

Issue: Compliance/grievant alleges Director of DHRM is out of compliance; Ruling
Date: December 12, 2006; Ruling #2007-1507; Agency: Department of State Police;
Outcome: no violation of grievance procedure by DHRM



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of State Police
Ruling No. 2007-1507
December 12, 2006

The grievant has asked for a compliance ruling from this Department. The grievant alleges that the Director of the Department of Human Resource Management (DHRM) is out of compliance with the grievance process because she has failed to respond to his request for administrative review within the time period set forth in the *Grievance Procedure Manual*.

FACTS

The grievant is employed as a Trooper with the Virginia State Police (VSP or the agency). On July 6, 2006, the grievant initiated a grievance challenging a Group III Written Notice with suspension and transfer for “[i]nsubordination or serious breach of discipline” in violation of agency policy.

The July 6th grievance was subsequently qualified for a hearing and the hearing was held on September 19, 2006. In an October 3, 2006 decision, the hearing officer reduced the Group III Written Notice to a Group II Written Notice and upheld the suspension.¹ The agency was further ordered to reverse the grievant’s transfer and reinstate him to his former position or, if occupied, to an objectively similar position.²

On October 18, 2006, the grievant e-mailed the hearing officer his request for reconsideration.³ Also on October 18th, the grievant e-mailed the DHRM Director his request for administrative review of the hearing officer’s decision based on alleged violations of policy. The hearing officer denied the grievant’s request for reconsideration

¹ See Decision of Hearing Officer (“Hearing Decision”), Case No. 8415, issued October 3, 2006 at 7.

² *Id.*

³ The grievant’s request for reconsideration was also mailed on October 17th and received by the hearing officer on October 23, 2006.

in a decision dated November 9, 2006.⁴ Thereafter, the grievant requested an administrative review by the EDR Director of the hearing officer's original and reconsidered opinions. The grievant's administrative review request was received by the EDR Director on November 13, 2006.

On December 4, 2006, the grievant requested a compliance ruling from this Department. In his request, the grievant alleges that the DHRM Director has failed to comply with the grievance process because she has not responded to his request for administrative review and asks this Department to order the DHRM Director to "comply with the grievance process and issue a decision pertaining to the administrative review request dated October 17, 2006...."

DISCUSSION

Pursuant to the *Grievance Procedure Manual*, a hearing officer's original decision is subject to three types of administrative review and a party may request more than one type of review. A request to reconsider a decision or reopen a hearing is made to the hearing officer; a challenge that a hearing decision is inconsistent with state or agency policy is made to the DHRM Director; and a challenge that a hearing decision does not comply with the grievance procedure is made to the EDR Director.⁵ Further,

If multiple requests for administrative review are pending, a hearing officer's decision on reconsideration or reopening should be issued before the DHRM and EDR Directors issue their decisions. The hearing officer should issue a written decision on a request for reconsideration or reopening within 15 calendar days of receiving the request. The DHRM and EDR Directors should issue written decisions on requests for administrative review within 30 calendar days of receiving the request or within 15 calendar days of receiving the hearing officer's decision on a request for reconsideration or reopening, whichever is longer.⁶

⁴ See Reconsideration Decision of Hearing Officer ("Reconsideration Decision"), Case No. 8415-R, issued November 9, 2006.

⁵ See *Grievance Procedure Manual* § 7.2(a).

⁶ *Grievance Procedure Manual* § 7.2(c). In addition, Va. Code § 2.2-3006(A) states "[u]pon the request of a party to a grievance hearing for an administrative review of the hearing decision, the Director of the Department of Human Resource Management shall determine, within 60 days of receipt of such a request, whether the hearing decision is consistent with policy." However, in light of a recent Supreme Court of Virginia case, this 60-day time limit may be merely directory and not mandatory. See *Horner v. Dep't. of Mental Health, Mental Retardation and Substance Abuse Services*, 168 Va. 187, 194 (Va. 2004) (the statutory provision which states that the circuit court must hear any appeal of a hearing officer's final decision within 30 days of receipt of the grievance record is "directory and procedural rather than mandatory and jurisdictional, because it merely directs the mode of proceeding by the circuit court.")

In this case, it has been more than 15 calendar days since the hearing officer issued his November 9th reconsideration decision⁷ and the DHRM Director has not issued a written decision on the grievant's request for administrative review. However, as stated above, the grievance procedure does not *require* that a decision on a request for administrative review to DHRM be issued within 15 calendar days of the hearing officer's reconsideration decision; rather, the *Grievance Procedure Manual* says a written decision *should* be issued within this time frame. Further, although not specifically stated in the *Grievance Procedure Manual*, EDR has adopted an internal agency practice of allowing the DHRM Director to wait to issue an administrative review decision until after the EDR Director has issued her administrative review decision in that same case.⁸ Here, the EDR Director has not yet issued a written decision on the grievant's November 13th request for administrative review.⁹ Once she does, the DHRM Director will be obligated to respond to the grievant's administrative review request at that time. Accordingly, this Department concludes that there has been no violation of the grievance procedure by DHRM in this case.¹⁰

This Department's rulings on matters of compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

⁷ The grievant has also objected to the hearing officer's alleged untimely reconsideration decision. This issue will be addressed in this Department's forthcoming administrative review decision.

⁸ This practice is intended to reduce any unnecessary confusion that could be caused by simultaneous reviews by EDR and DHRM.

⁹ It should be noted that the EDR Director received the grievant's request for administrative review on November 13, 2006. As such, under the grievance procedure, the EDR Director *should*, but is not required to, issue a decision on the grievant's request within 30 calendar days from receipt of that request. *See Grievance Procedure Manual* § 7.2(c).

¹⁰ This is not to say that the relevant time periods set forth in the grievance procedure and at issue in this case are without meaning and/or purpose. This Department strives to issue decisions within the non-compulsory time limits set forth in the *Grievance Procedure Manual* whenever possible.

¹¹ *See* Va. Code § 2.2-1001(5).