

Issue: Administrative Review of Case No. 8473/Hearing Decision Appeal; Ruling Date: March 26, 2007; Ruling #2007-1555; Agency: Department of Motor Vehicles; Outcome: Hearing Officer in compliance.



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

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Department of Motor Vehicles  
Ruling No. 2007-1555  
March 26, 2007

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8473. For the reasons set forth below, this Department will not disturb the decision of the hearing officer in this case.

FACTS

On August 17, 2006, the grievant was issued a Group I Written Notice for challenging the authority of her supervisor and grabbing her supervisor in the workplace.<sup>1</sup> The grievant challenged the disciplinary action by initiating a grievance on September 8, 2006.<sup>2</sup> The September 8<sup>th</sup> grievance was subsequently qualified for a hearing and the hearing was held on December 19, 2006. In a February 5, 2007 decision, the hearing officer upheld the disciplinary action.<sup>3</sup> The grievant subsequently requested that the hearing officer reconsider his decision. In a decision dated March 1, 2007, the hearing officer denied the grievant's request for reconsideration.<sup>4</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>5</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>6</sup>

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<sup>1</sup> See Decision of Hearing Officer ("Hearing Decision"), Case No. 8473, issued February 5, 2007.

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

<sup>3</sup> *Id.* at 4.

<sup>4</sup> See Reconsideration Decision of Hearing Officer ("Reconsideration Decision"), Case No. 8473-R, issued March 1, 2007.

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

<sup>6</sup> *Grievance Procedure Manual* §§ 6.4; 7.2.

Hearing officers are authorized to make “findings of fact as to the material issues in the case”<sup>7</sup> and to determine the grievance based “on the material issues and grounds in the record for those findings.”<sup>8</sup> By statute, hearing officers have the duty to receive probative evidence and to exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs.<sup>9</sup> 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.

The grievant asserts that her supervisor’s statement at hearing that the grievant “grabbed and bruised her arm” is untrue and that the hearing officer wrongly based his decision solely on her supervisor’s testimony rather than weighing all witness testimony equally. In his reconsideration decision, the hearing officer states:

After considering all of the testimony presented and the credibility of each witness, the Hearing Officer finds that the Supervisor was the most credible witness regarding the manner in which Grievant touched her. Grievant was focused, in large part, on expressing her opinion. The Supervisor was more focused on how Grievant was touching her and, thus, better able to report what actually happened. The other witnesses were not as close, focused, or attentive as was the Supervisor and, thus, they were not as credible.<sup>10</sup>

These findings regarding record testimony are precisely the kinds of determinations reserved to the hearing officer who observes witness demeanor, takes into account motive and potential bias, and considers potentially corroborating or contradictory evidence. Accordingly, this Department will not disturb the decision of the hearing officer in this case.

#### 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>11</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>12</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>13</sup>

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<sup>7</sup> Va. Code § 2.2-3005.1(C)(ii).

<sup>8</sup> *Grievance Procedure Manual* § 5.9.

<sup>9</sup> Va. Code § 2.2-3005(C)(5).

<sup>10</sup> Reconsideration Decision at 1.

<sup>11</sup> *Grievance Procedure Manual* § 7.2(d).

<sup>12</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>13</sup> *Id.*; see also *Virginia Dep’t of State Police vs. Barton*, 39 Va. App. 439, 445, 573 S.E. 2d 319 (2002).

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