

Issue: Administrative Review of #8157; Appeal of Hearing decision; grievance issues; discipline/termination; discipline/failure to report without notice; Ruling Date: September 23, 2005; Ruling #2006-1134; Agency: Old Dominion University; Outcome: Hearing officer in compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Old Dominion University  
Ruling Number 2006-1134  
September 23, 2005

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8157. The grievant claims that the hearing officer erred by failing to mitigate the discipline imposed by Old Dominion University (ODU or the university).

FACTS

The grievant was employed by the university as a Manager, Satellite Network Technical Support Services.<sup>1</sup> In connection with his work at the university, the grievant traveled to Las Vegas on June 7, 2005 for a business conference.<sup>2</sup> His wife accompanied him on this trip.<sup>3</sup> On Friday, June 10, 2005, the grievant and his wife drove to the Grand Canyon.<sup>4</sup> The grievant did not take leave for this day.<sup>5</sup> On the way back, they were involved in a car accident which resulted in the grievant's being transported by helicopter to a hospital.<sup>6</sup> The grievant apparently remained hospitalized for several days.<sup>7</sup>

The grievant subsequently submitted a Travel Expense Reimbursement Voucher to the university for the day of his trip to the Grand Canyon, as well as for June 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup>.<sup>8</sup> On July 7, 2005, the university issued the grievant a Group III Written Notice of disciplinary action with removal for falsifying records, failing to report to work without proper notice to supervisors, and leaving the work site during work hours without permission.<sup>9</sup>

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<sup>1</sup> Decision of Hearing Officer in Case Number 8157 (Hearing Decision) at 2.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1-2.

The grievant timely initiated a grievance challenging the disciplinary action, and after the parties failed to resolve the grievance during the management steps, a hearing officer was appointed.<sup>10</sup> A hearing was held on August 24, 2005.<sup>11</sup> On August 30, 2005, the hearing officer issued a decision upholding the disciplinary action.<sup>12</sup>

### 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.”<sup>13</sup> 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.<sup>14</sup>

The grievant argues that the hearing officer failed to comply with the grievance procedure by not mitigating the disciplinary action against him. Specifically, he asserts that his employment history with the Commonwealth of Virginia warrants a reduction in the discipline imposed. He also argues that the hearing officer erred by “disregard[ing]” evidence that the university reimbursed employees for a “similar prior trip to Arizona,” which “involved the same sightseeing excursion.”

Under the *Rules for Conducting Grievance Hearings*, a hearing officer is required to consider mitigating circumstances in determining whether a disciplinary action was “warranted and appropriate under the circumstances.”<sup>15</sup> In this case, the hearing officer stated in his decision that “[n]o credible evidence was presented to justify mitigation of the disciplinary action in accordance with the *Rules for Conducting Grievance Hearings*.” There is no evidence that the hearing officer failed to consider either the grievant’s length of service or the university’s actions with respect to the other trip cited by the grievant: to the contrary, the hearing decision specifically noted the grievant’s length of employment with the university and his previously satisfactory work performance,<sup>16</sup> as well as the earlier trip.<sup>17</sup> Accordingly, the hearing officer appears to

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<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> Va. Code § 2.2-1001(2), (3), and (5).

<sup>14</sup> See *Grievance Procedure Manual* § 6.4(3).

<sup>15</sup> See *Rules for Conducting Grievance Hearings*, § VI.B.

<sup>16</sup> Hearing Decision at 2.

<sup>17</sup> The hearing officer noted evidence that several years ago, a university manager took a group of employees in a rented van to see the Grand Canyon while on a business trip to Arizona. In rejecting the grievant’s apparent claim that the university’s actions were inconsistent, the hearing officer observed that the previous trip to the Grand Canyon had taken place on a Saturday, not on a work day, and that the employees had traveled to Arizona early in order to obtain lower airfare. *Id.* at 6.

have properly considered the mitigating circumstances alleged by the grievant but determined the circumstances did not warrant mitigation of the disciplinary action.

Moreover, we find that the hearing officer complied with the grievance procedure in determining that mitigation of the disciplinary action was unwarranted. A hearing officer may not mitigate a disciplinary action unless, under the record evidence, he finds that the discipline exceeds the limits of reasonableness.<sup>18</sup> Moreover, this Department will find that a hearing officer failed to comply with the grievance procedure in not mitigating disciplinary action only where the hearing officer's action constituted an abuse of discretion. Under the facts presented by this case, we cannot conclude that the hearing officer abused his discretion in finding that the discipline imposed on the grievant did not exceed the limits of reasonableness.

#### 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.<sup>19</sup> 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.<sup>20</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>21</sup> This Department's rulings on matters of procedural compliance are final and nonappealable.<sup>22</sup>

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Claudia T. Farr  
Director

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<sup>18</sup> *Rules for Conducting Grievance Hearings*, § VI.B.

<sup>19</sup> *Grievance Procedure Manual*, § 7.2(d).

<sup>20</sup> Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

<sup>21</sup> *Id.* See also Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 537 S.E. 2d 319 (2002).

<sup>22</sup> Va. Code § 2.2-1001 (5).