



JANET L. LAWSON
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

ADMINISTRATIVE REVIEW

In the matter of the University of Virginia Medical Center
Ruling Number 2023-5441
August 5, 2022

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management administratively review the hearing officer’s decision in Case Number 11784. For the reasons discussed below, EDR will not review the hearing officer’s decision pursuant to the grievant’s August 3, 2022 appeal because the request for administrative review is untimely.

The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** [EDR] within 15 calendar days of the date of the original hearing decision. **Received by** means delivered to, not merely postmarked or placed in the hands of a delivery service.”¹ The hearing decision in Case Number 11784 was issued on May 31, 2022, and clearly advised the parties that any request they may file for administrative review must be received by EDR within 15 calendar days of the date the decision was issued.² EDR received the grievant’s request for administrative review on August 3, 2022, which is beyond the 15-calendar-day deadline.

EDR previously considered the University of Virginia Medical Center’s administrative review request of the original hearing decision in this case in EDR Ruling No. 2022-5423. However, the grievant did not submit an appeal at that time, during the original 15-calendar-day period.³ Pursuant to the prior ruling remanding the matter to the hearing officer, a reconsideration hearing decision was issued on July 20, 2022.⁴ As EDR advised in the prior ruling, “both parties will have the opportunity to request administrative review of the hearing officer’s reconsidered decision on any new matter addressed in the revised decision (i.e. any matters not resolved by the original decision).”⁵ While the grievant is timely to request administrative review of the reconsideration hearing decision, none of the issues identified in his appeal submitted on August 3, 2022 address the matters determined in the reconsideration hearing decision, but rather address

¹ *Grievance Procedure Manual* § 7.2(a).

² Decision of Hearing Officer, Case No. 11784, May 31, 2022, at 1, 13.

³ See EDR Ruling No. 2022-5423 at n.4.

⁴ Reconsideration Decision of Hearing Officer, Case No. 11784-R, July 20, 2022.

⁵ EDR Ruling No. 2022-5423, at 3.

matters resolved in the original hearing decision.⁶ To be timely to address matters in the original hearing decision, a request for administrative review must have been submitted within 15 calendar days of the original hearing decision. As the grievant did not do so, EDR must determine that the August 3, 2022 appeal request is untimely and cannot be considered.

Furthermore, the grievant has presented no evidence of any just cause for the delay in submitting the request for administrative review.⁷ EDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.⁸ Any lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. Accordingly, the grievant's request for administrative review by EDR is untimely and will not be considered.

APPEAL RIGHTS

A hearing officer's decision becomes a final hearing decision when the 15-calendar-day period for filing requests for administrative review has expired and neither party has filed such a request or once all timely requests for review have been decided.⁹ Because the grievant's administrative review request to EDR was untimely, the hearing decision became a final hearing decision after the 15-calendar-day period following the reconsideration hearing decision expired on **August 4, 2022**. The parties have 30 calendar days from that date to appeal the decision to the circuit court in the jurisdiction in which the grievance arose.¹⁰ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹¹

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ To the extent the grievant's appeal was intended to challenge the reconsideration decision's conclusion as to severance benefits, the appeal did not articulate with any specificity a basis to disturb that conclusion. Thus, this aspect of the appeal also would not appear to comply with the requirements of the grievance procedure. *See Grievance Procedure Manual* § 7.2(a) (A challenge that the hearing decision is inconsistent with . . . agency policy must refer to a particular mandate in [the] policy with which the hearing decision is not in compliance."). In any event, the findings stated in the reconsideration decision are supported by evidence in the record, for the reasons explained in EDR Ruling Number 2022-5423.

⁷ "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

⁸ *See, e.g.*, EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2018-4643.

⁹ *See Grievance Procedure Manual* § 7.2(d).

¹⁰ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹¹ *Id.*; *see also* Va. Dep't of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).