

Issue: Compliance Ruling/Response of Hearing Officer to Directive to Amend Prior ruling (Response to Directive); Ruling Date: September 7, 2004; Ruling #2004-859; Agency: Department of Corrections; Outcome: hearing officer correct in concluding he had no jurisdiction.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-859
September 7, 2004

The Department of Corrections (DOC or the agency) has requested a final and nonappealable compliance ruling addressing the hearing officer's July 2, 2004 *Response of Hearing Officer to Directive to Amend Prior Ruling (Response to Directive)*.

FACTS

The underlying facts pertaining to the merits of case number 5821 are not germane to this ruling.¹ This ruling addresses only the procedural aspects of the case.

On February 16, 2004, the hearing officer who presided over case number 5821 issued his original hearing decision overturning the grievant's discharge from employment. By letter dated February 26, 2004, the Department of Corrections (DOC or agency) timely requested that the hearing officer reconsider his opinion. On the same day, the agency also timely requested the DHRM Director to review the original hearing decision to determine whether it conformed to state policy. The agency copied the grievant's attorney on this correspondence.

The hearing officer issued his *Order Upon Motion for Reconsideration (Reconsideration)* on March 3, 2004, in which declined to alter his original decision. On March 19, 2004, the DHRM Director's designee issued a *Policy Ruling of the Department of Human Management (Policy Ruling)* upholding the hearing officer's original decision.

At some point in late March or early April, DOC's Human Resources Director spoke with the DHRM Director and requested that she reconsider and reverse the March 19th *Policy Ruling*. On April 14, 2004, the DOC Human Resources Director sent the

¹ This Department is keenly aware of the serious nature of the underlying facts in this case and the agency's desire to adequately address the alleged misconduct of those involved. Nevertheless, as further discussed, the underlying facts that led to grievant's discipline do not allow for the disregard of well-established grievance procedure rules or the statutory mandate that the grievance process provide expeditious resolution to workplace disputes.

DHRM Director a follow-up letter. Neither the grievant, his attorney, nor this Department were copied on the April 14th follow-up letter.²

On June 2, 2004, the DHRM Director issued a *Revised Policy Ruling* in which she reversed the March 19th *Policy Ruling*. In the *Revised Policy Ruling*, copies of which were provided to the grievant and to this Department, the DHRM Director concluded that the hearing officer had misinterpreted policy and ordered him to reverse his original decision and uphold the discipline imposed by the agency (unless there was some other basis for overturning the discipline.)

On or about June 9, 2004, the Director of the Department of Employment Dispute Resolution (EDR or this Department) contacted the hearing officer directing him to allow the parties to submit briefs on whether the hearing officer still retained any jurisdiction over case number 5821. On June 9, 2004, the hearing officer instructed the parties to submit written arguments to him by June 28, 2004. On July 2, 2004, the hearing officer issued his *Response to Directive* in which he concluded that he no longer had jurisdiction over the case, thus declining to revise his original decision. The hearing officer determined that the DHRM Director's *Revised Policy Opinion* had "no effect" due to the expiration of the statutory 60-day timeframe in which the DHRM Director had to issue her administrative review ruling.³ On July 21, 2004, DOC requested that this Department issue a compliance ruling addressing the hearing officer's *Response to Directive* and his refusal to reverse his opinion.

DISCUSSION

The hearing officer is correct in concluding that under the grievance procedure, he had no jurisdiction over this case after March 19, 2004. However, as explained below, the lack of jurisdiction rests upon the plain language of the administrative review process in the Grievance Procedure Manual.

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."⁴ In accordance with this exclusive authority, has EDR promulgated the *Grievance Procedure Manual*, which sets forth the rules that govern the grievance procedure. In keeping with the statutory mandate of providing a fair and expeditious⁵

² Section 7.2(a) of the *Grievance Procedure Manual* states that "a copy of all requests [for administrative review] must be provided to the other party and to the EDR Director."

³ Va. Code §2.2-3006(A) states that "[i]n grievances initiated by state employees, the Director of the Department of Human Resource Management shall determine within sixty days of the decision whether the decision is consistent with policy."

⁴ Va. Code § 2.2-1001(2), (3), and (5).

⁵ See Va. Code § 2.2-3000 which states that "the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between agencies and those employees who have access under Va. Code § 2.2-3001."

dispute resolution process, the *Grievance Procedure Manual* has established a framework to allow for prompt administrative and judicial review of hearing decisions.

