

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9059;
Ruling Date: September 18, 2009; Ruling #2009-2327; Agency: Department
of Corrections; Outcome: Decision Affirmed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2009-2327
September 18, 2009

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 9059. For the reasons set forth below, this Department finds no reason to disturb the hearing officer's decision in this case.

FACTS

On December 15, 2008, the grievant was issued a Group III Written Notice of disciplinary action with demotion, disciplinary pay reduction and disciplinary transfer for engaging in an inappropriate relationship with a subordinate.¹ On January 8, 2009, the grievant filed a grievance challenging the disciplinary action, and a hearing was held on May 5, 2009.² In a hearing decision dated May 11, 2009, the hearing officer upheld the Group III Written Notice with demotion, transfer, and disciplinary pay reduction.³

The grievant now seeks an administrative review decision 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."⁴ 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.⁵

¹ Decision of Hearing Officer, Case No. 9059, issued May 11, 2009 ("Hearing Decision") at 1.

² Hearing Decision at 1.

³ *Id.* at 1, 7.

⁴ Va. Code § 2.2-1001(2), (3), and (5).

⁵ *Grievance Procedure Manual* § 6.4.

Hearing officers are authorized to make “findings of fact as to the material issues in the case”⁶ and to determine the grievance based “on the material issues and grounds in the record for those findings.”⁷ Further, in cases involving discipline, the hearing officer reviews the facts *de novo* to determine whether the cited actions constituted misconduct and whether there were mitigating circumstances to justify a reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action.⁸ Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.⁹ Where the evidence conflicts or is subject to varying interpretations, hearing officers have the sole authority to weigh that evidence, determine the witnesses’ credibility, and make findings of fact. As long as the hearing officer’s findings are based upon evidence in the record and the material issues of the case, this Department cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case, the grievant’s challenge to the hearing decision largely contests the weight and credibility that the hearing officer accorded to the testimony of those witnesses at the hearing, the resulting inferences that he drew from the testimony and the documentary evidence, the characterizations that he made, and the facts he chose to include in his decision. Such determinations are entirely within the hearing officer’s authority, and indeed, there is record evidence to substantiate this finding. Moreover, the grievant himself apparently admits that the alleged relationship occurred between him and another DOC employee.¹⁰

The grievant also apparently contests the hearing officer’s conclusion that the relationship between the grievant and the other employee violated the Agency’s policy on consensual workplace relationships. However, the hearing officer’s interpretation of state policy is not an issue for this Department to address. Rather, the Director of the Department of Human Resource Management (DHRM) (or her designee) has the authority to interpret all policies affecting state employees, and to assure that hearing decisions are consistent with state and agency policy.¹¹ In this case, the grievant requested an administrative review of the hearing decision by the DHRM Director. DHRM’s ruling, which did not overturn the hearing officer’s decision, was issued on June 11, 2009.

⁶ Va. Code § 2.2-3005.1(C).

⁷ *Grievance Procedure Manual* § 5.9.

⁸ *Rules for Conducting Grievance Hearings* § VI(B).

⁹ *Grievance Procedure Manual* § 5.8.

¹⁰ To the extent the grievant argues that the hearing officer was biased in this matter, he has not claimed nor presented evidence that the hearing officer had a “direct, personal, substantial or pecuniary interest” in the outcome of the grievance. Accordingly, this Department cannot conclude that the hearing officer showed actionable bias in this case. See EDR Ruling No. 2009-2300.

¹¹ Va. Code § 2.2-3006 (A); *Grievance Procedure Manual* § 7.2(a)(2).

APPEAL RIGHTS AND OTHER INFORMATION

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 and, if ordered by EDR or DHRM the hearing officer has issued a revised decision.¹² 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.¹³ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁴

Claudia T. Farr
Director

¹² *Grievance Procedure Manual* § 7.2(d).

¹³ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

¹⁴ *Id.*; see also *Virginia Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319 (2002).