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ADMINISTRATIVE REVIEW

In the matter of the Department of Juvenile Justice
Ruling Number 2025-5880
May 14, 2025

The grievant 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 12209. For the reasons set forth below, EDR will not disturb the hearing officer's decision.

FACTS

The relevant facts in Case Number 12209, as found by the hearing officer, are as follows:¹

The Facility is a secure juvenile correctional facility that serves juvenile residents ranging from 14 to 20 years of age.

The Facility has a medical department that employs registered nurses and licensed practical nurses (LPNs) to provide medical services to the juvenile residents of the Facility. Based on the descriptions provided at the hearing, the Facility has an older section referred to as the "Existing Section" which includes housing units (or residential pods), cottages that also serve as residential pods, and a medical unit. The Facility also has a newer section referred to as the "Expansion Section" which includes eight residential pods and a medical unit. Although any nurse working at the Facility may be assigned to work in either the Existing Section or the Expansion Section on a particular day, some nurses may be assigned to one Section or the other on a regular basis. Based on the testimony during the hearing, the Expansion Section is accessible without climbing any stairs, but certain areas of the Existing Section may require the use of stairs to gain entry. It was unclear whether ramps also may be available to access those parts of the Existing Section.

Prior to her dismissal, Grievant worked at the Facility as an LPN. Grievant testified that during her employment at the Facility, she was primarily assigned to

¹ Decision of Hearing Officer, Case No. 12209 ("Hearing Decision"), Apr. 18, 2025, at 2-7 (footnotes omitted).

work in the medical unit in the Expansion Section. Grievant's Employee Work Profile (EWP) identified the core responsibilities of Grievant's job as follows: direct patient care (25 percent), support of a safe and efficient clinical environment (25 percent), medication administration (20 percent), ensuring continuity of medical care (15 percent), and responds to medical emergencies and security events (5 percent). Among the specific duties involved in these categories were:

- Health screening (under supervision)
- Triaging health complaints and requests
- Assessing residents prior to placement in holding rooms, risk of self-injury, etc.
- Communicating patient needs with health care providers
- Direct patient care (under supervision)
- Chart/records maintenance
- Equipment checks and maintenance
- Keeping workspaces clean
- Medication administration and documentation
- Providing emergency care as required, including performing CPR, using AED, applying oxygen, and using first aid techniques.

Grievant was approved for a period of short-term disability from August 18, 2023 through February 4, 2024. Grievant returned to work on February 8, 2024, with the following medical restrictions: no pushing carts for 4 weeks, no standing for long periods of time, no heavy lifting, and requires frequent breaks to elevate her leg. Upon her return, the agency considered Grievant to be in long-term disability-working status (LTD-W) as of February 9, 2024. Nurse Manager testified that when Grievant was returning to work, Nurse Manager was asked by an Agency benefits consultant if she could accommodate Grievant's restrictions for four weeks and Nurse Manager confirmed that she could. Nurse Manager also identified specific duties that Grievant could perform within her restrictions to be included as part of a "Transitional Employment Plan." Those specific duties included:

- No medication plans
- Can complete chart audits
- Checking MAR's and completing supervisory audits of MAR's
- Restocking/organization of treatment rooms
- Reordering meds and refills
- Other task within her limits

Grievant testified that when she returned to work in the Expansion Section medical unit, it was like she had "not missed a beat." According to Grievant, she worked approximately 40 hours each week. Although she could not push the medicine carts due to her restrictions, Grievant testified that she continued to perform other LPN duties consistent with work she had performed prior to her short-term disability leave when she was the "third nurse" on a particular shift. According to Grievant and Nurse Manager, when there were three nurses working a shift in the Expansion Section, only two of the nurses could be assigned to push the medicine carts, so the "third nurse" would perform the other duties of an LPN,

including temperature checks, paperwork, reports, checking equipment, inventory and counting materials, and other duties.

On or about February 23, 2024, Grievant submitted the Agency's required forms to request disability accommodations. By memorandum dated March 19, 2024, the Agency's ADA Coordinator issued a memorandum to Grievant which granted the following accommodations on a temporary basis until May 9, 2024:

- Not to be pushing medication carts.
- Cannot stand for long periods and will require frequent breaks.
- No heavy lifting.
- 3 x 15-minute breaks per shift.
- No standing more than 45 minutes within every 1.5 hours of time

The ADA Coordinator noted that Grievant's position "requires a high degree of standing, movement, and pushing of medication carts." The memorandum noted that

[d]ue to this organizational need and expectation, it is my assessment that the [Agency] will not be able to grant your preferred accommodation request for an extended period. However, that does not mean there are no alternative accommodation options available to you. We will reassess this accommodation on 5/9/2024.

