

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10982; Ruling
Date: August 11, 2017; Ruling No. 2018-4598; Agency: Department of Corrections;
Outcome: AHO's decision affirmed.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution¹

ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2018-4598
August 11, 2017

The grievant has requested that the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management administratively review the hearing officer’s decision in Case Number 10982. Because the grievant’s request for administrative review was untimely, EEDR will not review the hearing officer’s actions or decision.

FACTS

The hearing decision in Case Number 10982 was issued on July 7, 2017.² On August 7, 2017, EEDR received the grievant’s request for administrative review. The request provided no explanation for the delayed filing.

DISCUSSION

The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** EEDR 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.”³ Further, the July 7, 2017 hearing decision clearly advised the parties that any request they may file for administrative review must be received by EEDR within fifteen calendar days of the date the decision was issued.⁴ However, EEDR received the grievant’s request for administrative review on August 7, 2017, beyond the fifteen calendar day deadline, which expired on July 24, 2017.⁵ Accordingly, the grievant’s request for administrative review by EEDR is untimely and will not be considered.

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. The *Grievance Procedure Manual* has now been updated to reflect this Office’s name post-merger as the Office of Equal Employment and Dispute Resolution.

² Decision of Hearing Officer, Case No. 10982, July 7, 2017 (“Hearing Decision”), at 1.

³ *Grievance Procedure Manual* § 7.2(a).

⁴ Hearing Decision at 7.

⁵ The fifteenth calendar day from July 7, 2017 was Saturday, July 22, 2017. Section 7.2(a) of the *Grievance Procedure Manual* provides that, when the fifteenth calendar day “falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the request for administrative review is to be filed is

Furthermore, the grievant has presented no evidence of any just cause for the delay in submitting his request for administrative review.⁶ EEDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.⁷ Any lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner.

APPEAL RIGHTS

A hearing officer's decision becomes a final hearing decision when the fifteen 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.⁸ Because the grievant's administrative review request to EEDR was untimely, the hearing decision became a final hearing decision on **July 24, 2017**, after the fifteen calendar day period expired. Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose.⁹



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

closed during normal business hours, the appeal may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed." In this case, therefore, the filing deadline was extended to Monday, July 24, 2017.

⁶ "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

⁷ See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁸ See *Grievance Procedure Manual* § 7.2(d).

⁹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).