

Issue: Permission to Appeal to Circuit Court the Hearing Officer's Decision in Case No. 8882; Ruling Date: January 7, 2009; Ruling #2009-2202; Agency: Science Museum of Virginia; Outcome: Permission Denied (premature).



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

**PERMISSION TO APPEAL RULING OF DIRECTOR**

In the matter of the Science Museum of Virginia  
Ruling No. 2009-2202  
January 7, 2009

The Science Museum of Virginia (the agency) has requested permission to appeal to the circuit court the hearing officer's decision in Case No. 8882. For the reasons set forth below, the agency's request is premature.

FACTS

The original hearing officer's decision in this case was issued August 25, 2008, in which the hearing officer concluded that the grievant's employment was inappropriately terminated.<sup>1</sup> On August 28, 2008, the hearing officer received the grievant's petition for attorney's fees.

The agency timely asked the hearing officer to reconsider his opinion and asked both this Department and the Department of Human Resources Management (DHRM) to administratively review the original hearing decision. Following the issuance of an Administrative Review Ruling by EDR<sup>2</sup>, as well as the first reconsidered decision,<sup>3</sup> the hearing officer issued a second reconsidered decision on November 21, 2008.<sup>4</sup> On November 25, 2008, the grievant submitted to the hearing officer a supplemental petition for attorney's fees. Finally, on December 19, 2008, DHRM issued an Administrative Review Ruling in this case.<sup>5</sup>

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. 8882. "Once an original hearing decision becomes final, either party may seek review by the circuit court

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<sup>1</sup> Decision of Hearing Officer, Case No. 8882, issued August 25, 2008, at 7.

<sup>2</sup> EDR Ruling No. 2009-2128, issued November 6, 2008.

<sup>3</sup> Reconsideration Decision of Hearing Officer, Case No. 8882-R, issued September 15, 2008.

<sup>4</sup> Second Reconsideration Decision of Hearing Officer, Case No. 8882-R2, issued November 21, 2008.

<sup>5</sup> DHRM Policy Ruling in Case No. 8882, issued December 19, 2008.

on the ground that the final hearing decision is contradictory to law.”<sup>6</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>7</sup>

In this case, however, the hearing decision is not yet final. The grievance procedure provides that “[t]he hearing officer should issue the fees addendum within 15 calendar days of the issuance of the last of the administrative review decisions.”<sup>8</sup> The last administrative review was issued by DHRM on December 19, 2008, and the hearing officer has not yet issued his fees addendum. Furthermore, the grievance procedure provides that:

Within 10 calendar days of the issuance of the fees addendum, either party may petition the EDR Director for a decision solely addressing whether the fees addendum complies with this Grievance Procedure Manual and the Rules for Conducting Grievance Hearings. Once the EDR Director issues a ruling on the propriety of the fees addendum, and if ordered by EDR, the hearing officer has issued a revised fees addendum, the original decision becomes “final” as described in §7.2(d) and may be appealed to the Circuit Court in accordance with §7.3(a). The fees addendum shall be considered part of the final decision.

Because the hearing officer has not issued his fees addendum, and because the appeals period regarding the addendum has not yet expired, the decision is not final. Therefore, the agency’s request for permission to appeal to circuit court is premature.<sup>9</sup> The hearing decision will become a final hearing decision when the fees issue, as outlined above, is resolved. 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>10</sup>

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Claudia T. Farr  
Director

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<sup>6</sup> *Grievance Procedure Manual* § 7.3(a).

<sup>7</sup> *Grievance Procedure Manual* § 7.2(d); see also *Grievance Procedure Manual* § 7.2(e).

<sup>8</sup> *Grievance Procedure Manual* § 7.2(e).

<sup>9</sup> See *Id.*

<sup>10</sup> *Grievance Procedure Manual* § 7.3(a).