The Employee Work Profile for Grievant's position and the accommodations that Grievant had requested and been granted by the Agency did not include any restrictions or prohibitions associated with climbing stairs/ramps or working in housing units (or residential pods) where juvenile residents resided.

On March 26, 2024, Nurse Manager requested that Grievant check AEDs and first aid kits in the Facility and that she complete those checks during the first two weeks of April.

After Nurse Manager requested that Grievant perform the AED checks across the Facility, Grievant asked Nurse Manager questions regarding the process for conducting such checks. Grievant also expressed concern that going to certain areas of the Facility was outside the scope of what she understood her work restrictions to be. Based on her testimony, Grievant believed at that time that because she was on "restricted" duties, she was not allowed or required to walk outside of her "normal" work area, the Expansion Section, and into housing units except during medical emergencies. Grievant testified that her understanding was that security personnel were not allowed to go into areas with the juvenile residents while they were on "restricted duties" due to safety and liability concerns and she had been advised by an employee relations consultant that the Facility would have the same safety and liability concerns for a nurse with restricted duties. Grievant further testified that she was concerned that her medical conditions made her unsteady while walking and she believed that her risk of falling increased if she

walked into the areas outside of the Expansion Section and in areas where juvenile residents resided.

Grievant testified that based on her concerns, she was advised by an employee relations consultant to obtain a note from her medical provider stating that Grievant could not be around residents while she had medical restrictions.

On or about April 4, 2024, Grievant obtained a note from one of her health care providers stating:

Due to current health condition, patient is not ideal candidate to work in juvenile departments due to unsteady gait. Please allow for patient to reduce frequent standing heavy lifting/pulling, walking long distances or climbing of stairs.

On or about April 8, 2024, Grievant obtained a note from the same health care provider that provided the April 4th note. The note stated:

Due to current health condition, patient is not ideal candidate to work in juvenile departments due to unsteady gait. Please allow for patient to reduce frequent standing, heavy lifting/pulling, walking long distances or climbing of stairs until 7/31/24. Patient should not be pushing medication carts, standing longer than 45 minutes within every 1.5 hours period of time Do not carry > 20 lbs. Will require 3 15-minute breaks per shift.

On April 10, 2024, an Agency employee relations consultant sent an email to Grievant notifying her that “HR” had received her “ADA Packet” and asking Grievant if she was “able to send us a resume; this will help us reviewing your ADA packet for a possible job placement.” Grievant testified that she never provided the Agency with the requested resume because on April 19, 2024, the Agency advised Grievant that she was being assigned to a post where she would monitor juvenile residents’ computer and internet use.

It appears that on or about April 17, 2024, the Agency’s human resources director became aware of the April 4, 2024, note from Grievant’s health care provider indicating that Grievant “was not an ideal candidate to work in juvenile departments due to unsteady gait.” The Agency’s human resources director advised her staff to remove Grievant from the worksite immediately and contact the third-party administrator to advise them that the Agency could no longer accommodate Grievant’s medical restrictions. Consistent with the human resources director’s instructions, it appears that the Agency’s human resources and employee relations staff interpreted the note from Grievant’s health care provider as “a note provided by her doctor that she cannot work in a juvenile detention center, so she could not come back on site as a result.”

On April 18, 2024, Grievant provided the Agency with another note from her health care provider stating:

Due to current health condition, patient is not ideal candidate to work directly with juveniles in juvenile departments due to unsteady gait. Please allow for patient to reduce frequent standing, heavy lifting/pulling, walking long distances or climbing stairs until [July 31, 2024]. Patient should not be pushing medication carts, standing longer than 45 minutes within every 1.5 hours period of time[.] Do not carry > 20 lbs. Will require 3 15-minute breaks per shift. She is appropriate, however, to work in medical office setting.

Based on the evidence and testimony presented during the hearing, on and after April 17, 2024, Nurse Manager was not included in any discussions or determinations as to whether Grievant could perform the essential functions of her job with or without reasonable accommodation. Indeed, based on the evidence presented, it appeared that there was limited consultation with Nurse Manager regarding the extent to which Grievant's limitations could be accommodated aside from the initial inquiry as to whether Nurse Manager could, for four weeks, accommodate the specific restrictions identified by Grievant's health care providers when Grievant returned from short-term disability leave in February 2024.

