



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

ADMINISTRATIVE REVIEW

In the matter of the University of Virginia Medical Center
Ruling Number 2020-5037
January 7, 2020

On December 21, 2019, the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management¹ received a request from the grievant to administratively review the hearing officer’s decision in Case Number 11418. In EDR Ruling Number 2020-5033, issued on December 31, 2019, EDR found that the grievant’s request for administrative was untimely, and accordingly declined to review the hearing officer’s actions or decision. The grievant submitted a request for EDR to reconsider its decision on January 6, 2020.

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.² Reconsideration of administrative review rulings is not provided for under the grievance procedure, and entertaining such requests could disrupt potential circuit court appeal deadlines over which EDR has no control.³ As such, in the absence of just cause, EDR does not reconsider its administrative review rulings.

The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** [EDR] 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.”⁴ The hearing decision in Case Number 11418 was issued on December 5, 2019.⁵ The decision clearly advised the parties that any request they may file for administrative

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² 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).

³ *See id.*

⁴ *Grievance Procedure Manual* § 7.2(a).

⁵ Decision of Hearing Officer, Case No. 11418, December 5, 2019 (“Hearing Decision”), at 1.

review must be received by EDR within fifteen calendar days of the date the decision was issued.⁶ EDR received the grievant's request for administrative review at 1:48 a.m. on December 21, 2019, one day beyond the fifteen calendar day deadline, which expired on December 20, 2019.

In his request for reconsideration, the grievant asserts that there was just cause for his delay in requesting administrative review. The grievant has explained that he was in another state in a different time zone on December 20, 2019 for the funeral of a family member. He argues that his request for administrative review was timely (*i.e.*, submitted on December 20) where he was located, though he did not consider that the difference in time zone would result in EDR receiving the appeal on December 21. While EDR is sympathetic to the grievant's situation, the hearing decision clearly explained that, consistent with the grievance procedure, any request for administrative review must be received by EDR within fifteen calendar days of the date of the original decision.⁷ Although the grievant may have believed that he was timely submitting his request for administrative review, EDR received the grievant's submission on the sixteenth calendar day after the decision was issued. Under these circumstances, EDR cannot find that there was just cause for the grievant's delay in submitting his request for administrative review.⁸

For these reasons, the grievant's request for reconsideration is denied. The grievant has stated no grounds warranting reconsideration of EDR Ruling Number 2020-5033, which will stand as issued. Pursuant to Section 7.2(d) of the *Grievance Procedure Manual*, a hearing officer's original decision becomes a final hearing decision once all timely requests for administrative review have been decided.⁹ Because the grievant's administrative review request to EDR was untimely, the hearing decision became a final hearing decision on **December 20, 2019**, 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.¹⁰



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ Hearing Decision at 5.

⁷ *See id.*; *Grievance Procedure Manual* § 7.2(a).

⁸ "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

⁹ *Grievance Procedure Manual* § 7.2(d).

¹⁰ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).