

Issue: Compliance/administrative review of hearing decision; Ruling Date: April 4, 2003;
Ruling #2003-064; Agency: Norfolk State University; Outcome: request for review not
timely, hearing officer in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling No. 2003-064
April 4, 2003

The grievant has requested that this Department administratively review the hearing officer's conduct in Case Number 5646/5647/5648. The grievant contends that a prehearing conference was not offered to the grievant.

FACTS

The grievant timely filed three grievances with Norfolk State University. The first grievance alleged harassment, hostile work environment, denial of opportunity, and forced involuntary separation. Her second grievance alleged a number of inappropriate work practices by the University based on her October 26, 2002 receipt of a Group III Written Notice and 30-day suspension. The third grievance alleges the same practices as the second grievance and was filed because grievant received notification on November 23, 2002 that her employment had been terminated.

The grievant requested that her three grievances be consolidated and heard at a single hearing. The University agreed with the request. The Director of the Department of Employment Dispute Resolution (EDR) reviewed the request and subsequently issued a ruling granting the consolidation request.

The consolidated hearing took place on March 6, 2003, and in a March 11, 2003 decision, the hearing officer upheld the University's disciplinary action and termination of the grievant.

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 in all matters related to procedural compliance with the grievance procedure."¹ If the hearing officer's exercise of authority is not in compliance with the grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.²

¹ Va. Code § 2.2-1001(2), (3), and (5).

² See *Grievance Procedure Manual* § 6.4(3), page 18.

The *Grievance Procedure Manual* further provides however that “all requests for review must be made in writing, and *received* by the administrative reviewer, within 10 calendar days of the date of the original hearing decision.”³ In this case, this Department received the grievant’s request for administrative review on March 24, 2003, three days beyond the 10 calendar days that followed the issuance of the original decision on March 11th. Moreover, the grievant has presented no evidence of a “just cause” for the delay.⁴ Accordingly, the grievant’s request for administrative review by this Department is untimely and the original hearing decision stands.

It should be noted that even if the appeal had been timely, generally, the lack of a prehearing conference would not constitute reversible error. While it is true that the grievance procedure “encourage[s]” the use of prehearing conferences, it does not mandate such meetings.⁵ Moreover, while such conferences provide “*an opportunity* to improve the management of the hearing by addressing procedural and evidentiary issues,”⁶ such conferences are not the only means by which such issues can be addressed. The grievant was represented by counsel and has presented no evidence that either she or her counsel attempted to raise any concerns regarding procedural or evidentiary issues prior to the hearing through motion or any other means. Of course, evidentiary and procedural objections also could have been raised at the hearing, thereby preserving the objections for appeal.⁷ In sum, the grievant has provided no evidence that she was prejudiced by the lack of a prehearing conference.

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.⁸ 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.⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁰ This Department’s rulings on matters of procedural compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

³ See *Grievance Procedure Manual* § 7.2 (a), page 18 (emphasis in original).

⁴ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9, page 24.

⁵ *Grievance Procedure Manual*, § 5.3, page 13.

⁶ *Id.*

⁷ In this case, however, the grievant did not timely administratively appeal to this Department on the basis of any procedural or evidentiary issue *other than the fact that there was no prehearing conference.*

⁸ *Grievance Procedure Manual*, § 7.2(d), page 20.

⁹ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a), page 20.

¹⁰ *Id.*

¹¹ Va. Code § 2.2-1001 (5).

April 4, 2003
Ruling #2003-064
Page 4

William G. Anderson, Jr.
EDR Consultant