

Issue: Administrative Review of hearing case #716; Ruling Date: September 7, 2004; Ruling #2004-780; 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 2004-780
September 7, 2004

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 716.¹ The grievant essentially claims that the hearing officer was presented with insufficient evidence to substantiate the disciplinary action against him. For the reasons discussed below this Department concludes that the hearing officer did not violate the grievance procedure.

FACTS

Prior to his termination, the grievant was employed as a Corrections Officer Senior. On March 10, 2004, the grievant was issued a Group III Written Notice of disciplinary action with ten workday suspension. The Group Notice alleged that:

On February 28, 2004, you documented that you made 15 minute checks on death row [Inmate C] at 2232 hours and again at 2245 hours. Records indicate that these checks were never made on [Inmate C]. Your falsification of the documentation is a serious violation of the standards of conduct and one that cannot be tolerated at a level-5 maximum-security prison. Your actions were a serious breach of security. Therefore, your employment is being terminated effective March 12, 2004.

On March 29, 2004, the grievant timely filed a grievance to challenge the agency's action. The outcome of the Third Resolution Step was not satisfactory to the grievant and he requested a hearing. On May 6, 2004, the Department of Employment Dispute Resolution assigned this appeal to the Hearing Officer, who upheld the agency's disciplinary action, finding that the grievant had committed the act of falsification. The grievant's argument - - that his misrepresentation did not constitute a falsification because he had not initialed the document containing the misrepresentation - - was rejected by the hearing officer.

¹ The grievant did not file his request for administrative review within 10 days of the date of the decision. However, he did not receive the hearing officer's decision until after the expiration of the 10-day appeal deadline. Accordingly, this Department finds that the grievant had just cause for the delay in initiating his request for administrative review.

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.”² 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.³

Witness Testimony/Findings of Fact/Weighing Evidence

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 grounds in the record for those findings.”⁵ Moreover, the grievance hearing is an administrative process that envisions a more liberal admission of evidence than a court proceeding.⁶ Accordingly, the technical rules of evidence do not apply.⁷ By statute, hearing officers have the duty to receive probative evidence and to exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs.⁸ 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 claims that the hearing officer did not have sufficient evidence to support the disciplinary action against him. Specifically, he asserts that a videotape was not made available to him. In addition, he contends that according to policy, seven officers should have manned the special housing unit but only six were present on the night of the alleged falsification. The grievant also takes issue with testimony regarding the angle of a camera.

None of the cited objections, however, have any bearing on the hearing officer’s conclusion that the grievant had indeed falsified the logbook, even though the grievant had not initialed it. This Department finds that the hearing officer did not err by rejecting the grievant’s “failure to initial” argument as completely groundless and by upholding the disciplinary action.

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

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

⁴ Va. Code § 2.2-3005(D)(ii).

⁵ *Grievance Procedure Manual* § 5.9.

⁶ See *Rules for Conducting Grievance Hearings*, § IV(D).

⁷ *Id.*

⁸ Va. Code § 2.2-3005(C)(5).

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.⁹ Accordingly, with the issuance of this decision, the hearing officer's decision is now a final decision.

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.¹⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹¹ This Department's rulings on matters of procedural compliance are final and nonappealable.¹²

Claudia T. Farr
Director

⁹ *Grievance Procedure Manual*, § 7.2(d). It should be noted that DHRM noted the grievant's delay in initiating his appeal with that Department. However, it also found that because the grievant had not identified any state or agency policy that was violated by the hearing decision thus it "had no basis to interfere with the application of this decision."

¹⁰ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

¹¹ *Id. See also* Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 573 S.E.2d 319 (2002).

¹² Va. Code § 2.2-1001 (5).