Pursuant to the *Grievance Procedure Manual*, a hearing officer's original decision is subject to three types of administrative review and a party may request more than one type of review. A request to reconsider a decision or reopen a hearing is made to the hearing officer; a challenge that a hearing decision is inconsistent with state or agency policy is made to the DHRM Director; and a challenge that a hearing decision does not comply with the grievance procedure is made to the EDR Director.

The *Grievance Procedure Manual* instructs further that “[a] hearing officer’s original decision becomes a **final hearing decision** with no further possibility of administrative review, when: (1) the 10 calendar day period for filing requests for administrative review has elapsed and neither party has filed such a request; or, (2) all timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.”⁶ After a decision becomes a final hearing decision, it may be appealed to the circuit court⁷ and then to the Court of Appeals.⁸ A party may petition the circuit court in the jurisdiction in which the grievance arose for an order implementing a final decision once all appeals have been exhausted.⁹

The plain language of the *Grievance Procedure Manual* precludes the issuance of multiple (revised) administrative review rulings by the DHRM and EDR Directors. Section 7.2(d) of the *Grievance Procedure Manual* states that a “hearing officer’s original decision becomes a final hearing decision with no further possibility of administrative review, when . . . all timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.”¹⁰ In this case, the hearing officer issued his *Reconsideration* on March 3, 2004, in which he declined to alter the outcome of his original decision. The DHRM Director’s designee issued DHRM’s *Policy Ruling* upholding the hearing officer’s decision on March 19, 2004. Thus, pursuant to § 7.2 (d), the last of the timely requests for administrative reviews was decided on March 19th, and the hearing officer had not been ordered to issue a revised decision by EDR or DHRM. Accordingly, on that day the original hearing decision became the final hearing decision with no further possibility of administrative review.

The grievance procedure’s appeal framework was never intended to impede administrative reviewers, including the DHRM Director, from carrying out their statutory

⁶ *Grievance Procedure Manual*, § 7.2(d), (emphasis in original).

⁷ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a). The basis of an appeal to the circuit court must be based on the assertion that the decision is contradictory to law. The appeal is filed in the circuit court in the jurisdiction in which the grievance arose.

⁸ See, Va. Code 17.1-405. *Grievance Procedure Manual*, § 7.3(b).

⁹ Va. Code § 2.2-3006 (D); *Grievance Procedure Manual*, § 7.3(c).

¹⁰ Emphasis added.

obligations, such as interpreting state policy.¹¹ However, if the administrative review process were open-ended, allowing for multiple (revised) opinions, the judicial appellate process would be derailed through the loss of a clear, defined point at which hearing decisions becomes final and ripe for judicial appeal. To borrow a phrase from the *Response to Directive*, the grievance process would be placed in “legal and practical limbo.” Similarly, the process for seeking implementation of a final hearing decision would be thwarted by the absence of any definitive point at which decisions could be considered final and ripe for petition.¹²

The DHRM Director’s *Revised Policy Ruling* was issued well beyond 60 days following the issuance of the original decision but, most importantly, after the time for both administrative and judicial appeals had expired. Thus, for all the above reasons, this Department holds that, as a matter of compliance with the grievance procedure, the hearing officer correctly concluded that the DHRM Director’s *Revised Policy Ruling* was of “no effect” in case number 5821 and that he no longer had jurisdiction over that case. This decision is final and nonappealable.¹³

Claudia T. Farr
Director

¹¹ Indeed, DHRM’s June 2, 2004 Revised Policy Ruling clearly serves as a policy interpretation for future grievance hearings. However, the opportunity for the DHRM Director to provide policy guidance for this particular grievance ended on March 19, 2004, once her designee issued an opinion upholding the hearing officer’s decision.

¹² Va. Code § 2.2-3006 (C) states “[t]he hearing officer's final decision shall be effective from the latter of the date issued or the date of the conclusion of any administrative review and judicial appeal, and shall be implemented immediately thereafter, unless circumstances beyond the control of the agency delay such implementation. Section 2.2-3006 (D) states “[e]ither party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision or recommendation of a hearing officer.” Va. Code § 2.2-3006 (D).

¹³ Va. Code § 2.2-1001 (5).