

Issue: Permission to Appeal to Circuit Court – Hearing Decision in Case No. 9194; Ruling Date: October 30, 2009; Ruling #2010-2459; Agency: Department of Motor Vehicles; Outcome: Request Premature.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

PERMISSION TO APPEAL RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling No. 2010-2459
October 30, 2009

The Department of Motor Vehicles (DMV or the agency) has requested permission to appeal to the circuit court the hearing officer's decision in Case No. 9194. For the reasons set forth below, the agency's request is premature.

FACTS

On April 6, 2009, the grievant timely filed a grievance to challenge her transfer from Location C to Location W.¹ The grievance was qualified for a hearing and a hearing was held on October 19, 2009.² In a decision dated October 21, 2009, the hearing officer rescinded the grievant's transfer to Location W and ordered that she be returned to Location C.³ Pursuant to Va. Code § 2.2-3006(B), the agency now seeks approval from the Director of this Department to appeal the hearing officer's decision in Case No. 9194.

DISCUSSION

As explained in § 7.3(a) of the *Grievance Procedure Manual*, "[o]nce 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." 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.⁴

In this case, the hearing decision was issued on October 21, 2009 and as such, the parties have 15 calendar days from that date, i.e. until November 5, 2009, to request administrative review. Accordingly, the decision is not yet final because the 15 calendar day period for filing requests for administrative review has not expired. If either one or

¹ Decision of Hearing Officer, Case No. 9194, issued October 21, 2009 ("Hearing Decision") at 1.

² *Id.*

³ *Id.* at 6.

⁴ *Grievance Procedure Manual* § 7.2(d); see also *Grievance Procedure Manual* § 7.2(e).

both of the parties so challenge the hearing officer's decision, the hearing decision will become a final hearing decision when all future timely and appropriate requests for administrative review 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). The basis for any such appeal is limited to the argument that the final hearing decision is contradictory to law.⁵ If neither party challenges the October 21, 2009 decision, the decision will become final and appealable to the circuit court on November 5, 2009, 15 days from October 21st. At that time, the agency may then renew its request for permission to appeal.

Claudia T. Farr
Director

⁵ *Grievance Procedure Manual* § 7.3(a).