

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9935; Ruling
Date: November 30, 2012; Ruling No. 2013-3485; Agency: James Madison
University; Outcome: Hearing Decision in Compliance.



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

ADMINISTRATIVE REVIEW

In the matter of James Madison University
Ruling Number 2013-3485
November 30, 2012

James Madison University (the University) has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer's decision in Case Number 9935. For the reasons set forth below, EDR has no basis to disturb the decision.

FACTS

The underlying facts in Case Number 9935 are not pertinent to EDR's review of this matter. In short, the grievant was issued a Group II Written Notice with termination.¹ The hearing officer found that the University had met its burden of proof to support the Group II Written Notice.² However, because the grievant had no other active disciplinary actions, the termination could not be upheld under state policy.³ The agency now appeals to this Office.

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."⁴ 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.⁵

The issue primarily raised by the University on appeal is the hearing officer's determination that state policy does not authorize the termination of an employee on the basis of a single Group II Written Notice. To the extent the University's arguments on this point address questions of the hearing officer's compliance with the grievance procedure, we find no violation. The hearing officer's determinations were consistent with this Office's understanding of the Standards of Conduct. Ultimately, however, whether the hearing decision complies with state or

¹ See Decision of Hearing Officer, Case No. 9935, Nov. 15, 2012 ("Hearing Decision"), at 1.

² *Id.* at 3.

³ *Id.*

⁴ Va. Code § 2.2-1202.1(2), (3), and (5).

⁵ See *Grievance Procedure Manual* § 6.4(3).

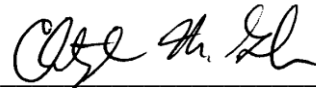
agency policy is not a determination for EDR, but rather for the Director of DHRM.⁶ The agency has also requested administrative review from the Director of DHRM. As such, these matters will not be addressed here as they will be considered under that review.

The University also questions that the hearing officer engaged in inappropriate mitigation. However, as indicated clearly in the decision, the hearing officer did not reduce the penalty of termination on the basis of mitigation.⁷ Indeed, the hearing officer found there was no basis for mitigation here.⁸ Rather, the hearing officer reduced the penalty to be consistent with the maximum allowable penalty under policy for a single Group II Written Notice. Consequently, the University's argument as to mitigation is misplaced. There was no mitigation and we will not address this issue further.

While we understand the University's apparent frustration with the result in this decision, EDR has reviewed nothing in the decision that warrants remand. The University is correct to argue that the grievant could have been terminated for his actions. The hearing officer stated as much in the decision.⁹ However, a single Group II Written Notice does not support termination under the Standards of Conduct. The University has presented no indication that issuing the Written Notice as a Group II was simply a mistake, and that it had intended to check the Group III box on the form. It appears that the Group II was the University's apparently intended disciplinary action. As such, the hearing officer's decision was appropriate and consistent with the grievance procedure.

CONCLUSION AND APPEAL RIGHTS

Based on the foregoing, EDR has no basis to disturb the hearing officer's decision in consideration of the grounds raised by the University. 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 § 2.2-3006(A); *Grievance Procedure Manual* § 7.2(a).

⁷ Hearing Decision at 3 – 4.

⁸ *Id.* at 4.

⁹ *Id.* at 3.

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 (2002).