

Issue: Compliance – Grievance Procedure (Administrative Review); Ruling Date: September 15, 2011; Ruling No. 2012-3045; Agency: Department of Behavioral Health and Developmental Services; Outcome: No Ruling – Declined to Review.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2012-3045  
September 15, 2011

The grievant has again requested that this Department (EDR) administratively review the hearing officer's decision in Case 9498. This Department reviewed that decision in EDR Ruling No. 2011-2904. After careful examination of the hearing officer's decision, this Department found no reason to disturb it. For the reasons set forth below, this Department will not intervene now.

FACTS

The facts of this case were set forth in full in EDR Ruling No. 2011-2904. The grievant was issued a Group I Written Notice of disciplinary action for failure to follow policy and failure to report an accident in a state vehicle. Grievant was removed from employment based upon the accumulation of disciplinary action.

The grievant grieved the discipline and a hearing took place on February 3, 2011. Finding that the grievant had committed the misconduct and that no mitigating circumstances warranted a lesser sanction, the hearing officer issued his February 4, 2011 hearing decision in which he upheld the discipline in its entirety. The grievant requested an administrative review and on March 8, 2011, this Department issued EDR Ruling No. 2011-2904 which upheld the hearing decision in its entirety.

DISCUSSION

*Request to Reopen Grievance Case No. 9498*

The grievant seeks to reopen Case No. 9498 based on newly discovered evidence. However, administrative reviewers, i.e., the hearing officer, the Director of this Department, and the Director of the Department of Human Resource Management (DHRM), do not have the authority or jurisdiction to consider evidence that is discovered outside of the mandated 15

calendar day period for filing requests for administrative review.<sup>1</sup> If administrative reviewers were allowed to address evidence discovered after the 15 calendar day period has expired, the finality of the grievance process would be severely hindered. And while the grievance procedure's appeal framework was never intended to impede administrative reviewers from carrying out their statutory obligations, if the administrative review process were open-ended, allowing for multiple (revised) opinions based on evidence discovered outside of the 15 calendar day period, 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. Similarly, the process for seeking implementation of a final hearing decision would be thwarted by the absence of any definitive point at which decisions could be considered final and ripe for petition.<sup>2</sup> Accordingly, the grievant's request to reopen Case No. 9498 based on newly discovered evidence must be denied due to the untimeliness of her request.

The grievant asserts that she did not know that she had a right to seek a stay of the hearing when one of her witnesses was unavailable for the hearing. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>3</sup> A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner.

#### CONCLUSION AND APPEAL RIGHTS

The hearing decision is final and there are no remaining appeal options.

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Claudia T. Farr  
Director

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<sup>1</sup> See e.g., EDR Ruling #2008-1740 and EDR Ruling #2007-1576. See also *Grievance Procedure Manual* § 7.2(a) ("all requests for review must be made in writing, and *received* by the administrative reviewer, within 15 calendar days of the date of the original hearing decision.")

<sup>2</sup> Va. Code § 2.2-3006 (C) states "[t]he hearing officer's final decision shall be effective from the latter of the date issued or the date of the conclusion of any administrative review and judicial appeal, and shall be implemented immediately thereafter, unless circumstances beyond the control of the agency delay such implementation." Section 2.2-3006 (D) states "[e]ither party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision or recommendation of a hearing officer." Va. Code § 2.2-3006 (D).

<sup>3</sup> See, e.g., EDR Ruling No. 2011-2829; EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.