

Issue: Compliance/administrative review of hearing decision; Ruling Date: January 7, 2004; Ruling #2003-164; Agency: Department of Juvenile Justice; Outcome: hearing officer's instruction on re-calculation of leave balances exceeded the scope of his authority.



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice/ No. 2003-164  
January 7, 2004

The agency has requested an administrative review of Hearing Decision 5762. The agency contends that the hearing officer "exceeded his authority by granting relief beyond that which is available under the grievance procedure." For the following reasons, this Department finds that the hearing officer's instruction on the re-calculation of leave balances exceeded the scope of his authority.

FACTS

The grievant is a Juvenile Corrections Officer Senior with DJJ. In her grievance filed September 16, 2002, the grievant claims that since April 23, 2000, the agency's payroll department has charged her time off for illness to compensatory, overtime, or annual leave rather than sick leave, causing her to lose leave balances at the end of each year. Specifically, the grievant asserts that the result of this practice is that at the end of the year, her sick leave balances are high, and do not carry over to the next year. The agency acknowledged that it uses compensatory and overtime leave to adjust employee schedules.

The grievance advanced to hearing on August 29, 2003, and on September 5, 2003, the hearing officer concluded that "the Agency improperly substituted other leave for sick leave in those instances where Grievant had available sick leave balance and had met the requirements to claim and receive sick leave."<sup>1</sup> The hearing officer also found that DJJ was improperly retroactively re-characterizing the grievant's compensatory leave as annual leave. The hearing officer ultimately concluded that:

The Agency is Ordered to recalculate Grievant's available sick, annual, compensatory, and overtime leave balances beginning on August 17, 2002 (or prior to August 17, 2002 at the Agency's discretion). The Agency must either pay Grievant for that leave or increase her current leave balances. In order to determine Grievant's beginning leave balances as of August 17, 2002, the Agency may use either of two methods. First, the

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<sup>1</sup> September 5, 2003, Hearing Decision, page 6. The hearing officer's decision apparently rests in large part on a Department of Human Resource Management (DHRM) Policy Interpretation. See September 5, 2003, Hearing Decision, pages 5-6. The DHRM Policy Interpretation, issued May 2, 2003, by DHRM Director of Compensation and Policy, held that agency's treatment of leave was not in accord with state policy.

Agency may determine the actual balances in existence on August 17, 2002 by restarting the calculation from April 23, 2000 and bringing it forward to August 17, 2002. [Option 1] Second, the Agency may assume that Grievant has the highest possible balances available to her on August 17, 2002 [Option 2].<sup>2</sup>

The agency asserts that the hearing officer's order has the effect of circumventing the instruction set forth in this Department's earlier Qualification Ruling (#2003-054), which held that: "the grievant's relief, if any, from a hearing officer could extend no further back than August 17, 2002," in other words, no further than the 30-calendar day period immediately preceding September 16, 2002, the date the grievance was filed.

### DISCUSSION

Under the grievance procedure, when an agency misapplies policy, the relief that a hearing officer may grant is limited to ordering the agency to go back to the point at which the policy was misapplied, and then apply the policy properly. In addition, relief is limited to the 30-calendar day period immediately preceding the grievance initiation date.<sup>3</sup> Applying these principles to the facts in this case, the scope of the hearing officer's authority was limited to ordering the agency to: (1) comply with state policy, and (2) correct any improper charges to leave accounts that occurred from August 17, 2002 through the date of the hearing decision. While the hearing officer ordered just such relief,<sup>4</sup> he went further by instructing the agency to recalculate the grievant's leave balances using one of the two options outlined above. As discussed below, it is the hearing officer's further instruction regarding the leave balance calculations that appears to grant relief beyond that available under the grievance procedure.

The crux of the error in this case appears to stem from the hearing officer's focus on the alleged inaccuracy of the grievant's leave balances prior to August 17, 2002. The hearing officer seems to imply that because the grievant's leave balances were inaccurate prior to August 17, 2002, any subsequent leave adjustments will continue to yield inaccurate ending balances. While this may be true, the correction of inaccurate leave balances *prior to* August 17, 2002 is simply not relief available under the grievance procedure. The proper focus of relief in this case is the restoration of any leave improperly charged *on or subsequent to* August 17, 2002 and the agency can only be

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<sup>2</sup> September 5, 2003, Hearing Decision, page 8.

<sup>3</sup> Cf. *Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336 (4<sup>th</sup> Cir. 1994) (in context of a Title VII or Equal Pay Act violation, relief is available only for the designated statutory time) with Va. Code § 2.2-3003(C) (the designated statute of limitations period for filing a grievance is 30 calendar days). See Department of Employment Dispute Resolution (EDR) Ruling 2000-144; 2002-103; 2003-054.

