

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8770;
Ruling Date: February 27, 2008; Ruling #2008-1961; Agency: Department of
State Police; Outcome: Hearing Officer In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Virginia State Police
Ruling Number 2008-1961
February 27, 2008

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8770. For the reasons set forth below, this Department determines that there is no basis to disturb the hearing officer's decision.

FACTS

On November 2, 2007, the grievant was issued a Group III Written Notice with demotion, transfer and disciplinary pay reduction for engaging in conduct that undermined the effectiveness or efficiency of the Virginia State Police (VSP or the agency).¹ The grievant challenged the disciplinary action by initiating a grievance on November 13, 2007.² The November 13, 2007 grievance was ultimately qualified for a hearing and a hearing officer was appointed on December 26, 2007.³ The hearing in this matter was subsequently held on January 29, 2008.⁴ In a February 1, 2008 hearing decision, the hearing officer upheld the agency's disciplinary action.⁵ The grievant now requests administrative review from this Department.

DISCUSSION

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

¹ Decision of Hearing Officer, Case No. 8770, Feb. 1, 2008 ("Hearing Decision"), at 1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 6.

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

⁷ *See Grievance Procedure Manual* § 6.4.

The grievant asserts that the hearing officer erred because the hearing decision was not issued within thirty-five days of the appointment of the hearing officer. According to the grievance procedure and rules established by this Department, absent just cause, hearing officers are to hold the hearing and issue a written decision within 35 calendar days of appointment.⁸ In this case, the hearing officer was appointed on December 26, 2007, and the hearing held January 29, 2008. The hearing decision was issued on February 1, 2008. Preferably, hearings take place and decisions are written within the 35-day timeframe set forth in the grievance procedure. This Department recognizes, however, that circumstances may arise that impede the issuance of a timely decision, without constituting noncompliance with the grievance procedure so as to require a rehearing.⁹ There is no indication of inappropriate or improper delay in this case especially given that the hearing decision was issued 37 calendar days after appointment.

CONCLUSION AND APPEAL RIGHTS AND OTHER INFORMATION

For the reasons set forth above, this Department will not disturb the hearing officer's decision. 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.¹⁰ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹²

Claudia T. Farr
Director

⁸ *Grievance Procedure Manual* § 5.1.

⁹ See, e.g., EDR Ruling No. 2006-1135.

¹⁰ *Grievance Procedure Manual* § 7.2(d).

¹¹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹² *Id.*; see also *Virginia Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).