

Issue: Administrative Review of Case # 8162; Grievance issue/ Discipline/Termination;
Ruling Date: October 14, 2005; Ruling #2006-1167; Agency: Department of
Corrections; Outcome: Hearing decision in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2006-1167
October 14, 2005

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8162. The grievant claims that the hearing officer's written decision does not comply with the grievance procedure because it was not issued within 35 days of the hearing officer's appointment.

FACTS

The grievant was employed by the Department of Corrections (DOC or the agency) as a Corrections Officer.¹ On June 16, 2005, the agency issued the grievant a Group III Written Notice of disciplinary action with removal for fighting with and assaulting an inmate.² The grievant subsequently initiated a grievance challenging the disciplinary action.³ The grievance was qualified for hearing and assigned to a hearing officer on August 10, 2005.⁴ A hearing was held on August 31, 2005.⁵ On September 30, 2005, the hearing officer issued a written decision affirming the disciplinary action.⁶

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."⁷ If the hearing officer's exercise of authority is not in compliance with the

¹ Hearing Decision at 2.

² *Id.* at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Va. Code § 2.2-1001(2), (3), and (5).

grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁸

The grievant alleges that the hearing officer did not comply with the grievance procedure because he failed to issue a timely decision. Under the grievance procedure rules established by this Department, absent just cause, hearing officers are to hold the hearing and issue a written decision within 35 calendar days of their appointment.⁹ In this case, the hearing officer was appointed on August 10, 2005. The hearing decision, however, was not issued until September 30, 2005, more than 35 days after the hearing officer's appointment. During the investigation for this ruling, the hearing officer stated that the decision was delayed by the difficulty of the grievant's case, as well as by his full hearing schedule.

Preferably, decisions are written as soon as possible after the hearing, when testimony of the witnesses is fresh. This Department recognizes, however, that circumstances such as case volume and difficulty may impede the issuance of a timely decision, without constituting noncompliance with the grievance procedure so as to require a rehearing. Such is the case here.

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.¹⁰ 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.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹² This Department's rulings on matters of procedural compliance are final and nonappealable.¹³

Claudia T. Farr
Director

⁸ See *Grievance Procedure Manual* § 6.4.

⁹ *Grievance Procedure Manual* § 5.1.

¹⁰ *Grievance Procedure Manual*, § 7.2(d).

¹¹ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

¹² *Id.*

¹³ Va. Code § 2.2-1001 (5).

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