

Issue: Administrative Review of Hearing Officer's Decision in Case No.10404; Ruling
Date: September 23, 2014; Ruling No. 2015-4002; 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 2015-4002
September 23, 2014

The Department of Behavioral Health and Developmental Services (“agency”) 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 10404. Because the agency’s request for administrative review was untimely, EDR will not review the hearing officer’s actions or decision.

FACTS

The hearing decision in Case Number 10404 was issued on September 3, 2014.¹ On September 19, 2014, EDR received the agency’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 September 3, 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 agency’s request for administrative review on September 19, 2014, one day beyond the 15 calendar day deadline. Accordingly, the agency’s request for administrative review by EDR is untimely and, therefore, will not be considered.

Furthermore, the agency has presented no evidence of any “just cause” for the delay.⁴ EDR has long held that it is incumbent upon parties to know their responsibilities under the

¹ Decision of Hearing Officer, Case No. 10404, September 3, 2014 (“Hearing Decision”), at 1.

² *Grievance Procedure Manual* § 7.2.


³ Hearing Decision at 9-10.

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.

grievance procedure.⁵ Any 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 agency's administrative review request to EDR was untimely, the hearing decision became a final hearing decision on **September 19, 2014**, after the 15 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 The agency shall request and receive prior approval of the Director before filing a notice of appeal.⁸



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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).

⁸ *Grievance Procedure Manual* § 7.3(a).