

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 23, 2009; Ruling #2009-2264; Agency: Virginia Department of Transportation; Outcome: No Ruling (no jurisdiction).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2009-2264
March 23, 2009

The grievant's representative has requested an extension to file an appeal in Case Number 8895 with the circuit court. For the reasons set forth below, this Department is unable to grant that request.

FACTS

The hearing decision for Case Number 8895 was issued February 9, 2009.¹ The grievant requested reconsideration from the hearing officer, but that request was received on February 25, 2009.² As such, the hearing officer ruled the request as untimely.³

On March 12, 2009, EDR received the grievant's request for administrative review of: (1) the hearing decision in Case Number 8895, and (2) the hearing officer's denial of the grievant's request for reconsideration.

On March 18, 2009, in Ruling Number 2009-2252, EDR issued a decision holding that the requests for administrative review were untimely⁴ and that there was no "just cause" for the delay in seeking review.⁵

EDR Ruling Number 2009-2252 further held that because the grievant's requests for review were untimely, the hearing decision in Case Number 8895 became a final

¹ Decision of Hearing Officer, Case No. 8895, Feb. 9, 2009 ("Hearing Decision"), at 1.

² Reconsideration Denial, Case No. 8895-R, Mar. 9, 2009, at 1.

³ *Id.*

⁴ This Department received the grievant's request for review on March 12, 2009, sixteen days beyond the 15 calendar days following the February 9, 2009 hearing decision. The Grievance Procedure Manual provides that "all requests for review must be made in writing, and *received* by the administrative reviewer, within 15 calendar days of the date of the original hearing decision." *Grievance Procedure Manual* § 7.2(a).

⁵ EDR Ruling Number 2009-2252 at 2. The grievant appeared to argue that his request for reconsideration to the hearing officer is timely because the hearing officer received it within 15 days of February 12, 2009, the date the grievant received the hearing decision. However, as explained in Ruling 2009-2252, the proper measure of the 15 calendar day period is from the date of the hearing decision. *Grievance Procedure Manual* § 7.2(a).

hearing decision after the 15 calendar day period expired on February 24, 2009, and that any appeal to the circuit court must be initiated within 30 calendar days from that date.

DISCUSSION

It is unfortunate that the grievant was apparently mistaken about the administrative appeals deadline.⁶ However, as Ruling Number 2009-2252 held, and consistent with prior precedent, misconception regarding rules of the grievance procedure does not excuse noncompliance with the grievance procedure.⁷ Moreover, this Department has no authority to extend the filing deadline for the circuit court. Accordingly, as we held in EDR Ruling Number 2009-2252, because the grievant's requests for review were untimely, Case Number 8895 became a final hearing decision on February 24, 2009 and the parties have 30 calendar days from that date to appeal the decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must be that the final decision was contradictory to law.⁸

Claudia T. Farr
Director

⁶ Ruling Number 2009-2252 pointed out that the hearing decision expressly reiterated that the appeals deadline begins to run when the decision is issued, not when received. EDR Ruling Number 2009-2252 at 1.

⁷ See EDR Ruling 2008-1881.

⁸ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).