Issue: Qualification – Management Actions: Assignment of Duties; Ruling Date: July 26, 2007; Ruling #2008-1735; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Qualified.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling No. 2008-1735
July 26, 2007

The grievant has requested a qualification ruling from this Department on her April 20, 2007 grievance. The Department of Mental Health, Mental Retardation, and Substance Abuse Services (the agency or DMHMRSAS) asserts that the grievance is not qualified for hearing. For the reasons set forth below, this grievance qualifies for hearing.

FACTS

The grievant is employed by the agency as a Care Worker at one of its facilities. On or about March 20, 2007, the grievant was apparently transferred from the living area to which she had previously been assigned. On April 20, 2007, the grievant initiated a grievance challenging her reassignment.[1]

After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. On June 13, 2007, the agency head signed the Grievance Form A, which indicated that the grievance was qualified because "[d]isciplinary actions must be heard by a hearing officer." By letter dated June 15, 2007, the agency's human resources office informed the grievant that the agency head had qualified her grievance for hearing.[2] The original Form A was enclosed with the June 15th letter.

[1] The grievant apparently signed and dated the Grievance Form A on April 2, 2007, but the Form A indicates that the grievance was not received by the first-step respondent until April 20, 2007. As the date of grievance initiation is not relevant to our decision, we will assume, for purposes of this ruling only, that the grievance was initiated on April 20, 2007.

[2] The June 15th letter stated, "After careful review of your request for qualification, regarding a disciplinary action, the Commissioner has qualified your grievance for hearing."

The grievant states that she received the June 15th letter on June 20, 2007. Subsequently, on June 21, 2007, the agency apparently advised the grievant by telephone that the letter had been sent in error. The grievant states that on June 25, 2007, she received a "corrected" copy of the Form A. On the corrected copy, the statement regarding disciplinary actions qualifying had been lined out and the box indicating the grievance was not qualified was circled. In addition, a statement explaining the non-qualification had been appended to the Form A. The agency head does not appear to have re-signed the form; instead, the additions appear to have been made by the human resources office to a copy of the original signed Form A.[3]

DISCUSSION

Under the grievance procedure, only the agency head (or his or her designee), the EDR Director or the Circuit Court may qualify (or choose not to qualify) grievance issues for hearing.[4] This Department has repeatedly held that in determining what, if any, issues have been qualified by the agency head, the plain language of the Grievance Form A is determinative.[5]

Because the grievant, the agencies and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to expressly state their intentions clearly on that document. An inquiry into the subjective intent of the parties beyond that which is clearly and unambiguously expressed on the Form A would be impractical. Further, because allowing a party to change his or her original decision as indicated on the Form A could be unfair to the opposing party, this Department has consistently held that a party is bound by its initial decision, once that decision has been communicated to the other party, even if the original decision was made in error.

For example, in EDR Ruling 2004-696 (which also involved DMHMRSAS), this Department held that a grievant was bound by her election to conclude her grievance (which involved her termination), even though the grievant claimed that she made the election in error and later advised the agency of her intent to continue her grievance. The present case is analogous, because in both cases, one party claimed to have made a mistake which it subsequently attempted to rescind. Just as this Department concluded in our 2004 decision that the grievant's alleged error amounted to a forfeiture of her hearing

[3] The cover letter for the corrected Form A explained: "Recently the Commissioner received a request from you to qualify your grievance to be heard before a hearing officer. You previously received a letter dated June 15th in error that indicated that your grievance qualified for hearing. Unfortunately, after a closer review of your complaint, the Commissioner has determined the issue you presented does not qualify for hearing. Enclosed, is a **corrected** copy of your Grievance Form A. Please refer to the Commissioner's response that is attached to the Grievance Form A."

[4] *Rules for Conducting Grievance Hearings*, § 1 ("Any issue not qualified by the agency head, the EDR Director, or the Circuit Court cannot be remedied through a hearing.")

[5] *See, e.g.*, EDR Ruling No. 2006-1324.

rights, we find in the present case that the agency is bound by the agency head's initial decision to qualify the grievance.[6]

By copy of this ruling, the grievant and the agency are advised that the agency has five workdays from receipt of this ruling to request the appointment of a hearing officer.

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Claudia T. Farr
Director

[6] *See also* EDR Ruling No. 2004-611 (finding agency bound by having checked box on Form A qualifying the grievance for hearing, even though the agency asserted that was not its true intent).