

Issue: Compliance – Grievance Procedure (Administrative Review); Ruling Date: September 27, 2011; Ruling No. 2012-3058; Agency: Department of Environmental Quality; Outcome: No Ruling.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Environmental Quality
Ruling Number 2012-3058
September 27, 2010

The grievant has requested that this Department provide clarification regarding EDR Ruling No. 2011-3002. For the reasons set forth below, this Department will not further rule on this matter.

FACTS

The facts of this case are set forth in detail in EDR Ruling No. 2011-3002. In that ruling, this Department addressed a number of objections raised by the grievant in her original request for administrative review of Case Number 9458/9490. Having found no error with the original May 13, 2011 hearing decision, this Department upheld the decision. In this new request for “clarification,” the grievant now raises objections to EDR Ruling No. 2011-3002 and renews objections to the original hearing decision.

DISCUSSION

Once this Department issues its administrative review, it no longer has jurisdiction to rule further. As we have ruled in other prior cases, the plain language of the *Grievance Procedure Manual* precludes the issuance of multiple administrative review rulings by the EDR and Department of Human Resources Management (“DHRM”) Directors.¹ EDR Ruling No. 2011-3002 instructed that the only remaining right of appeal was to the circuit court once the last timely initiated administrative review request had been answered.

Even if this Department could further rule, none of the representations in the instant ruling request would have altered the underlying reasoning set forth in EDR Ruling No. 2011-3002. For instance, the grievant asserts that the “EDR Decisions appear to focus on eyesight as the only element of the grievant’s disability.” This was addressed in note 18 in EDR Ruling 2011-3002, which held that: “In a supplement to her Request for Administrative

¹ See EDR Ruling Nos. 2010-2538; 2010-2500, 2009-2328; 2006-1348; 2006-1289; 2004-859. Moreover, 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 become final and ripe for judicial appeal.

Review, the grievant asserts that she suffered disabilities other than those related to vision. Assuming the truth of this assertion, again, it is difficult to see how any such disabilities relate to the charges that were upheld [failure to follow her supervisor's instructions]." Likewise, the grievant points to a date in the decision that she contends constitutes a critical error. Again, assuming the truth of this assertion, it is difficult to see how the date discrepancy relates to the charges that were upheld--failure to follow her supervisor's instructions. Finally, the grievant asserts that EDR Ruling 2011-3002 "only comments on one of the case examples" of other employees who allegedly committed similar infractions but were purportedly treated more favorably than the grievant. EDR Ruling 2011-3002 addressed two employees as follows:

The hearing decision does not expressly address these situations regarding other employees but, based on the particular facts of this case, mitigation does not appear to be warranted here. In the case of the first individual, there was testimony that this person was subjected to disciplinary action. The grievant asserts that this testimony indicates that she kept her job but, based on a review of the testimony by this Department, it is not entirely clear that this was the case. Nevertheless, if we were to assume that this other employee was not discharged, the grievant has not submitted sufficient evidence that she is similarly situated to that individual. They were both disciplined for matters related to time cards but for different acts—one for exhausting her leave balance, and the other (the grievant) for refusing to accurately submit leave, correct erroneous submissions, and failing to follow the instruction not use timecards as a forum to argue with her supervisor about rejected timecard submissions.

EDR Ruling No. 2011-3002 also discussed a third employee in note 16 as follows:

In her supplement to her Request for Administrative Review, the grievant asserts that a third individual testified that he had timecards rejected on numerous occasions but that he had never been disciplined. This is essentially correct. However, this individual, testified that typically if his card was rejected, usually it would state the reason for the rejection on the card and he would correct it, if his error. If something like a miscommunication caused the rejection, he would go to his supervisor and try to work out. On cross-examination, this employee was asked if he had ever had a single card rejected more than once. The witness responded that this has happened a "few" times, "two or three, three or four, a half dozen" times during the over 30 years he has been with the agency. This witness reiterated that when there was a timecard issue, typically he would go to his supervisor and ask "what have I done wrong," then he would "work it out." Based on the entirety of the record, we cannot conclude that the grievant was similarly situated to this individual. In contrast to this witness who testified that he attempted to "work it out" with his supervisor, the hearing officer found the grievant consistently challenged the Manager over minor matters," apparently including timecards.

Thus, despite the grievant's claim to the contrary, EDR Ruling 2011-3002 addressed and commented on each of the three employees cited by the grievant in her original request for administrative review and supplement.

In sum, this Department has no authority to rule further and, even if it did, the outcome would have remained the same. As EDR Ruling 2011-3002 instructed, 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.² The last administrative review was apparently issued by the Department of Human Resource Management on August 10, 2011 and thus the original decision became final on that date. As EDR Ruling 2011-3002 instructed, parties had 30 calendar days from that date to appeal the decision to the circuit court in the jurisdiction in which the grievance arose.³

Claudia T. Farr
Director

² *Grievance Procedure Manual* § 7.2(d).

³ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).