

Issue: Administrative Review of Case #468; Ruling Date: July 21, 2004; Ruling #2004-695; Agency: Department of Corrections; Outcome: hearing officer in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-695
July 22, 2004

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 468. The grievant claims that (1) the hearing decision does not contain findings of fact on material issues and the grounds in the record for the findings; and (2) the hearing decision is contrary to state and/or agency policy. For the reasons discussed below this Department concludes that the hearing officer did not violate the grievance procedure.

FACTS

The grievant is employed as a Probation and Parole Officer with the Department of Corrections (DOC or the agency). On August 11, 2003, the grievant timely initiated a grievance claiming misapplication of the hiring policy and discrimination on the basis of age and gender. Upon qualification by this Department, the grievance proceeded to hearing on February 12, 2004. In a March 29, 2004 decision, the hearing officer denied the grievant relief.¹ On May 3, 2004, the hearing officer issued a reconsideration decision upholding his March 29, 2004 decision.²

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."³ If the hearing officer's exercise of authority is not in compliance with the

¹ See Decision of Hearing Officer Case Number: 468, March 29, 2004.

² See Reconsideration Decision of Hearing Officer, Case Number 468, May 3, 2004.

³ 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.⁴

Findings of Fact

Hearing officers are authorized to make “findings of fact as to the material issues in the case”⁵ and to determine the grievance based “on the material issues and grounds in the record for those findings.”⁶ Moreover, 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 By statute, hearing officers have the duty to receive probative evidence and to exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs.⁹ 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 judgment for that of the hearing officer with respect to those findings.

The grievant alleges that the hearing officer has failed to comply with the grievance procedure by issuing a decision that does not “contain findings of fact on material issues and the grounds in the record for the findings.”¹⁰ Specifically, the grievant claims that the hearing officer (1) fails to discuss or cite evidence presented at hearing; (2) cites incorrect facts in his decision; and (3) misinterprets evidence and arrives at erroneous conclusions.

Failure to discuss or cite evidence presented at hearing

In support of this contention, the grievant states that (1) the hearing decision references her job description and employee work profile (EWP), but fails to mention her added duties and accomplishments; (2) the hearing decision fails to note that the qualifications for the position at facility P were not updated upon re-advertisement (as the agency indicated it would be) and the only reason she was invited to reapply was because she had initiated a grievance; (3) the hearing decision states that all applicants were asked to provide work samples for the position at facility H; however, the agency submitted only one work sample at hearing and admitted that two of the candidates did not provide work samples; (4) the hearing officer ignored the fact that work samples are not routinely requested by DOC and she was not asked to bring one to her interview at

⁴ See *Grievance Procedure Manual* § 6.4(3).

⁵ Va. Code § 2.2-3005(D)(ii).

⁶ *Grievance Procedure Manual* § 5.9.

⁷ *Rules for Conducting Grievance Hearings*, § IV(D), page 7.

⁸ *Id.*

⁹ Va. Code § 2.2-3005(C)(5).

¹⁰ *Rules for Conducting Grievance Hearings* § V(C), page 9.

facility D (D); and (5) the hearing officer fails to consider that according to the applicant screening form, the grievant was approved for an interview at facility G.

A hearing officer is not bound to recite in his decision all evidence proffered by the grievant that he ultimately deemed insufficient to establish a misapplication of policy or discrimination on the basis of age or gender. In other words, if a hearing officer concludes that a grievant has not provided sufficient evidence to establish a claim, he has, in essence, stated the facts, or more to point, the lack thereof, that formed the basis of his decision. Moreover, it should be noted that the hearing officer did state in his decision the facts that he relied upon to conclude that there was no misapplication of policy or discrimination.¹¹

Incorrect findings of fact

The grievant claims that contrary to the hearing officer's findings, she was not selected for an interview at facility H. The March 29, 2004 hearing decision does in fact state that the grievant was selected for an interview at facility H.¹² In an attachment to the grievant's August 11, 2003 grievance, the grievant admits that she was asked to interview at facility H. While the hearing officer may not have included in his decision all the circumstances surrounding the grievant's invitation to interview at facility H,¹³ there is no dispute that the grievant was ultimately selected for an interview at facility H. As such, the hearing officer's finding that the grievant was selected for an interview at facility H cannot be viewed as error.

Misinterpretation of evidence and erroneous conclusions

The grievant claims that evidence on training courses was introduced by the grievant to show "that the Department hires individuals into these positions who have 'limited experience' with psychological instruments," not to demonstrate that the agency has an obligation to train the grievant, as stated by the hearing officer. Additionally, the grievant asserts that the hearing officer's conclusions on why the grievant was not selected for an interview at facility G is contrary to the position announcement and that the hearing officer's conclusions on the issue of discrimination are erroneous.

These challenges simply contest the hearing officer's findings of disputed fact, 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, the characterizations that he made, and the facts he chose to include in his decision. Such determinations are entirely within the hearing officer's authority.

¹¹ See Decision of Hearing Officer, Case Number 468, March 29, 2004.

¹² See Decision of Hearing Officer, Case Number 468, March 29, 2004, page 3.

¹³ It appears that the grievant was contacted to interview at facility H only after the position had been re-advertised for lack of applications.

Policy Interpretation

The remainder of the grievant's claims are based on the hearing officer's interpretation of state and/or agency policy, which is not an issue for this Department to address. Rather, the Director of DHRM (or her designee) has the authority to interpret all policies affecting state employees, and has the authority to assure that hearing decisions are consistent with state and agency policy.¹⁴ In addition to her appeal to this Department on procedural grounds, the grievant has properly appealed to DHRM on the basis of policy. If DHRM finds that the hearing officer's interpretation of policy was not correct, DHRM may direct the hearing officer to reconsider his decision in accordance with its interpretation of policy.¹⁵

APPEAL RIGHTS AND OTHER INFORMATION

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.¹⁶ In addition to the grievant's request for an administrative review 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.¹⁷ 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.¹⁸ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁹ This Department's rulings on matters of procedural compliance are final and nonappealable.²⁰

Claudia T. Farr
Director

¹⁴ Va. Code § 2.2-3006 (A); *Grievance Procedure Manual* § 7.2 (a)(2).

¹⁵ *Grievance Procedure Manual* § 7.2 (a)(2).

¹⁶ *Grievance Procedure Manual*, § 7.2(d).

¹⁷ *Id.*

¹⁸ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

¹⁹ *Id. See also* Va. Dept. of State Police vs. Barton, No. 39 Va. App. 439, 573 S.E. 2d 319 (2002).

²⁰ Va. Code § 2.2-1001 (5).