

Issue: Reconsideration of EDR Ruling No. 2016-4353; Ruling Date: June 1, 2016;  
Ruling No. 2016-4363; Agency: Department of Corrections; Outcome: Request  
denied.



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

**RECONSIDERED ADMINISTRATIVE REVIEW**

In the matter of the Department of Corrections  
Ruling Number 2016-4363  
June 1, 2016

In Grievance Hearing Case Number 10765, the hearing officer upheld the grievant's disciplinary termination from employment with the Department of Corrections (the agency).<sup>1</sup> The grievant previously requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management administratively review the hearing officer's decision. EDR issued its review in that case on May 16, 2016.<sup>2</sup> EDR found no basis to disturb the hearing officer's decision.<sup>3</sup>

On May 26, 2016, EDR received from the grievant a new submission by facsimile with various documents and policies including handwritten notations. While the submission included very little description of what the grievant was requesting from EDR, the crux of the handwritten portion on the first page indicates that the grievant continues to contest the hearing officer's decision. EDR has interpreted the grievant's request as one of reconsideration of EDR's administrative review ruling.

In general, EDR does not conduct reconsiderations of its administrative review rulings, absent substantial grounds of just cause and/or in cases, if warranted, when the procedural posture is amenable to such reconsideration.<sup>4</sup> Reconsideration of administrative review rulings is not provided for under the grievance procedure. Entertaining such requests could disrupt potential Circuit Court appeal deadlines over which EDR has no control.<sup>5</sup> As such, in the absence of just cause, EDR does not reconsider its administrative review rulings. There are no such grounds present here and, as such, EDR respectfully declines the grievant's request to review the hearing officer's decision in Case Number 10765 again.

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<sup>1</sup> Decision of Hearing Officer, Case No. 10765 ("Hearing Decision"), April 7, 2016, at 1, 3-4.

<sup>2</sup> EDR Ruling No. 2016-4353.

<sup>3</sup> *Id.*

<sup>4</sup> EDR does, when the situation warrants, address requests for reconsideration of its rulings on compliance and qualification. As EDR's rulings on compliance and qualification are final, *see* Va. Code § 2.2-1202.1(5), there are no opportunities for a party to appeal. Thus, EDR entertains such requests for reconsideration to address, for example, any mistakes made in the original ruling, to ensure accurate determinations of the pertinent issues with finality. For parties appealing a hearing officer's decision, however, administrative review by EDR is not the final appeal step. Rather, both parties have the right to request legal appeals from the Circuit Court. *See* Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>5</sup> *See id.*

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. **Received by** means delivered to, not merely postmarked or placed in the hands of a delivery service.”<sup>6</sup> Further, the April 7, 2016 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.<sup>7</sup> The issues the grievant appears to contest in his May 26 submission either could have been raised previously on administrative review or have already been addressed in EDR Ruling Number 2016-4353. Consequently, EDR is unable to review new or additional grounds of appeal at this time as his new submission is untimely. Further, nothing raised by the grievant in his May 26 submission presents any basis contesting EDR’s handling of the prior appeal as incorrect or identifies any mistakes therein.

As already stated, the grievant has presented no evidence of any just cause for EDR to reconsider its prior administrative review ruling, nor any basis as to why any new grounds for appeal should be considered at this late date.<sup>8</sup> EDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.<sup>9</sup> Any lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner.

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>10</sup> The hearing decision in this case became a final hearing decision following the issuance of EDR’s administrative review ruling on **May 16, 2016**. 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.<sup>11</sup> Consequently, if the grievant wishes to pursue this case further, he must seek an appeal to the appropriate Circuit Court.



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<sup>6</sup> *Grievance Procedure Manual* § 7.2.

<sup>7</sup> Hearing Decision at 5-6.

<sup>8</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>9</sup> See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>10</sup> See *Grievance Procedure Manual* § 7.2(d).

<sup>11</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).