

Issue: Administrative Review/challenges hearing officer determination; Ruling Date: June 28, 2005; Ruling #2005-1063; Agency: Department of Corrections; Outcome: hearing officer in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2005-1063
June 28, 2005

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8053. The grievant challenges the hearing officer's determination that the discipline taken against him was appropriate under the Standards of Conduct.

FACTS

The grievant is employed as a Corrections Officer with the Department of Corrections (DOC or the agency). On December 13, 2004, the agency issued the grievant a Group III Written Notice with a three workday suspension for "actions unbecoming a corrections officer"—specifically, failing to be truthful when questioned by the warden and assistant warden about his conduct with another employee. The grievant timely challenged the disciplinary action, and after the parties failed to resolve the grievance during the management resolution steps, the grievance proceeded to hearing on May 27, 2005. The hearing officer issued a decision upholding the challenged disciplinary action on May 31, 2005.

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."¹ 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.²

Hearing officers are authorized to make "findings of fact as to the material issues in the case"³ and to determine the grievance based "on the material issues and the grounds in the

¹ Va. Code § 2.2-1001(2), (3), and (5).

² See *Grievance Procedure Manual* § 6.4(3).

³ Va. Code § 2.2-3005.1(C)(ii).

record for those findings.”⁴ Moreover, the grievance hearing is an administrative process that envisions a more liberal admission of evidence than a court proceeding.⁵ Accordingly, the technical rules of evidence do not apply.⁶ Hearing officers have the duty to “[r]eceive probative evidence,” that is, evidence that “affects the probability that a fact is as a party claims it to be.”⁷ They may exclude evidence that is “irrelevant, immaterial, insubstantial, privileged, or repetitive.”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.

Under §7.2(a)(3) of the *Grievance Procedure Manual*, a challenge that the hearing decision does not comply with the grievance procedure “must state the specific requirement of the grievance procedure with which the hearing decision is not in compliance.” Here, the grievant fails to meet this burden, as he has not identified *any* specific requirement of the grievance procedure violated by the hearing officer. Instead, the grievant attempts to re-argue his claim that the disciplinary action taken against him was unwarranted. The grievant’s opposition to the hearing officer’s conclusion that the discipline was justified is merely a challenge to 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. As stated above, such determinations are entirely within the hearing officer’s authority.

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 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

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⁴ *Grievance Procedure Manual* § 5.9.

⁵ *Rules for Conducting Grievance Hearings* § IV(D).

⁶ *Id.*

⁷ Edward W. Cleary, McCormick on Evidence § 16, page 52 (1984).

⁸ *Rules for Conducting Grievance Hearings* § IV(D).

⁹ *Grievance Procedure Manual*, § 7.2(d).

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).

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