

Issues: Reconsidered Ruling: Compliance – Grievance Procedure (Documents), and Administrative Review of Hearing Decision in Case No. 8738; Ruling Date: January 17, 2008; Ruling #2008-1917; Agency: Department of Corrections; Outcome: Agency In Compliance, Hearing Decision in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

**RECONSIDERED COMPLIANCE AND
ADMINISTRATIVE REVIEW RULING OF DIRECTOR**

In the matter of the Department of Corrections
Ruling Number 2008-1917
January 17, 2008

On January 11, 2008, this Department (EDR) issued EDR Ruling Number 2008-1906, concerning the grievant's appeal of the hearing officer's decision in Case Number 8738. It was determined in that ruling that the grievant was untimely in his request for a compliance ruling and administrative review. However, on January 16, 2008, the grievant provided documentation to EDR indicating that he had indeed submitted a timely request for administrative review on December 12, 2007. In that request, the grievant alleged the same grounds as raised with the hearing officer on December 10, 2007. Because it is now determined that the grievant indeed submitted a timely request for a compliance ruling and/or administrative review, the grievant's claims will now be considered on the merits.

FACTS

The hearing decision for Case Number 8738 was issued November 28, 2007.¹ On December 10, 2007, the grievant submitted to the hearing officer a letter objecting to the Department of Corrections' (the agency's) alleged noncompliance. This same letter was provided to EDR on December 12, 2007, as a request for administrative review. The grievant asserted that the agency had failed to provide documents pursuant to section 8.2 of the Grievance Procedure Manual and had improperly changed the date on the Written Notice at issue. The hearing officer addressed these matters in a Reconsideration Decision issued on December 20, 2007.²

DISCUSSION

Documents Issue

The grievant has not provided evidence that there were any documents the agency failed to produce. The significance of any such documents is additionally unclear in that

¹ Decision of Hearing Officer, Case No. 8738, Nov. 28, 2007 ("Hearing Decision"), at 1.

² Reconsideration of Decision of Hearing Officer, Case No. 8738, Dec. 20, 2007 ("Reconsideration Decision").

the grievant has provided no discussion of how these documents would have affected the outcome of the hearing decision. Furthermore, the hearing officer found that the agency had indeed produced the documents identified. The documents at issue were the notes of a member of agency management. The notes were transcribed because of the apparent illegibility of the agency manager's handwriting.³ Because it appears that the agency produced, at a minimum, the contents of the notes and the grievant has provided no evidence of any other documents not produced, there is no support to the contention that the agency has failed to comply substantially with the grievance procedure. Moreover, because the hearing decision has already been rendered, corrective action for a past issue of party noncompliance would seem to be necessary only if the decision would be affected by the introduction of the missing documents. Even if there are such missing documents, the hearing officer determined that the form and content of the documents had no effect on the proceedings. Neither the grievant's assertions nor the hearing record provide any basis to dispute the hearing officer's determinations in this regard. As such, there is no basis to order any form of relief because of the agency's alleged failure to produce documents.

Changed Date on Written Notice

The grievant's second challenge, i.e., the improper amendment of the Written Notice, does not present an issue of noncompliance with the Grievance Procedure Manual. It appears that on the original Written Notice the agency had listed the wrong date (August 2, 2007) that the grievant's charged misconduct had occurred, but that error was corrected in a subsequent version of the Written Notice to list the correct date (August 3, 2007). The corrected Written Notice was provided to the grievant on September 14, 2007. Even if the slight error on the original Written Notice presented a due process concern, the agency had corrected the problem well in advance of hearing. The grievant was aware no later than September 14, 2007, over two months before the November 21, 2007 hearing, that his conduct on August 3, 2007 was the subject of the disciplinary action. There is no indication that the grievant had lack of notice of the charges against him at the hearing such that he was prevented from having a fair opportunity to present his defense to the Written Notice. This Department finds no grounds to alter the hearing officer's decision in this case based on the amendment of the date on the Written Notice.

APPEAL RIGHTS

A hearing officer's decision becomes a final hearing decision when the 15 calendar-day period for filing requests for administrative review has expired and neither party has filed such a request or once all timely requests for review have been decided.⁴ Because the grievant submitted a timely request for administrative review to this Department and there is no other such request pending, all timely requests for review

³ See Hearing Tape 2, Side B, at Counter Nos. 277-330.

⁴ See *Grievance Procedure Manual* § 7.2(d).

have been decided. As such, to correct this Department's previous pronouncement in EDR Ruling No. 2008-1906, the hearing decision is final as of the date of this ruling. The grievant has 30 calendar days from January 17, 2008 to appeal the hearing decision to the circuit court in the jurisdiction in which the grievance arose.⁵ The basis of any such appeal must be that the final decision is contradictory to law.⁶

Claudia T. Farr
Director

⁵ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁶ *Id.*