

Issue: Administrative Review of Hearing Officer's Decision in Case No. 11114; Ruling Date: January 8, 2018; Ruling No. 2018-4665; Agency: Department of Behavioral Health and Developmental Services; Outcome: Untimely; Request Denied.



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

ADMINISTRATIVE REVIEW

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2018-4665
January 8, 2018

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 11114. 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 11114 was issued on December 19, 2017.¹ On January 5, 2018, 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.”² Further, the December 19, 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.³ However, EEDR received the grievant’s request for administrative review on January 5, 2018, two days beyond the fifteen calendar day deadline, which expired on January 3, 2018. Accordingly, the grievant’s request for administrative review by EEDR is untimely and will not be considered.

Furthermore, the grievant has presented no evidence of any just cause for the delay in submitting his request for administrative review.⁴ EEDR has long held that it is incumbent upon

¹ Decision of Hearing Officer, Case No. 11114, December 19, 2017 (“Hearing Decision”), at 1.

² *Grievance Procedure Manual* § 7.2(a).

³ Hearing Decision at 4-5.

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.

the parties to know their responsibilities under the grievance procedure.⁵ 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.⁶ Because the grievant's administrative review request to EEDR was untimely, the hearing decision became a final hearing decision on **January 3, 2018**, 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.⁷



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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).