EMILY S. ELLIOTT
DIRECTOR

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

ADMINISTRATIVE REVIEW

In the matter of the Virginia Department of Corrections
Ruling Number 2021-5167
October 5, 2020

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 11480. 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 11480 was issued on September 14, 2020, 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 October 1, 2020, two days beyond the 15-calendar-day deadline, which expired on September 29, 2020.

Furthermore, the grievant has presented no evidence of any just cause for the delay in submitting her request for administrative review.[3] EDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.[4] 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.[5]

---

[1] *Grievance Procedure Manual* § 7.2(a).
[2] Decision of Hearing Officer, Case No. 11480, September 14, 2020, at 1, 7.
[3] "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.
[4] *See*, *e.g.*, EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2019-4643.
[5] In addition, the grievant's request for administrative review does not explain the grounds for her appeal of the hearing officer's decision. Pursuant to Section 7.2(a) of the *Grievance Procedure Manual*, a request for administrative review must explain the basis for a party's appeal of a hearing decision. *See Grievance Procedure Manual* § 7.2(a) (requiring the requesting party to refer to the particular provision of policy or the grievance procedure with which the hearing decision does not comply). Even if the grievant's appeal were timely, EDR would therefore have no grounds on which

<u>APPEAL RIGHTS</u>

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 <u>timely</u> 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 **September 29, 2020**. 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]

Christopher M. Grab
Director
Office of Employment Dispute Resolution

---

to assess the appeal on administrative review. In addition to being untimely, the grievant's submission is essentially a nullity.

[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).