

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8451;
Ruling Date: August 9, 2007; Ruling #2008-1746; Agency: Virginia
Department of Transportation; Outcome: No Ruling – untimely.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of the Department of Transportation
Ruling No. 2008-1746
August 9, 2007

The Department of Human Resources Management (DHRM) has forwarded to this Department (EDR) a request for administrative review of Case Number 8451, dated July 13, 2007. For the reasons set forth below, this Department will not disturb the Hearing Officer's decision.

FACTS

On August 9, 2006, the grievant was issued a Group III Written Notice with removal for violation of a safety rule with a threat of physical harm and for failure to follow her supervisor's instructions.¹ The grievant challenged the disciplinary action by initiating a grievance on October 17, 2006.² The grievance was subsequently qualified for hearing and a hearing was held on November 8, 2006.³ In a November 22, 2006 hearing decision, the hearing officer upheld the Group III Written Notice with removal.⁴ On July 13, 2007, the grievant asked the DHRM Director to issue an administrative review based on purported newly discovered witness testimony. On July 19, 2007, DHRM forwarded the request to EDR noting that DHRM has no authority to address such an appeal.⁵

DISCUSSION

¹ See Decision of Hearing Officer, Case Number 8451 ("Hearing Decision"), issued November 22, 2006.

² Hearing Decision at 1.

³ *Id.*

⁴ *Id.* at 6.

⁵ For a full recounting of the facts and issues in this matter, see Case Number 8451 and subsequent appeals which can be found on EDR's Website at <http://www.edr.virginia.gov/searchhearing/2007-8451%20Decision.pdf> and <http://www.edr.virginia.gov/searchedr/re2007-1524.pdf>.

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and “[r]ender final decisions ... on all matters related to procedural compliance with the grievance procedure.”⁶ If the hearing officer’s exercise of authority is not in compliance with the grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁷

Under the grievance procedure, requests for a reopening of the hearing are appropriately directed to the hearing officer. In this case, the grievant erroneously made such a request to the DHRM Director. However, this error is of no real import because even if the request had been made to the hearing officer, it was nevertheless untimely. A hearing officer may consider and decide all requests for reconsideration based on newly discovered evidence that are received within the 15 calendar day time administrative appeal period that begins with the issuance of the original hearing decision. However, the hearing officer may not consider any requests for reconsideration based on newly discovered evidence made after the expiration of the 15 calendar day administrative appeal period. Here, the request for reconsideration came months after the November 22, 2006 hearing decision. Accordingly, this Department will not disturb the hearing decision.

CONCLUSION

Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer’s original decision becomes a final hearing decision once all *timely* requests for administrative review have been decided, and if ordered by either the EDR or DHRM Director, the hearing officer issues any reconsidered opinions.⁸ The hearing officer issued his third (and final) reconsidered decision (R3) on June 14, 2007. Thus, the original hearing decision became final on that day. The decision is not subject to any further review.

Claudia T. Farr
Director

⁶ Va. Code §§ 2.2-1001(2), (3), and (5).

⁷ *Grievance Procedure Manual* §§ 6.4; 7.2 (a) (3).

⁸ *Grievance Procedure Manual* § 7.2(d).