

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9400; Ruling  
Date: December 3, 2010; Ruling No. 2011-2831; Agency: University of Virginia  
Health System; Outcome: Hearing Decision Affirmed.



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

**ADMINISTRATIVE REVIEW OF DIRECTOR**

In the matter of University of Virginia Health System  
Ruling Number 2011-2831  
December 3, 2010

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 9440. For the reasons set forth below, this Department finds no reason to disturb the hearing officer's determination in this matter.

**FACTS**

The relevant facts as set forth in Case Number 9440 are as follows:

The grievant was employed as a Patient Services Supervisor with the University of Virginia Health System (the "Agency") until his demotion effective June 23, 2010.<sup>1</sup> The grievant's typical work shift was from 4 p.m. until 12:30 a.m.<sup>2</sup>

The hearing officer found that the Agency had experienced problems with employees bringing their children to the workplace during work hours. Agency managers instructed employees not to bring their children to the workplace. The hearing officer found that grievant knew of this prohibition because several of his subordinates had brought children to the workplace and he was involved in the process of informing those employees not to bring their children with them to work.<sup>3</sup>

On June 7, 2010, the grievant reported to work approximately thirty minutes prior to his shift beginning at 4 p.m. He was scheduled to work until 12:30 a.m. the following day. The grievant met with his supervisor, but he did not mention his intent to leave the workplace during the shift. At approximately 9:48 p.m., the grievant left the worksite without notifying anyone. At approximately 11:31 p.m., the grievant returned to the worksite with his son. The grievant's son remained near the grievant while he continued to work. At approximately 12:26 a.m. on June 8, 2010, the grievant and his son left the workplace.<sup>4</sup>

On June 16, 2010, the grievant's supervisor asked the grievant whether he had worked his entire scheduled shift on June 7, 2010, and if there were any incidents out of the ordinary. The

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<sup>1</sup> Decision of Hearing Officer, Case No. 9440, issued November 1, 2010 ("Hearing Decision") at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

grievant stated that he had worked the whole day and nothing out of the ordinary occurred.<sup>5</sup> The supervisor asked the grievant to provide a written statement to that effect. The grievant wrote:

I couldn't think of anything that would have me missing from work for 4 hours on Monday 6/7/10. To my recollection I was on grounds from 4 p.m. to 12:30 a.m.<sup>6</sup>

On June 23, 2010, during a disciplinary predetermination meeting, the supervisor again asked the grievant if he was at work for his entire shift on June 7, 2010. The grievant denied leaving work that day. The supervisor informed the grievant that he had a badge access report and video surveillance showing the grievant leaving the loading dock on June 7, 2010. At that point, the grievant admitted he left the workplace and drove to another county to pick up his son.<sup>7</sup> As a result, on June 23, 2010, the grievant was issued a Formal Performance Improvement Counseling Form with demotion for leaving the worksite without notifying his supervisor, bringing his child into the workplace, and untruthfulness regarding the event.<sup>8</sup>

On July 21, 2010, the grievant timely filed a grievance to challenge the Agency's action. On October 13, 2010, the Department of Employment Dispute Resolution ("EDR") assigned this Appeal to a Hearing Officer. On October 29, 2010, a hearing was held at the Agency's location.<sup>9</sup> In a November 1, 2010 hearing decision, the hearing officer upheld the disciplinary action.<sup>10</sup> In addition, the hearing officer denied the grievant's request for reconsideration.<sup>11</sup>

### 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."<sup>12</sup> 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.<sup>13</sup>

The grievant's request for administrative review primarily challenges the hearing officer's findings of fact. Hearing officers are authorized to make "findings of fact as to the material issues in the case"<sup>14</sup> and to determine the grievance based "on the material issues and the grounds in the record for those findings."<sup>15</sup> 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.<sup>16</sup> Thus, in disciplinary actions, the hearing officer has the authority to determine whether the agency has

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> See Reconsideration Decision of Hearing Officer, Case No. 9440-R, issued November 29, 2010, at 1.

<sup>12</sup> Va. Code § 2.2-1001(2), (3), and (5).

<sup>13</sup> See *Grievance Procedure Manual* § 6.4(3).

<sup>14</sup> Va. Code § 2.2-3005.1(C).

<sup>15</sup> *Grievance Procedure Manual* § 5.9.

<sup>16</sup> *Rules for Conducting Grievance Hearings* § VI(B).

established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.<sup>17</sup> 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.

Here, the grievant simply contests the hearing officer's findings of fact, the weight given to the grievant's written statement, the credibility he accorded to the testimony of the two witnesses, and the facts included in the hearing decision. Such determinations of disputed facts are within the hearing officer's authority as the hearing officer considers the facts *de novo* to determine whether the disciplinary action was appropriate.<sup>18</sup> This Department cannot find that the hearing officer exceeded or abused his authority where, as here, the findings are supported by the record evidence and the material issues in the case. Specifically, two witnesses testified that the grievant was fully aware of the agency's policy prohibiting employees from bringing their children to the workplace.<sup>19</sup> Furthermore, the grievant's supervisor testified that the grievant did not seek prior approval to leave work early that day,<sup>20</sup> nor did the grievant admit to the early departure and return with his child until video surveillance and the badge access report were shown to him.<sup>21</sup> Accordingly, because the hearing officer's findings are based upon evidence in the record and the material issues of the case, this Department has no reason to remand the decision.

#### APPEAL RIGHTS

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.<sup>22</sup> 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.<sup>23</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>24</sup>

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Claudia T. Farr  
Director

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<sup>17</sup> *Grievance Procedure Manual* § 5.8.

<sup>18</sup> *Rules for Conducting Grievance Hearings* § VI(B).

<sup>19</sup> See Hearing Recording at 16:20 through 16:56 (testimony of supervisor) and Hearing Recording at 42:58 through 43:45 (testimony of administrator).

<sup>20</sup> See Hearing Recording at 21:31 through 23:07 (testimony of supervisor).

<sup>21</sup> See Hearing Recording at 13:00 through 14:18 (testimony of supervisor).

<sup>22</sup> *Grievance Procedure Manual* § 7.2(d).

<sup>23</sup> Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

<sup>24</sup> *Id.*; see also *Virginia Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).