On April 19, 2024, an Agency benefits consultant advised Grievant that on April 22, 2024, she would begin a "modified duty post" where she would monitor juvenile residents' computer and internet use. Later that same day, the benefits consultant also advised Grievant that "I also heard about your ADA approval, and it is through 05/09/24. I would have your doctor complete new ADA paperwork to continue this ADA Accommodation. I have attached the paperwork for you." The Agency appears to have initially expected Grievant to remain in the modified duty post until May 9, 2024.

Grievant updated a request for reasonable accommodation on or about April 24, 2024. Grievant requested that the accommodations previously requested continue, including "not pushing medication carts/cannot stand for long period of time, frequent breaks, [no] heavy lifting, 3x15 min breaks per shift, no standing more than 45 min within every 1.5 hrs. of time." Grievant provided the Agency with a certification form from her health care provider to support her request on or about May 6, 2024. That certification was subsequently updated and resubmitted to the Agency on or about May 10, 2024. The May 6 form, as completed by Grievant's provider, indicated that Grievant was experiencing leg swelling and pain after pushing a medication cart for prolonged periods. In response to the form's prompt about how the employee's limitations would affect her ability to perform the essential functions of her job, the medical provider noted Grievant's need for three 15-minute breaks throughout the day, such that the grievant would not be standing for more than 90 minutes at a time. This restriction was identified as chronic but potentially controlled with medication. The updated certification Grievant provided from her health care provider indicated that the accommodations should continue until July 31, 2024. This request for accommodations did not request any accommodations with respect to walking long distances, climbing stairs, working with juveniles, or performing work in juvenile resident housing units.

The evidence showed that by May 15, 2024, the Agency had approved the continuation of the modified duty post for Grievant through July 31, 2024. Based on the evidence presented, it also appeared that by that time the Agency had stopped engaging in any discussions as to whether there were potential reasonable accommodations that would allow Grievant to continue to perform her duties as an LPN at the Facility.

According to Grievant, she used her annual leave for an approved, planned vacation from May 22, 2024, through June 4, 2024.

While Grievant was on vacation, the Agency restricted juvenile residents' access to computers, such that the Agency no longer had a need, or positions, for Grievant and other employees to monitor juvenile residents' computer and internet use.

On June 7, 2024, the Facility's human resources manager sent an email to Grievant advising her that:

Per our conversation on Tuesday June 4, 2024, you were informed that we are unable to accommodate your work restrictions beyond 6/4/24. [The third-party administrator] has been notified of this date. Please contact them in regard to your LTD benefits. A revised long term disability letter and forms will be sent to you. If you have any questions, please feel free to call me at the below cell number.

There was no evidence that after the Agency determined that it no longer had a modified duty post for Grievant the Facility's human resources manager or anyone else from the Agency discussed with Grievant or Nurse Manager the status and extent of Grievant's medical limitations or Grievant's ability to perform the essential functions of an LPN at the Facility with or without reasonable accommodations.

On or about June 7, 2024, the agency notified the grievant that they were unable to accommodate her work restrictions; the agency also separated the grievant from employment for inability to meet working conditions.² The grievant timely grieved her separation, and EDR qualified the grievance for a hearing following an appeal of the agency head's qualification denial.³ Following a hearing on March 4, 2025, the hearing officer concluded that the agency's action was not consistent with applicable policy.⁴ As a result, the hearing officer ordered the agency "to reinstate Grievant to Grievant's same position prior to removal, or if the position is filled, to an equivalent position," "to provide Grievant with back pay through July 31, 2024, less any interim earnings accrued during that period," and also to "provide Grievant with back benefits including

² *Id.* at 1, 7; Agency Exs. at 83.

³ Hearing Decision at 1; *see* EDR Ruling No. 2025-5760.

