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ADMINISTRATIVE REVIEW

In the matter of the Virginia Department of Transportation
Ruling Number 2023-5501
December 30, 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 11860. For the reasons discussed below, EDR will not review the hearing officer’s actions or decision because the grievant’s 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 11860 was issued on December 9, 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 December 30, 2022, three days beyond the 15-calendar-day deadline, which expired on December 27, 2022.³

Furthermore, the grievant has presented no evidence of any just cause for the delay in submitting the request for administrative review.⁴ EDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.⁵ 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.

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

² Decision of Hearing Officer, Case No. 11860, December 9, 2022, at 1, 5.

³ Fifteen calendar days after December 9 is actually December 24. However, because that day fell on a weekend, the administrative review request would not be due until the following business day, which was December 27. *See Grievance Procedure Manual* § 7.2(a).

⁴ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁵ *See, e.g.*, EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2018-4643.

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.⁶ 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 expired on **December 27, 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.⁷ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁸

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⁶ See *Grievance Procedure Manual* § 7.2(d).

⁷ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁸ *Id.*; see also *Va. Dep't of State Police v. Barton*, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).