

Issue: Administrative Review of Hearing Officer's Decision in Case No. 10323; Ruling
Date: May 23, 2014; Ruling No. 2014-3894; Agency: Department of Corrections;
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 Corrections
Ruling Number 2014-3894
May 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 Number 10323. 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 10323 was issued on April 29, 2014.¹ On May 20, 2014, EDR received the grievant's request for an 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* the reviewer within 15 calendar days of the date of the original hearing decision."² Further, the April 29, 2014 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 May 20, 2014, six days beyond the 15 calendar day deadline. 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 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.

¹ Decision of Hearing Officer, Case No. 10323, April 29, 2014 ("Hearing Decision"), at 1.

² *Grievance Procedure Manual* § 7.2.

³ Hearing Decision at 5-6.

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. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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 **May 14, 2014**, after the 15 calendar day period expired. The grievant has 30 calendar days from May 14, 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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⁶ See *Grievance Procedure Manual* § 7.2(d).

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