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THIRD ADMINISTRATIVE REVIEW

In the matter of the Department of Juvenile Justice
Ruling Number 2025-5761
October 9, 2024

The Department of Juvenile Justice (the “agency”) has requested that the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) administratively review the hearing officer’s second remand decision in Case Number 12006. For the reasons set forth below, EDR has no basis to further intervene in the outcome of this case.

FACTS

The relevant facts in Case Number 12006, as found by the hearing officer’s two remand decisions, are hereby incorporated by reference.¹ In the First Remand Decision, the hearing officer reversed her previous finding from the original decision that rescinded the Group II Written Notice and instead upheld the Written Notice as issued.² Following a request for administrative review sought by the grievant, EDR directed that the hearing officer reconsider that decision in EDR Ruling Number 2024-5732 (“second administrative review”). In the Second Remand Decision, the hearing officer has returned to her original outcome, rescinding the Group II Written Notice, based on the agency’s failure to meet its burden to show that the grievant engaged in misconduct.³ The agency now appeals this outcome to EDR.⁴

¹ Remand Decision of Hearing Officer, Case No. 12006 (“First Remand Decision”), June 14, 2024, at 2-9; Remand Decision of Hearing Officer, Case No. 12006 (“Second Remand Decision”), Sept. 3, 2024, at 1-2; *see also* Decision of Hearing Officer, Case No. 12006 (“Hearing Decision”), November 21, 2023, at 2-9 (internal citations omitted).

² First Remand Decision at 16.

³ Second Remand Decision at 2-3.

⁴ The grievant’s attorney has objected to the agency’s submission of an administrative review request at this juncture and argues that the hearing decision is now final. While we understand the grievant’s attorney’s position in this respect, EDR’s practice is to provide appeal rights for remand decisions to ensure parties are provided the opportunity to address any policy or grievance procedure errors in such a decision. EDR’s second administrative review described such appeal rights. *See* EDR Ruling No. 2024-5732. These appeal rights were the same ones that the grievant’s attorney availed herself of in appealing the hearing officer’s First Remand Decision, so it follows that the parties would have the same right to appeal the Second Remand Decision, as well.

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”⁵ 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.⁶ The Director of DHRM also has the sole authority to make a final determination on whether the hearing decision comports with policy.⁷ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

Hearing officers are authorized to make “findings of fact as to the material issues in the case”⁸ and to determine the grievance based “on the material issues and the grounds in the record for those findings.”⁹ 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.¹⁰ 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.¹¹ As long as the hearing officer’s findings are based on 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.

The agency states that “[t]he core issue is whether it was proper to violate the will of the Court by instructing the person who had the juvenile in custody to set the juvenile free.”¹² Indeed, this contention is indicated to be the primary reason why the grievant was disciplined in the first place: violating a court order.¹³ However, the argument that the grievant violated a court order or, as the agency states in its administrative review request, “the will of the Court,” has been addressed in EDR’s second administrative review and, most importantly, by the hearing officer in the First Remand Decision, finding that the grievant substantially complied with the order.¹⁴ EDR has no basis to dispute this finding as a factual determination by the hearing officer based on the available record evidence. To the extent this question involves a legal determination, it may ultimately be for a court to determine with finality through appropriate appeal procedures.¹⁵

The agency refers to testimony from the agency head that “no one in the Agency was authorized to take the type of action the Grievant took on March 25, 2023.”¹⁶ Indeed, testimony from the agency head during the remand hearing essentially suggested that the agency had no

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

⁶ See *Grievance Procedure Manual* § 6.4(3).

⁷ Va. Code §§ 2.2-1201(13), 2.2-3006(A); see *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁸ Va. Code § 2.2-3005.1(C).

⁹ *Grievance Procedure Manual* § 5.9.

¹⁰ *Rules for Conducting Grievance Hearings* § VI(B).

¹¹ *Grievance Procedure Manual* § 5.8.

¹² Agency’s Second Request for Administrative Review at 2.

¹³ See, e.g., EDR Ruling No. 2024-5648 at 6.

¹⁴ First Remand Decision at 11-12; see also EDR Ruling No. 2024-5732 at 2-3.

¹⁵ See Va. Code § 2.2-3006(B).

¹⁶ Agency’s Second Request for Administrative Review at 2.

authority to do anything in the circumstance presented.¹⁷ The hearing officer addressed the agency head's testimony in the First Remand Decision, finding her testimony about the agency's role in detention placements not credible.¹⁸ Weighing the evidence and rendering factual findings on the material issues is squarely within the hearing officer's authority, and EDR has repeatedly held that it will not substitute its judgment for that of the hearing officer where the facts are in dispute and the record contains evidence that supports the version of facts adopted by the hearing officer, as is the case here.¹⁹ For all the reasons described in the hearing officer's remand decisions,²⁰ the grievant addressed a novel situation, without guidance from her management, in an attempt to resolve the situation in her dual-role as an agency employee and providing support to the court. While the agency cited in the Written Notice the possibility of contempt or other consequences for non-adherence to the order,²¹ none of those consequences appear to have occurred. Therefore, we cannot find fault with the hearing officer's ultimate determination that the agency has not met its burden to show that the grievant violated a court order or that the disciplinary action for the grievant's actions was otherwise proper.

To the extent the agency argues that the grievant's actions were without legal authority or violated a Code provision, EDR has not reviewed evidence in the record supporting such a contention. In its administrative review request, the agency argues that the applicable statute was Va. Code § 16.1-249.²² EDR addressed this claim in the second administrative review, stating that it was not clear that this statute applied.²³ EDR would additionally observe that this Code section was not listed on the court order at issue, again, making its applicability unclear.²⁴ Therefore, EDR has no basis to disturb the hearing decision in consideration of this argument as a matter of the grievance procedure. To the extent there is a question of consistency with law, it may be a matter for a court to determine with finality through appropriate appeal procedures.²⁵

Lastly, the agency contends that the grievant should have called the Judge before taking an action that was different than listed on the court order.²⁶ EDR has agreed with the premise underlying this contention as far back as our first administrative review.²⁷ Nevertheless, the hearing officer addressed this argument in the First Remand Decision, finding that the agency did not meet its burden to show that the Judge should have been called in consideration of all the circumstances.²⁸ This was a factual determination made by the hearing officer based on her assessment of the available record evidence. As there is evidence in the record, or a lack thereof, to support the hearing officer's determination, EDR has no basis to dispute the hearing officer's finding.

¹⁷ Remand Hearing Recording, File Z0000764, at 29:10-35:20.

¹⁸ First Remand Decision at 7, 11.

¹⁹ *See, e.g.*, EDR Ruling No. 2014-3884.

²⁰ *See* Second Remand Decision at 1-3.

²¹ Agency Ex. 4.

²² Agency's Second Request for Administrative Review at 2.

²³ EDR Ruling No. 2024-5732 at 3.

²⁴ Agency Ex. 8.

²⁵ *See* Va. Code § 2.2-3006(B).

²⁶ Agency's Second Request for Administrative Review at 2.

²⁷ *See, e.g.*, EDR Ruling No. 2024-5648 at 7.

²⁸ First Remand Decision at 12-13.

CONCLUSION AND APPEAL RIGHTS

For the reasons set forth above, EDR declines to further disturb the hearing officer's decision in this matter. 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.²⁹ 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.³⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.³¹

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²⁹ *Grievance Procedure Manual* § 7.2(d).

³⁰ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

³¹ *Id.*; see also Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).