

Issue: Permission to Appeal Hearing Decision in Case No. 8666 to Circuit Court;  
Ruling Date: June 20, 2008; Ruling #2008-2040; Agency: Virginia Community  
College System; Outcome: Denied (request premature).



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**PERMISSION TO APPEAL RULING OF DIRECTOR**

In the matter of the Virginia Community College System  
Ruling No. 2008-2040  
June 20, 2008

The Virginia Community College System (the agency) has requested permission to appeal the hearing officer's decision in Case No. 8666. For the reasons set forth below, the agency's request is premature.

FACTS

The original hearing officer's decision in this case was issued November 12, 2007, in which the hearing officer concluded that the grievant's position was eliminated in retaliation for her prior protected acts and recommended that the grievant be reinstated to her former position or to a similar position.<sup>1</sup> After the decision, the grievant's counsel submitted to the hearing officer a timely petition for attorneys' fees.<sup>2</sup> The agency also submitted a request for reconsideration.<sup>3</sup>

On January 2, 2008, the hearing officer ruled the agency's request for reconsideration untimely and concluded that she does not have the authority to award attorneys' fees because this case does not involve a disciplinary dismissal.<sup>4</sup> Both the grievant and the agency then requested that this Department review the hearing officer's January 2<sup>nd</sup> determinations.<sup>5</sup>

In EDR Ruling Nos. 2008-1910, 2008-1915 and 2008-1916, this Department determined that the agency's request for reconsideration was timely and remanded the matter to the hearing officer for consideration of the agency's request. In the same ruling, it was determined that the grievant's request regarding the hearing officer's attorneys' fees determination was premature. The ruling provided that the grievant could submit a renewed request for administrative review of the hearing officer's decision regarding attorneys' fees within 10 calendar days of the date of the hearing officer's

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<sup>1</sup> Decision of Hearing Officer, Case No. 8666, Nov. 12, 2007, at 9.

<sup>2</sup> See EDR Ruling Nos. 2008-1910, 2008-1915 and 2008-1916.

<sup>3</sup> See *id.*

<sup>4</sup> Reconsideration Decision of Hearing Officer, Case No. 8666, Jan. 2, 2008.

<sup>5</sup> See EDR Ruling Nos. 2008-1910, 2008-1915 and 2008-1916.

reconsideration decision.<sup>6</sup> On May 29, 2008, the hearing officer issued a Second Reconsideration Decision.<sup>7</sup> Additionally, the grievant has now submitted a renewed request to review the hearing officer's attorneys' fees determination.

### DISCUSSION

Pursuant to Va. Code § 2.2-3006(B), the agency seeks approval from the Director of this Department to appeal the hearing officer's decision in Case No. 8666. "Once an original hearing decision becomes final, either party may seek review by the circuit court on the ground that the final hearing decision is contradictory to law."<sup>8</sup> A hearing decision becomes final when either the 15 calendar-day period for filing requests for administrative review has expired and neither party has filed such a request, or all timely requests for administrative review have been decided and, if ordered by this Department or DHRM, the hearing officer has issued a revised decision.<sup>9</sup>

In this case, however, the hearing decision is not yet final. Once the hearing officer issued the Second Reconsideration Decision on May 29, 2008, pursuant to this Department's determination in EDR Ruling Nos. 2008-1910, 2008-1915 and 2008-1916, the grievant had 10 calendar days to submit a renewed request for administrative review of the hearing officer's decision regarding attorneys' fees. EDR has received such a renewed request in a timely manner. Therefore, because not all administrative reviews have been decided, the agency's request for permission to appeal to circuit court is premature.<sup>10</sup>

The hearing decision will become a final hearing decision when all timely and appropriate requests for administrative review of the Second Reconsideration Decision, if any, and fees issue have been decided by the EDR Director, and if ordered by EDR, the hearing officer has issued any revised decisions. At that time, the agency may renew its request for permission to appeal to the circuit court in accordance with § 7.3(a) of the *Grievance Procedure Manual*. The basis for any such appeal is limited to the argument that the final hearing decision is contradictory to law.<sup>11</sup>

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Claudia T. Farr  
Director

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<sup>6</sup> *Id.*

<sup>7</sup> Second Reconsideration Decision of Hearing Officer, Case No. 8666, May 29, 2008.

<sup>8</sup> *Grievance Procedure Manual* § 7.3(a).

<sup>9</sup> *Grievance Procedure Manual* § 7.2(d); *see also* *Grievance Procedure Manual* § 7.2(e).

<sup>10</sup> *See id.*

<sup>11</sup> *Grievance Procedure Manual* § 7.3(a).