

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9846; Ruling
Date: August 9, 2012; Ruling No. 2013-3405; Agency: Department of Juvenile
Justice; Outcome: Hearing Decision in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resources Management
Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW

In the matter of the Department of Juvenile Justice
Ruling Number 2013-3405
August 9, 2012

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management administratively review the hearing officer's decision in Case Number 9846. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

In Case Number 9846, the grievant was disciplined for violating policy by failing to submit a complete incident report and being out of position during the cited incident.¹ In the July 23, 2012 hearing decision, the hearing officer upheld the disciplinary action on both bases.² The grievant now seeks administrative review from EDR.

DISCUSSION

By statute, EDR 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."³ If the hearing officer's exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.⁴

The grievant's request for administrative review addresses his arguments that he complied with certain policies that allegedly related whether he was out of position during the incident in question. Whether the hearing decision complies with state or agency policy is not a determination for EDR.⁵ The grievant has already requested administrative review from the Director of DHRM. As such, these matters will not be addressed here as they will be considered under that review.

To the extent the grievant's request for review can be read as a challenge to the hearing officer's findings of fact and/or the weight and credibility that he accorded to evidence presented

¹ Decision of Hearing Officer, Case No. 9846 ("Hearing Decision"), July 23, 2012 at 1, 3 – 4.

² *Id.* at 3 – 5.

³ Va. Code § 2.2-1202.1(2), (3), and (5).

⁴ See *Grievance Procedure Manual* § 6.4(3).

⁵ Va. Code § 2.2-3006(A); *Grievance Procedure Manual* § 7.2(a).

and testimony given at the hearing, there is still no basis for EDR to intervene. Hearing officers are authorized to make “findings of fact as to the material issues in the case”⁶ and to determine the grievance based “on the material issues and grounds in the record for those findings.”⁷ 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.⁸ Thus, in disciplinary actions the hearing officer has the authority to determine whether the agency has established by a preponderance of the evidence that the action taken was both warranted and appropriate under all the facts and circumstances.⁹ 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, EDR cannot substitute its judgment for that of the hearing officer with respect to those findings.

In this case, the grievant’s request provides no indication that there was insufficient evidence to support the hearing officer’s factual findings and ultimate conclusions. Indeed, even if we were to assume that the grievant’s arguments are correct and he was, in fact, not out of position, the grievant was also disciplined for failing to submit a complete incident report. Nothing in the grievant’s request for review challenges that finding. Consequently, even if the grievant was inappropriately disciplined for being out of position, there was an independent basis to find that he had violated agency policy. Accordingly, we decline to disturb the decision.

CONCLUSION AND 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.¹⁰ 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.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹²

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⁶ Va. Code § 2.2-3005.1(C).

⁷ *Grievance Procedure Manual* § 5.9.

⁸ *Rules for Conducting Grievance Hearings* § VI(B).

⁹ *Grievance Procedure Manual* § 5.8.

¹⁰ *Grievance Procedure Manual* § 7.2(d).

¹¹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹² *Id.*; see also *Virginia Dep’t of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).