her file. In granting relief, “the hearing officer should consider the relief requested in the written grievance.”¹¹ It is undisputed that the only written relief requested on the grievant’s Form A regarding the Group II Written Notice is “Transfer.”¹² During the grievance process, prior to her qualification request, the grievant added a request that the Group II “be remove[d] from [her] file,”¹³ with no mention of altering her leave status. While a verbal request concerning leave days was made during concluding remarks at the hearing, such relief was never requested in the written grievance as provided in the grievance procedure.

⁵ See *Grievance Procedure Manual* § 6.4(3), page 18.

⁶ Va. Code § 2.2-3005(D)(ii).

⁷ *Grievance Procedure Manual* § 5.9, page 15.

⁸ *Grievance Procedure Manual* § 5.8(2), page 14.

⁹ *Id.*, page 6.

¹⁰ *Id.*, page 7.

¹¹ *Grievance Procedure Manual* § 5.9, page 15.

¹² See Grievance Form A dated 9/4/02.

¹³ See email sent by grievant on October 2, 2002 to the agency’s Employee Relations Manager.

Moreover, even if such relief had been requested in the written grievance, the hearing officer's removal of the Group II for failure to acknowledge supervisory authority would not have called for any alteration of leave status under the facts of this case. Neither the Group II Written Notice or its removal by the hearing officer was based on the issues such as grievant's use of leave or failure to provide a doctor's note for an absence. Rather, the hearing officer essentially concluded that the agency had issued the Group II Written Notice merely because the grievant had refused to acknowledge in writing that her supervisor had the authority to set leave requirements.¹⁴

APPEAL RIGHTS

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.¹⁵ 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.¹⁶ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁷ This Department's rulings on matters of procedural compliance are final and nonappealable.¹⁸

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¹⁴ See Decision of Hearing Officer-Case #5559/5560, issued December 31, 2002, pages 7 and 8.

¹⁵ *Grievance Procedure Manual*, § 7.2(d), page 20.

¹⁶ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a), page 20.

¹⁷ *Id.*

¹⁸ Va. Code § 2.2-1001 (5).