

Issue: Permission to Appeal ruling/appeal hearing decision Nos. 8299, 8300, 8301, 8302 in circuit court; Ruling Date: January 19, 2007; Ruling #2007-1534; Agency: Northern Virginia Community College; Outcome: permission granted



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

**APPEAL REVIEW RULING OF DIRECTOR**

In the matter of Northern Virginia Community College  
Ruling No. 2007-1534  
January 19, 2007

Pursuant to Va. Code 2.2-3006(B), Northern Virginia Community College (NVCC or the agency) seeks approval from the Director of this Department to appeal the final hearing decision in Case Nos. 8299, 8300, 8301, 8302 on the basis that it is contradictory to law. Specifically, the agency asserts that: (1) “contrary to doctrine set forth in *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1985),” the hearing officer “incorrectly determined that evidence of Grievant’s misrepresentations of her qualifications and employment history was irrelevant”; and (2) the hearing officer “improperly substituted his judgment for that of the Agency head” in finding that a Group II Written Notice was not “the proper discipline” for the grievant’s conduct.

We note that of the two grounds asserted by the agency for its appeal, only the first in fact challenges the hearing officer’s decision on the basis of an allegedly erroneous legal conclusion.<sup>1</sup> In contrast, the second ground for appeal simply asks the court to interpret policy, a task which lies solely within the jurisdiction of the Director of the Department of Human Resource Management.<sup>2</sup> However, because the agency has stated at least one basis on which it contends the hearing officer’s decision was contradictory to law and there is no evidence that the agency’s appeal is based on any improper purpose such as to harass or cause delay, its request to appeal is granted.

The agency may now file a notice of appeal with the Circuit Court in the jurisdiction in which the grievance arose. Any such notice must be filed within 30 calendar days of January 16, 2007, the date the hearing decision became final.<sup>3</sup> Approval

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<sup>1</sup> Under the grievance procedure, the decision of a hearing officer may *only* be appealed to a circuit court on the ground that it is “contradictory to law.” See Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>2</sup> See Va. Code § 2.2-3006(A); *Grievance Procedure Manual* § 7.2(c) (noting that decisions by the Director of Department of Human Resource Management (DHRM) are final and nonappealable). We note that on November 27, 2006, the DHRM Director’s designee issued a ruling upholding the hearing officer’s decision.

<sup>3</sup> *Grievance Procedure Manual* § 7.2(e) (“Within 10 calendar days of the issuance of the fees addendum, either party may petition the EDR Director for a decision solely addressing whether the fees addendum complies with this *Grievance Procedure Manual* and the *Rules for Conducting Grievance Hearings*. Once the EDR Director issues a ruling on the propriety of the fees addendum, and if ordered by EDR, the hearing

to proceed with the circuit court appeal in no way reflects the substantive merits of the appeal.

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Claudia T. Farr  
Director

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officer has issued a revised fees addendum, the original decision becomes 'final' as described in § 7.2(d) and may be appealed to the Circuit Court in accordance with § 7.3(a).")