

Issue: Compliance/appointment of new hearing officer, set aside current briefing schedule, grant attorney's fees; Ruling Date: February 19, 2004; Ruling #2004-556; Agency: Virginia Polytechnic Institute and State University; Outcome: new hearing officer appointed, fees not granted



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute
and State University, Case #5770
Ruling Number 2004-556
February 19, 2004

In reference to the above-captioned case (# 5770), counsel for the grievant requests that this Department: (1) appoint a new hearing officer, (2) set aside the current briefing schedule, and (3) grant attorney's fees and cost incurred by the parties in attending the previously held hearing in case # 5770.

FACTS

On October 3, 2003, this Department appointed a hearing officer from the list of hearing officers maintained by the Office of the Executive Secretary of the Virginia Supreme Court, to serve as a hearing officer in the above case (# 5770). On January 20, 2004, this Department received a letter from the grievant's counsel, dated January 19, 2004, requesting the appointment of a new hearing officer. In support of that request, the letter stated that at the January 13th the hearing, the hearing officer had appeared to be incapable of discharging his duties. The letter described the hearing officer's conduct as erratic and confrontational, and as evincing an inability to focus on the issues. Based on counsel's observations of the hearing officer's behavior, grievant's counsel stated his opinion that the hearing officer was under the influence of alcohol. The letter indicated further that the grievant shared that opinion, as did others present. The University's counsel at the hearing advised this Department that the factual description of the hearing officer's behavior in the January 19, 2004 letter from grievant's counsel was accurate, and that to ensure fairness, a new hearing officer should be appointed to hear and decide this case.

DISCUSSION

Revocation of Appointment

In light of the above reports and this Department's responsibility to assure a fair and effective hearings process, on January 22, 2004, this Department revoked the hearing officer's appointment. The hearing officer was informed in writing that: "[i]n regard to any fee, it is this Department's position that the University should not be billed by you, as the reported behavior amounts to failing to perform the duties you had agreed to undertake." In addition, based upon the reported observations described above and the standards in place for EDR hearing officers, this Department informed the hearing officer that it deemed him ineligible at

that time for further selection to hear state employee grievances and so advised the Virginia Supreme Court's Office of the Executive Secretary.

Appointment of a New Hearing Officer and Briefing Schedule

Having revoked the appointment of the original hearing officer, this Department has appointed a new hearing officer. The appointment of a new hearing officer necessitates the abandonment of the original briefing schedule. The new hearing officer will issue any needed prehearing orders or briefing schedules.

Attorney's Fees

This Department has no authority under the grievance statutes or procedure to provide the parties with attorney's fees and costs. Therefore, the grievant's request for fees and costs is denied.

This Department's rulings on compliance are final and nonappealable.¹

Claudia T. Farr
Director

¹ Va. Code § 2.2-1001 (5).