

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 27, 2009; Ruling #2009-2266; Agency: Department of Corrections; Outcome: No Ruling.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2009-2266
March 27, 2009

In an e-mail dated March 24, 2009, the grievant has requested that this Department (EDR) reconsider Ruling Number 2009-2157, 2009-2174, in which EDR addressed the hearing decision in Case Number 8840 and remanded the matter to the hearing officer for further clarification and consideration.

The grievant's request has been reviewed and we conclude that there are no grounds for which reconsideration of EDR's administrative review ruling is appropriate. The issues raised by the grievant in his March 24, 2009 e-mail have either already been considered and addressed in the administrative review, or were raised for the first time in the March 24 request for reconsideration, and are thus untimely.¹ This Department's rulings on matters of compliance are final and nonappealable.²

APPEAL RIGHTS AND OTHER INFORMATION

As noted in the original ruling, both parties will have the opportunity to request administrative review of the hearing officer's reconsidered decision on any new matter addressed in the reconsideration decision (i.e., any matters not previously part of the original decision).³ Any such requests must be **received** by the administrative reviewer **within 15 calendar days** of the date of the issuance of the reconsideration decision.⁴

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.⁵ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction

¹ For example, one issue raised by the grievant -- that time constraints imposed by the hearing officer led to the dismissal, without testimony, of the majority of the grievant's witnesses -- was not previously raised to this Department on administrative review.

² See Va. Code § 2.2-1001(5).

³ See, e.g., EDR Ruling Nos. 2008-2055, 2008-2056.

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

⁵ *Grievance Procedure Manual* § 7.2(d).

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in which the grievance arose.⁶ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁷

Claudia Farr
Director

⁶ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

⁷ *Id.*; see also *Virginia Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).