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**ADMINISTRATIVE REVIEW**

In the matter of the Department of State Police  
Ruling Number 2022-5388  
March 31, 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 11762. 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.”<sup>1</sup> The hearing decision in Case Number 11762 was issued on January 13, 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.<sup>2</sup> EDR received the grievant’s request for administrative review on March 18, 2022, seven weeks beyond the 15-calendar-day deadline, which expired on January 28, 2022.

As just cause for his delay in filing,<sup>3</sup> the grievant has provided documentation showing that he attempted to email his request for administrative review to EDR on January 28, 2022, the fifteenth calendar day. However, he sent his request for administrative review to an incorrect email address.<sup>4</sup>

EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>5</sup> A grievant’s lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely

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<sup>1</sup> *Grievance Procedure Manual* § 7.2(a).

<sup>2</sup> Decision of Hearing Officer, Case No. 11762, January 13, 2022, at 1, 5-6.

<sup>3</sup> “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

<sup>4</sup> It appears the grievant sent his email to [edr@edr.virginia.gov](mailto:edr@edr.virginia.gov). The correct email address should have been [edr@dhrm.virginia.gov](mailto:edr@dhrm.virginia.gov).

<sup>5</sup> See, e.g., EDR Ruling No. 2015-4017; EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159.

manner. Although the grievant has demonstrated that he did in fact attempt to submit his request for administrative review within 15 calendar days of when the decision was issued, it is clear that he directed his submission to an incorrect email address. EDR's correct mailing and email addresses appear in the section of the hearing officer's decision addressing appeal rights,<sup>6</sup> on EDR's website,<sup>7</sup> and on other official grievance documents provided or maintained by DHRM.<sup>8</sup> We must therefore conclude that the grievant's request for administrative review is untimely because EDR did not receive it until March 18, 2022 and that the grievant has not presented sufficient evidence of just cause for his late filing. Accordingly, the grievant's request for administrative review 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.<sup>9</sup> 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 **January 28, 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.<sup>10</sup> Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.<sup>11</sup>

Because of the delay in the grievant's submission of his request for administrative review to EDR, it would appear that more than 30 calendar days have passed since the hearing decision became final. As a result, any appeal to the circuit court filed now may be untimely. If the parties have any questions about a possible circuit court appeal, they should contact the clerk's office of the circuit court with jurisdiction over this matter.

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<sup>6</sup> See Hearing Decision at 5-6.

<sup>7</sup> <https://www.dhrm.virginia.gov/employment-dispute-resolution/contactedr>.

<sup>8</sup> For example, the Grievance Form A the grievant used to initiate his grievance would have also included EDR's contact information, including mail and email addresses.

<sup>9</sup> See *Grievance Procedure Manual* § 7.2(d).

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

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