

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8599;
Ruling Date: July 10, 2007; Ruling #2007-1720; Agency: Department of
Correctional Education; Outcome: Hearing Decision In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Department of Correctional Education
Ruling Number 2007-1720
July 10, 2007

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8599. For the reasons set forth below, the grievant has failed to present any grounds warranting remand to the hearing officer.

FACTS

The grievant was terminated on January 26, 2007, following the receipt of a Group III Written Notice.¹ A grievance hearing was held in this matter on May 25, 2007.² In his June 4, 2007 decision, the hearing officer found that the agency had met its burden of proof and upheld the termination.³ The grievant now requests administrative review from this Department. He claims that the hearing decision does not comply with the grievance procedure because "the hearing exceeded the (5) days I was to have my hearing."

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."⁴ 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.⁵

The grievant's sole request for administrative review from this Department is that "the hearing exceeded the (5) days I was to have my hearing." There is no such five-day time period in which to have a hearing, even under the expedited grievance process. The

¹ Decision of Hearing Officer, Case No. 8599, June 4, 2007 ("Hearing Decision"), at 3.

² *Id.* at 1.

³ *Id.* at 5. The hearing officer affirmed his decision in a Review Decision issued on July 3, 2007.

⁴ Va. Code § 2.2-1001(2), (3), and (5).

⁵ *Grievance Procedure Manual* § 6.4(3).

grievant might be referring to the provision of the grievance procedure that states that a “hearing should be held and a written decision issued within 35 calendar days of the hearing officer’s appointment.”⁶ We note that this provision states that decisions should be issued within the thirty-five calendar day time frame, and thus it is not a mandatory rule for which a hearing officer’s noncompliance must lead to a remand. At any rate, in this case, the hearing officer was appointed on April 30, 2007,⁷ and the hearing decision was issued on June 4, 2007, thirty-five days after appointment.

CONCLUSION AND APPEAL RIGHTS AND OTHER INFORMATION

For the reasons set forth above, the hearing officer’s decision will not be disturbed. 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.⁸ 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.⁹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁰

Claudia T. Farr
Director

⁶ *Grievance Procedure Manual* § 5.1.

⁷ Hearing Decision at 1.

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

⁹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁰ *Id.*; see also *Virginia Dep’t of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319 (2002).