⁴ Hearing Decision at 8-12.

health insurance and credit for leave and seniority that the employee did not otherwise accrue.”⁵ The grievant now appeals the hearing decision to 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”⁶ 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 either party; the sole remedy is that the hearing officer correct the noncompliance.⁷ The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.⁸ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

In her request for administrative review, the grievant appears to contend that she should have been provided further back pay and/or long-term disability benefits beyond that which was addressed by the hearing officer. She also requests “at least [\$]500,000 for [her] pain and suffering.” She explains that she is currently awaiting a determination of permanent disability. As to the request for damages, she argues that the way in which her agency handled her disability accommodations and working situation caused her mental and physical health to worsen. Finally, though she states she is not currently capable to work, she expresses concern that, upon her returning to employment, her agency will “know [her] conditions and will fire [her].”⁹

In finding that the agency misapplied policy in separating the grievant, the hearing officer reasoned as follows:

The preponderance of the evidence showed that the Agency’s separation of Grievant from employment was a misapplication of policy. The evidence showed that Grievant was a person with a disability who was qualified for her position as an LPN. The Agency misapplied policy when it separated Grievant from employment rather than first engaging Grievant in a process to review her specific physical limitations and the essential functions of her job to determine whether there were accommodations that may have enabled Grievant to continue to perform the essential functions of an LPN without imposing undue hardship on the Agency’s operations. Based on the evidence presented, it is reasonable to infer that, if the Agency had not misapplied policy, Grievant could have continued to perform the job duties of an LPN with reasonable accommodations until at least July 31, 2024, consistent with the Agency and Grievant’s expectations as to when Grievant’s health care providers would again review her medical condition and limitations. . . .

Although the Hearing Officer is reinstating Grievant, it is not clear, based on the information provided, whether Grievant is able to perform her work duties

⁵ *Id.* at 13.

⁶ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁷ See *Grievance Procedure Manual* § 6.4(3).

⁸ Va. Code §§ 2.2-1201(13), 2.2-3006(A); see *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁹ Request for Administrative Review.

with or without reasonable accommodations. Consistent with this decision, the Agency is directed to engage in an interactive process to determine the extent of Grievant's current limitations and whether there are reasonable accommodations that would allow Grievant to perform the essential functions of her job without imposing an undue hardship on the Agency's operations.¹⁰

This conclusion appears to be consistent with the remedies contemplated in the *Rules for Conducting Grievance Hearings*, which provides that where a hearing officer finds that a policy has been misapplied, they "may order the agency to reapply the policy from the point at which it became tainted."¹¹ As to the grievant's view that her back pay and/or disability benefits should be extended to a longer period of time, the hearing officer only found that the agency misapplied policy at the time of the grievant's separation. That is, the hearing officer identified the agency's separation of the grievant, contradicting a previously established approval for reasonable accommodations through July 31, as the point at which the policy application was tainted. Therefore, the hearing officer ordered the agency to return the grievant to her employment status at the time that policy was misapplied, and then appropriately reapply any policies as necessary from that point – to include a re-evaluation of the grievant's reasonable accommodations, as the agency deems necessary.

Additionally, it is not clear how the remedy ordered in this case would cause any disruption in the grievant's attempt to seek further disability benefits. State employees subject to DHRM Policy 4.57, *Virginia Sickness and Disability Program*, may be eligible for such benefits as determined by the state's third-party disability administrator. The third-party administrator's benefits determination is distinct from the employer's decision regarding employment status, and only the latter decision was before the hearing officer in this matter.¹² Indeed, the hearing officer did not make findings regarding the grievant's entitlement to benefits beyond July 31, and our review of the record does not indicate that either party presented the issue for substantial consideration. Accordingly, we cannot find that any disability claim by the grievant, or the third-party administrator's determination of that claim, presents a basis to disturb the hearing decision.

Similarly, as the hearing officer pointed out, neither EDR nor the hearing officer has the authority to award damages for pain and suffering.¹³ However, this does not bar the grievant for pursuing damages through some other forum.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to disturb the hearing officer's decision. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing decision becomes a final hearing decision once all timely requests for administrative review have been decided.¹⁴ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit

¹⁰ Hearing Decision at 12-13.

¹¹ *Rules for Conducting Grievance Hearings* § VI(C)(1).

¹² EDR is not aware of any authority for our office to review benefits determinations rendered by the third-party administrator, and we perceive nothing in the hearing officer's decision that purports to make findings regarding the grievant's eligibility for disability benefits. Should the parties seek guidance on how the hearing officer's decision implicates any prior benefits determination, we recommend contacting the third-party administrator.

¹³ E.g., *Rules for Conducting Grievance Hearings* § VI(D)(2).

¹⁴ *Grievance Procedure Manual* § 7.2(d).

court in the jurisdiction in which the grievance arose.¹⁵ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹⁶

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¹⁵ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹⁶ *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).