

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10220, 10221;
Ruling Date: January 23, 2014; Ruling No. 2014-3794; Agency: Department of
Behavioral Health and Developmental Services; Outcome: No Ruling – untimely.



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

ADMINISTRATIVE REVIEW

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2014-3794
January 23, 2014

The grievant appears to have 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 Numbers 10220/10221. Because the grievant's request for administrative review was untimely, EDR will not review the hearing officer's actions or decision.

FACTS

The hearing decision in Case Numbers 10220/10221 was issued on December 26, 2013.¹ On January 16, 2014, EDR received the grievant's apparent request for an administrative review. The request provided no explanation for the delayed filing.

DISCUSSION

The Grievance Procedure Manual provides that "[r]equests for review must be in writing and *received* by the reviewer within 15 calendar days of the date of the original hearing decision."² Further, the December 26, 2013 hearing decision clearly advised the parties that any request they may file for administrative review must be received by the reviewer within 15 calendar days of the date the decision was issued.³ However, EDR received the grievant's request for administrative review on January 16, 2014, six days beyond the 15 calendar day deadline which expired on January 10, 2014. Accordingly, the grievant's request for administrative review by EDR is untimely.

Furthermore, the grievant has presented no evidence of any "just cause" for the delay.⁴ EDR has long held that it is incumbent upon each employee to know his or her responsibilities

¹ Decision of Hearing Officer, Case Nos. 10220/10221, Dec. 26, 2013 ("Hearing Decision"), at 1.

² *Grievance Procedure Manual* § 7.2.

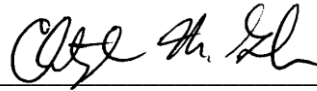
³ Hearing Decision at 4.

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.

under the grievance procedure.⁵ A grievant's lack of knowledge about the grievance procedure and its requirements do 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 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 on **January 10, 2014**, after the 15 calendar day period expired. The grievant has 30 calendar days from January 10, 2014 to appeal the hearing decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must have been that the final decision is contradictory to law.⁷



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Director
Office of Employment Dispute Resolution

⁵ See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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

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