

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: January 28, 2008; Ruling #2008-1928; Agency: Department of Corrections; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2008-1928
January 28, 2008

The Department of Corrections (DOC or the agency) seeks a ruling from this Department regarding the hearing decision in case number 8466. Case No. 8466 involved, among other issues, DOC's administration of a polygraph test to the grievant.¹ Several of the questions posed to the grievant during the polygraph test concerned the grievant's personal sexual life. In his January 26, 2007 hearing decision, the hearing officer concluded that the questions asked of the grievant "intruded into Grievant's private life and violated her right to liberty."² In the decision, the hearing officer specifically listed all the questions asked of the grievant during the polygraph examination. In a subsequent request for administrative review, DOC asked this Department to redact the actual questions asked of the grievant prior to publication due to the security risk that revealing the questions could pose. In EDR Ruling Nos. 2007-1549 and 2007-1550, this Department agreed to publish the hearing decision in a redacted manner until the circuit court issued a ruling on the legality of the questions.³

In an opinion dated January 15, 2008, the circuit court overturned the hearing officer's decision, thereby deeming the polygraph questions presumptively lawful. As a result of this decision, the agency has requested that this Department continue to publish the hearing decision in a redacted form with the questions posed during the polygraph examination removed. In light of the circuit court's decision, this Department will continue to publish the original hearing decision in Case No. 8466 (and all EDR rulings associated with Case No. 8466) with the actual polygraph questions redacted until and unless the circuit court's decision is overturned by a subsequent court decision.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

¹ For a full recounting of the facts in this case, see EDR Ruling No. 2007-1549, 2007-1550 which can be found on this Department's website at <http://www.edr.virginia.gov/searchedr/2007-1549%202007-1550.pdf>.

² See Decision of Hearing Officer, Case No. 8466 ("Hearing Decision"), issued January 26, 2007 at p. 10.

³ See EDR Ruling No. 2007-1549 and 2007-1550 at p. 13-14.

⁴ Va. Code § 2.2-1001(5).