<sup>4</sup> The hearing officer held that "[t]he Agency is Ordered to comply with DHRM leave policies." September 5, 2003, Hearing Decision, page 8. (Clearly, this directive includes the principles set forth in the May 2, 2003, DHRM Policy Interpretation.) The decision further instructed the agency to "recalculate Grievant's available sick, annual, compensatory, and overtime leave balances beginning on August 17, 2002 (or prior to August 17, 2002 at the Agency's discretion)." *Id.*

required to restore leave improperly charged from that point forward.<sup>5</sup> Leave balances prior to August 17, 2002 (accurate or otherwise) simply have no bearing on this case because the remedy afforded by the grievance procedure can extend no further back than the 30 calendar day period prior to the filing of the grievance.<sup>6</sup>

The second option presented by the hearing officer was that the agency could “assume that Grievant has the highest possible balances available to her on August 17, 2002.” Again, this option also has the potential of granting the grievant greater relief than she was entitled under the grievance procedure, because by inflating the grievant’s leave balances to the highest possible levels, it would effect a remedy beyond the 30 calendar day period prior to the initiation of her grievance, which could also result in a leave windfall. For instance, in his decision, the hearing officer cites to the following:

[F]or the December 25, 2002 to January 9, 2003 pay period, the Agency concluded Grievant had a zero sick leave balance and thus could not take sick leave. Instead, the Agency changed the sick leave to compensatory leave taken. If the Agency had used an accurate August 2002 beginning balance, it may have been the case that Grievant would have had available sick leave during that time period.<sup>7</sup>

If the agency were to assume that the grievant has the maximum leave balances available for recalculation purposes, then she could conceivably receive a leave windfall. For example, the grievant was entitled to 72 hours of personal sick leave each year under state policy.<sup>8</sup> In addition, she had apparently exhausted her sick leave by the pay period December 25, 2002 through January 9, 2003.<sup>9</sup> When the grievant attempted to use 10.2 hours of sick leave (which she did not have), the agency reduced her compensatory leave by 10.2 hours instead. Under Option 2’s ‘maximum available leave’ scenario, the agency could conceivably be required to increase her compensatory leave balance by 10.2 hours and decrease her sick leave balance (a fictitious 72 hours—in reality, zero

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<sup>5</sup> For example, if *after* August 17, 2002, the agency improperly charged the grievant with 8 hours of compensatory leave when she was sick, had available sick leave, and requested use of sick leave, the agency would simply charge 8 hours of sick leave and return 8 hours of compensatory leave. Of course, if the grievant had exhausted her sick leave in the interim, the agency would not be required to adjust the grievant’s sick leave.

<sup>6</sup> Although the recalculation approach suggested by the hearing officer under Option 1 would presumably result in correct ending balances, it would also serve as a remedy for events that occurred well before August 17, 2002 (the 30-day period preceding the initiation of the grievance). If the grievant wanted to correct improper leave balances caused by the agency’s improper re-characterization of leave in 2000, then the grievant should have initiated her grievance in 2000.

<sup>7</sup> September 5, 2003, Hearing Decision, page 7.

<sup>8</sup> The grievant is covered by the state’s Virginia Sickness and Disability Plan, which grants 72 hours of sick leave to employees that have between 60 and 119 months of state service. Department of Human Resource Management (DHRM) Policy 4.57.

<sup>9</sup> The grievant does not appear to dispute that she had exhausted her sick leave by this point in the year. Her central issue is not that her sick leave was improperly reduced. Rather, it was that the agency improperly reduced her compensatory and annual leave balances when she was out due to illness *instead of* her sick leave balance. *See* Grievance Form A, dated September 16, 2002.

hours) by 10.2 hours. Such a reduction would essentially have granted the grievant 82.2 hours of sick leave for the year instead of the 72 that state policy allows. Such a result is not permitted under the grievance procedure.<sup>10</sup>

### CONCLUSION

By ordering the agency to use one of two options for re-calculating leave balances, both of which potentially offer the grievant relief beyond that contemplated by the grievance procedure, this Department finds that the hearing officer exceeded the scope of his authority. Therefore, the hearing officer is directed to modify his opinion in accordance with this Ruling. He may do so by merely eliminating the last three sentences of the second paragraph of the Decision section on page 8 of the original decision.<sup>11</sup>

The agency also appealed the original hearing decision to the Department of Human Resource Management Director. The hearing officer may wait until the DHRM Director issues her decision before issuing his decision. Once all timely administrative appeals have been issued and the hearing officer issues his decision, the original hearing decision will become final and may be appealed to the circuit court in the jurisdiction in which the grievance arose.<sup>12</sup>

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Claudia T. Farr  
Director

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<sup>10</sup> As noted above, if the grievant had exhausted her sick leave, then the agency would not be required to charge leave to sick leave, an account with no available hours remaining. In such a circumstance, the agency could simply leave the time charged as compensatory leave.

<sup>11</sup> The last three sentences are as follows:

In order to determine Grievant's beginning leave balances as of August 17, 2002, the Agency may use either of two methods. First, the Agency may determine the actual balances in existence on August 17, 2002 by restarting the calculation from April 23, 2000 and bringing it forward to August 17, 2002. Second, the Agency may assume that Grievant has the highest possible balances available to her on August 17, 2002.

<sup>12</sup> 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, and, if ordered by EDR (this Department) or DHRM, the hearing officer has issued a revised decision. *Grievance Procedure Manual*, § 7.2(d), page 20. 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. Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a), page 20. Any such appeal must be based on the assertion that the final hearing decision is contradictory to law. *Id.* See also Va. Dept. of State Police vs. Barton, No. 2853-01-4, slip op. at 8 (Va. App. Dec. 17, 2002). This Department's rulings on matters of procedural compliance are final and nonappealable. Va. Code § 2.2-1001 (5).