

Issue: Compliance/Agency's appeal of final hearing decision; Ruling Date: October 25, 2002; Ruling #2002-202; Agency: Department of Corrections; Outcome: Agency out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED APPEAL REVIEW RULING OF DIRECTOR

In the matter of Department of Corrections Case No. 5524/5525
October 25, 2002

Pursuant to Va. Code 2.2-3006(B), the Department of Corrections (DOC) sought approval from the Director of this Department to appeal the final hearing decision in Case No. 5524/5525 on the basis that it is contradictory to law. Because there was no evidence that DOC's appeal was based on any improper purpose such as to harass or cause delay, the request was granted. However, upon further reflection, it is evident that the DOC request for approval to appeal was not timely, thus, under the Grievance Procedure, this Department must reverse its earlier decision and deny approval to appeal to the Circuit Court.

The Grievance Procedure Manual requires that an agency must request approval to appeal from this Department within 10 calendar days of issuance of the final hearing decision.¹ In this case, the original hearing decision became a final hearing decision on October 11, 2002.² Accordingly, the agency was required to request approval to appeal within ten calendar days of October 11th, which was October 21st. The appeal was made on October 24, 2002, and, therefore, was untimely.

Claudia T. Farr
Director

¹ *Grievance Procedure Manual* § 7.3(a), p. 20.

² An original hearing decision becomes a final hearing decision when one of two things occur: (1) the ten calendar day period for filing an administrative review has expired and neither party has filed such a request; *or* (2) all timely administrative reviews have been decided and the hearing officer has issued a revised decision (if so ordered). *Grievance Procedure Manual* § 7.2(d), p. 20. Here, neither party administratively appealed the hearing decision; thus, it became a final hearing decision on October 11, 2002.