

Issue: Compliance/hearings; Ruling Date: November 17, 2006; Ruling #2007-1485;  
Agency: Department of Corrections; Outcome: hearing officer in compliance



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

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of the Department of Corrections  
Ruling No. 2007-1485  
November 17, 2006

The grievant, through her representative, has requested a compliance ruling regarding Case Number 8446.

FACTS

On June 5, 2006, the grievant was issued four Written Notices and terminated from her employment with the Department of Corrections. The grievant grieved the discipline and termination, and a grievance hearing date of November 3, 2006 was set.

On the day of the hearing, Friday November 3<sup>rd</sup>, one of the witnesses who had been listed by the grievant, Witness C, purportedly called the Division of Hearings to say that she could not appear at hearing but could nevertheless testify telephonically. The Division of Hearings states that it has no record or recollection of the call. The hearing proceeded as scheduled.

On the following Monday, Witness C called the Division of Hearings and left a message that she could testify telephonically. She called again on Tuesday, the 7<sup>th</sup>, and spoke with a Divisions of Hearings representative. On November 9, 2006, the grievant's representative wrote to request that the hearing be reopened so that Witness C could testify. The hearing officer wrote the grievant's representative on November 9<sup>th</sup> and inquired as to what the representative believed the testimony of Witness C would be if she were allowed to testify. The grievant's representative did not respond to the hearing officer's request.

On November 13, 2006, the grievant's representative wrote the Director of this Department requesting a response.

DISCUSSION

Under the *Grievance Procedure Manual*, a hearing officer has the authority to rule on procedural matters, render written decisions and provide appropriate relief, and take any other actions as necessary or specified in the grievance procedure.<sup>1</sup> An action taken by a hearing officer in the exercise of his authority to determine procedural matters will only be disturbed where it constitutes an abuse of discretion.

The facts are disputed as to when the Division of Hearings first received notice that Witness C would not be able to attend the hearing. However, in an effort to address the apparent confusion surrounding Witness C's attempts to contact the Division of Hearings, the hearing officer properly attempted to discern the nature of Witness C's anticipated testimony. The question that he posed to the grievant's representative, inquiring as to the nature of Witness C's anticipated testimony, appears designed to determine whether the testimony would be relevant or, perhaps, repetitive. If the hearing officer concluded that the testimony would be irrelevant or repetitive, there would be no reason to re-open the hearing. Thus, while any earlier potential misunderstanding or oversight surrounding Witness C's attempts to contact the Division of Hearings is regrettable, the action of the hearing officer to rectify the situation appears entirely appropriate.

Accordingly, the grievant is ordered to respond within 10 calendar days of the date of this ruling to the hearing officer's inquiry as to the nature of Witness C's anticipated testimony. This Department's rulings on matters of procedural compliance are final and nonappealable.<sup>2</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> *Grievance Procedure Manual* at § 5.7; see also Va. Code § 2.2-3005.

<sup>2</sup> Va. Code § 2.2-1001 (5).