Issue: Reconsideration of Administrative Review Ruling No. 2011-2819; Ruling Date: January 18, 2011; Ruling No. 2011-2868; Agency: Department of Labor and Industry; Outcome: No Ruling.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERATION RULING OF DIRECTOR

In the matter of Department of Labor and Industry
Ruling No. 2011-2868
January 18, 2011

In a letter received by this Department (EDR) on December 31, 2010, the grievant requests reconsideration of EDR Ruling Number 2011-2819, in which EDR addressed the grievant's request for administrative review of the hearing decision in Case Number 9410. In EDR Ruling Number 2011-2819, this Department found, in part, that the additional information the grievant sought to introduce was not "newly discovered." In her December 31st request for reconsideration, the grievant alleges that the evidence she presented in her earlier request for administrative review to EDR was "newly discovered" because she was not aware of the information until after the hearing was over.

The grievant's December 31st request has been reviewed and we conclude that there are no grounds for which reconsideration of EDR's administrative review ruling is appropriate or permitted at this stage in the grievance process. The plain language of the *Grievance Procedure Manual* precludes the issuance of multiple (revised) administrative review rulings by the EDR Director. Section 7.2(d) of the *Grievance Procedure Manual* states that a "hearing officer's original decision becomes a final hearing decision with no further possibility of administrative review, when . . . all timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision."

In this case, the hearing officer was not asked to reconsider his decision; the Director of EDR issued a ruling on November 29, 2010, upholding the decision; and also on November 29, 2010, the DHRM Director's designee issued a ruling in response to the grievant's request for administrative review to that Department. Thus, pursuant to § 7.2 (d), the last of the timely requests for administrative reviews was decided on November 29, 2010, and the hearing officer had not been ordered to issue a revised decision by EDR or DHRM. Accordingly, on November 29, 2010, the original hearing decision became the final hearing decision with no further possibility of administrative review.[1] As such,

[1] The grievance procedure's appeal framework was never intended to impede administrative reviewers from carrying out their statutory obligations. However, if the administrative review process were open-ended, allowing for multiple (revised) opinions, the judicial appellate process would be derailed through the loss of a clear, defined point at which hearing decisions becomes final and ripe for judicial appeal.

this Department will not consider the grievant's December 31st request for reconsideration of EDR Ruling 2011-2819.[2]

This Department's rulings on matters of compliance are final and nonappealable.[3]

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Claudia T. Farr
Director

[2] Moreover, the issues raised by the grievant in her December 27, 2010 letter were previously considered and addressed in the earlier administrative review and despite the grievant's contention to the contrary, the information the grievant seeks to introduce does not appear to meet the definition of "newly discovered evidence." *See* EDR Ruling Number 2011-2819; *see also* Boryan v. United States, 884 F.2d 767, 771 (4th Cir. 1989) (granting relief based upon newly discovered evidence, requires the party to show: "(1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has been exercised; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended.") (quoting Taylor v. Texgas Corp., 831 F. 2d 255, 259 (11th Cir. 1987)).

[3] *See* Va. Code § 2.2-1001(5); 2.2-3003(G).