

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9211;
Ruling Date: February 9, 2010; Ruling #2010-2466; Agency: Department of
Corrections; Outcome: Hearing Decision Affirmed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2010-2466
February 9, 2010

The grievant has asked this Department to administratively review the hearing officer's decision in Case Number 9211. For the reasons set forth below, we will not disturb the hearing officer's decision.

FACTS

The grievant was previously employed by the Department of Corrections ("DOC" or the "agency") as a Senior Parole Officer.¹ On June 30, 2009, the agency removed the grievant from employment because of his failure to report to work on June 24, 2009.² The grievant timely grieved his removal.³ In his November 5, 2009 decision, the hearing officer held that the grievant's removal was without basis and directed that the agency reinstate the grievant to his former position with back pay less any interim earnings.⁴ Although the grievant does not dispute the hearing officer's conclusion that his removal was without basis, he now asks that the hearing officer be directed to amend and clarify his decision.

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."⁵ 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.⁶

¹ Hearing Decision in Case No. 9211, issued November 5, 2009 ("Hearing Decision"), at 2.

² *Id.* at 1.

³ *Id.*

⁴ *Id.* at 1, 6.

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

⁶ *Grievance Procedure Manual* § 6.4.

In his request for administrative review, the grievant asserts that the hearing officer erred in not “confirm[ing] that the [agency] **did not** (emphasis in original) follow proper policy and procedure in its decision to wrongfully terminate [his] employment,” and in not ordering the agency “to promptly pay [the grievant] full back pay under Workers’ Compensation guidelines and the Agency’s standard practices.” These issues are addressed below.

Policy Issue

The grievant argues that the hearing officer should be directed to specifically find that the agency did not follow policy and procedure in terminating his employment. In particular, the grievant asserts that the hearing officer should be required to hold that the agency “cannot rely on information obtained from a third party administrator and waive its obligation to follow policies and procedures” regarding an employee’s medical release to work.

On reviewing the hearing officer’s decision, we find that the hearing officer made all findings necessary to his holding in favor of the grievant. We therefore find no basis to disturb his decision.

Pay Remedy

Although couched as a challenge to the hearing officer’s decision, the grievant’s claim with respect to the amount of back pay is, in effect, a request for implementation of the hearing officer’s decision. The hearing officer’s duty was to award back pay, if he found such relief appropriate; whether the agency pays the grievant the proper amount of back pay is a matter of implementation.

Under the grievance procedure, if a grievant believes that an agency has not properly implemented a hearing officer’s orders, he may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final hearing decision.⁷ To the extent an agency fails to comply with an order by a hearing officer or an implementation order by a district court, any remedy lies in the judicial system, not the grievance procedure.⁸

CONCLUSION AND APPEAL RIGHTS AND OTHER INFORMATION

For the reasons set forth above, this Department will not disturb the hearing officer’s decision. 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.⁹ Within 30 calendar days of a final

⁷ Va. Code § 2.2-3006(D); *Grievance Procedure Manual* § 7.3(c).

⁸ See EDR Ruling No. 2007-1429.

⁹ *Grievance Procedure Manual* § 7.2(d).

hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.¹⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹¹

Claudia T. Farr
Director

¹⁰ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

¹¹ *Id.*; see also *Virginia Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).