

Issue: Compliance/grievant asserts that there was not opportunity to submit rebuttal to review request/computer misuse; Ruling Date: May 9, 2005; Ruling #2005-1025;
Agency: Virginia Department of Transportation; Outcome: relief denied



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2005-1025
May 9, 2005

The grievant has requested a compliance ruling from this Department. The grievant asserts that he never received a copy of the agency's request for administrative review of the hearing decision in Case Number 7928. As consequence of his failure to receive a copy of the ruling request, the grievant asserts that he has been denied the opportunity to submit a written rebuttal to the review request.

FACTS

The grievant challenged a Group II Written Notice by initiating a grievance, which proceeded to hearing on December 16, 2004. In his December 20, 2004 decision, the hearing officer rescinded the Group II Written Notice finding that the disciplinary action taken in the grievant's case constituted "disparate treatment."¹

On December 30, 2004, the agency administratively appealed the December 20, 2004 hearing decision to this Department (EDR), the Department of Human Resource Management (DHRM) Director and the hearing officer. In a January 25, 2005 reconsideration decision, the hearing officer upheld his original determination.² In a March 2, 2005 ruling, the EDR Director remanded the case back to the hearing officer with instruction that he clarify his decision.³ On April 20, 2005, the hearing officer issued his Second Reconsideration in which he upheld his original decision. The DHRM Director has not yet issued her ruling.⁴

DISCUSSION

The grievant asserts that because he did not receive a copy of the agency's December 30, 2005 ruling request, the December 20, 2005 hearing decision in his favor

¹ See Decision of Hearing Officer, Case No. 7928, issued December 20, 2004.

² See Reconsideration Decision of Hearing Officer, Case No. 7928, issued January 25, 2005.

³ Compliance Ruling of EDR Director, Number 2004-936, issued March 2, 2005.

⁴ DHRM has been awaiting the issuance of hearing officer's Second Reconsideration decision before issuing an Administrative Review Decision. In addition, shortly after receiving this compliance ruling request, this Department advised DHRM of the grievant's new request and suggested that DHRM refrain from issuing its decision until this Department issued the instant ruling.

should be considered final. The grievant is correct that he should have received a copy of the agency's administrative review request.⁵ It should be noted, however, that the request indicates that the grievant was to have received a copy, and the agency has verified that it indeed mailed him a copy by regular U.S. mail. Moreover, DHRM has agreed to refrain from issuing its administrative review ruling for at least five business days following its receipt of this ruling, thus allowing the grievant the opportunity to provide rebuttal information to DHRM for consideration in its administrative review decision.⁶ Accordingly, the grievant has not suffered any prejudice, and the relief he requests is denied.

CONCLUSION AND APPEAL RIGHTS

This Department's rulings on matters of procedural compliance are final and nonappealable.⁷ Therefore, this ruling may not be appealed. However, once DHRM issues its decision, the hearing officer's original decision will become a final hearing decision.⁸ Within 30 calendar days of DHRM's issuance of its decision, either party may appeal the *final hearing decision* to the circuit court in the jurisdiction in which the grievance arose.⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁰

Claudia T. Farr
Director

⁵ *Grievance Procedure Manual*, § 7.2(a) states that "A copy of all requests must be provided to the other party and to the EDR Director."

⁶ EDR's Administrative Ruling simply remanded the decision to the hearing officer who, in turn, ruled in favor of the grievant. Thus, given that the grievant now has the opportunity for rebuttal, the grievant has suffered no prejudice to date.

⁷ Va. Code § 2.2-1001 (5).

⁸ *Grievance Procedure Manual*, § 7.2(d).

⁹ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a). Note that if DHRM orders the hearing officer to revise his opinion, the decision becomes final and the 30-day timeframe begins when the hearing officer issues his revised opinion. Also, if the agency wishes to appeal to the Circuit Court, it must first seek approval from this Department within 10 days of the decision becoming final.

¹⁰ *Id.* See also Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 573 S.E. 2d 319 (2002).