

Issue: Administrative Review of Case #8330/hearing officer decision; Ruling Date: August 1, 2006; Ruling #2006-1384; Agency: Department of Motor Vehicles; Outcome: hearing officer issued reversal on reconsideration; review of June 8<sup>th</sup> decision is moot

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

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of the Department of Motor Vehicles  
Ruling Number 2006-1384  
August 1, 2006

The Department of Motor Vehicles (DMV or the agency) has requested that this Department administratively review the hearing officer's decision in Case Number 8330.

FACTS

The grievant was employed by the agency as an assistant manager.<sup>1</sup> On December 1, 2005, the grievant received a Group III Written Notice with termination for "misuse of state funds."<sup>2</sup> The grievant challenged the disciplinary action by initiating a grievance.<sup>3</sup> After the parties failed to resolve the grievance in the management resolution steps, the grievant requested a hearing.<sup>4</sup> The hearing was held on May 24, 2006.<sup>5</sup> On June 8, 2006, the hearing officer issued a decision which reduces the disciplinary action against the grievant to a Group II Written Notice and orders that the grievant be reinstated to employment.<sup>6</sup>

By letter dated June 22, 2006, the agency, through its representative, requested an administrative review of the hearing officer's June 8th decision. More specifically, in its request to this Department, the agency argues that the hearing officer erred and/or abused her discretion by (1) finding that "misuse of state funds" is equivalent to "misuse of state property or records" under policy; (2) determining that the grievant did not have adequate notice of the charges against her; and (3) failing to consider aggravating circumstances and give appropriate deference to the disciplinary action taken by the agency in this case. The agency asks this Department to order the hearing officer to "comply with the Standards of Conduct and uphold the Group III termination of this employee."

The agency also requested reconsideration of the June 8<sup>th</sup> decision by the hearing officer. The hearing officer issued her reconsideration decision on July 20, 2006. In that decision, the hearing officer reverses her June 8<sup>th</sup> decision and upholds the Group III

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<sup>1</sup> See Decision of Hearing Officer Case Number 8330, issued June 8, 2006.

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

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

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

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

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

Written Notice with termination issued on December 1, 2005.<sup>7</sup> More specifically, in her decision, the hearing officer finds:

Because the Agency does have the power to create definitions of unique offenses and decide upon the severity of the offense and further, because the agency has adequately made the distinction between “funds” and “property” and further, because the employee’s behavior was egregious as stated in the original opinion, the Hearing Officer Opinion of June 8, 2006 is reversed and the Group III discipline action is **upheld**.<sup>8</sup>

#### DISCUSSION

Given the hearing officer’s July 20, 2006 reconsideration decision, and in particular, her determination that the grievant was provided adequate notice of the charges against her, and her reinstatement of the Group III Written Notice with termination for “misuse of state funds,” the agency’s request that this Department administratively review the June 8<sup>th</sup> decision is moot, and need not be addressed.

#### APPEAL RIGHTS AND OTHER INFORMATION

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer’s decision becomes a final hearing decision once all timely requests for administrative review have been decided.<sup>9</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>10</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>11</sup> This Department’s rulings on matters of procedural compliance are final and nonappealable.<sup>12</sup>

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Claudia T. Farr  
Director

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<sup>7</sup> See Reconsideration Decision of the Hearing Officer, Case Number 8330, issued July 20, 2006.

<sup>8</sup> *Id.* (emphasis in original)

<sup>9</sup> *Grievance Procedure Manual*, § 7.2(d).

<sup>10</sup> Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a).

<sup>11</sup> *Id.* See also Va. Dept. of State Police vs. Barton, 39 Va. App. 439, 573 S.E. 2<sup>nd</sup> 319 (2002).

<sup>12</sup> Va. Code § 2.2-1001 (5).