

Issue: Compliance/Hearing Decision; Ruling date: June 20, 2003; Ruling #2003-099;
Agency: Norfolk State University; Outcome: hearing officer in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Norfolk State University/ No. 2003-099
June 20, 2003

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 5705/5724. The grievant claims that the hearing officer's written decision and conduct at hearing did not comply with the grievance procedure. For the reasons discussed below this Department concludes that the hearing officer did not violate the grievance procedure.

FACTS

The grievant was employed with Norfolk State University (NSU) as an Education Support Specialist II until she was terminated on January 27, 2003. NSU alleges that between May 2001 and March 2002, the grievant's job applications and biographical summary for the University's Web site falsely stated that she had received a Masters of Arts degree from the University. The University issued the grievant a Group III Written Notice for falsification of official documents and then terminated her. A hearing was held on May 7, 2003 and the hearing officer issued his decision on May 12, 2003.

In his decision, the hearing officer concluded that the grievant has not completed the requirements for a Masters degree and that the grievant's job applications and Web site biography constituted falsification of official state documents.¹ As such, he upheld the Group III Written Notice and termination of grievant's employment.² His May 27, 2003 Reconsideration Decision declined to reopen the hearing or amend his original Hearing Decision.³

DISCUSSION

The grievant lists a host of challenges to the hearing officer's decision. While this ruling does not discuss with particularity each of the 58 specific items asserted in the grievant's request, all of those points have been reviewed and considered in light of this

¹ Hearing Decision, Case No. 5705/5724, page 7, issued May 12, 2003.

² *Id.* at page 8.

³ *See* Reconsideration Decision, Case No. 5705/5724, page 7, issued May 27, 2003.

Department's responsibility to assure that the hearing officer's conduct of the hearing and written decision comply with the grievance procedure.

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 challenges to 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 all the facts and circumstances.⁶

The grievance hearing is an administrative process that envisions a more liberal admission of evidence than a court proceeding.⁷ Accordingly, the technical rules of evidence do not apply.⁸ Hearing officers have the duty to "[r]eceive probative evidence," that is, evidence that "affects the probability that a fact is as a party claims it to be."⁹ They may exclude evidence that is "irrelevant, immaterial, insubstantial, privileged, or repetitive."¹⁰ 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 judgement for that of the hearing officer with respect to those findings.

Evidence Presented at Hearing & Alleged Factual Errors

The grievant claims that the hearing officer's decision contains factual mistakes and relies on incorrect and insufficient evidence. She also disagrees with factual determinations made by the hearing officer and challenges the credibility of NSU's witnesses. However, when examined, these claims simply contest the weight and credibility that the hearing officer accorded to the testimony of the various witnesses at the hearing, the resulting inferences that he drew, and the characterizations that he made. Such determinations were entirely within the hearing officer's authority, and this Department cannot conclude that the hearing officer's findings were without some basis in the record and the material issues in this case. Further, the hearing officer has considerable discretion in making determinations about the relevancy and admissibility of evidence, and this Department cannot merely substitute its judgement for that of the hearing officer.

Failure of NSU to Produce Original Documents

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*, page 7.

⁸ *Id.*

⁹ Edward W. Cleary, *McCormick on Evidence* § 16, page 52 (1984).

¹⁰ Va Code § 2.2-3005(C)(5).

The grievant appears to further assert that NSU is out of compliance with the grievance procedure because it failed to provide original copies of documents at hearing. Once a hearing officer has been appointed to hear a grievance, disputes relating to the production of documents should be presented to the hearing officer for his determination. If either party to the grievance believes that the hearing officer exceeded his authority or failed to comply with the grievance procedure by ordering or failing to order the production of specific documents, that party may request a compliance ruling from this Department.

In this case, it appears that the grievant is alleging that NSU falsified her academic transcript, resume, and cover letter. She claims that her attorney objected at hearing to the admission of those documents on the basis that they were allegedly tampered with, and that the agency should have produced original copies instead.

Nothing in the grievance procedure, however, requires that a party provide original documents rather than copies at hearing.¹¹ Moreover, hearing officers are granted the sole authority to accept evidence and weigh the credibility of that evidence. In this case, the hearing officer determined that the agency complied with the requirements of the grievance procedure by providing copies of the grievant's cover letter, resume, and transcript.¹² This decision was wholly within the hearing officer's discretion. In addition, the Reconsideration decision explains that an original resume was produced at the hearing in order to establish that a copy had not been altered. Accordingly, this Department cannot conclude that he exceeded his authority or otherwise failed to comply with the procedural requirements of the grievance procedure.

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.¹³ In addition to the grievant's request for a ruling from this Department, the grievant requested an administrative review from the Department of Human Resource Management (DHRM). The hearing decision will become final on the date of DHRM's decision.¹⁴ The parties will have 30 calendar days from that date to appeal the hearing decision to the circuit court in the jurisdiction in which the grievance arose.¹⁵ The basis of any such appeal must be that the final hearing decision is contradictory to law.¹⁶ In noting the further right of appeal to the circuit court, this Department expresses no opinion as to the decision's conformance to law.

¹¹ See *Grievance Procedure Manual* § 5.7, page 14; *Rules for Conducting Grievance Hearings*, pages 7-9.

¹² See Reconsideration Decision, Case No. 5705/5724, page 2, issued May 27, 2003.

¹³ *Grievance Procedure Manual* § 7.2(d), page 20.

¹⁴ *Id.*

¹⁵ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a), page 20.

¹⁶ *Id.* See also *Va. Dept. of State Police v. Barton*, No. 2853-01-4, slip op. at 8 (Va. App. Dec. 17, 2002).

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This Department's rulings on matters of procedural compliance are final and nonappealable.¹⁷

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¹⁷ Va. Code § 2.2-1001(5).