

Issue: Compliance/Hearing Officer Decision; Ruling Date: January 31, 2003; Ruling #2003-010; Agency: Department of Corrections; Outcome: grievant out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2003-010
January 31, 2003

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 5608. The grievant presents numerous arguments to support her claim that the hearing officer exceeded the scope of his authority and/or abused his discretion. However, for the reason discussed below, this Department will not examine the hearing officer's actions or decision.

FACTS

The grievant is employed as a correctional officer with the Department of Corrections (DOC or the agency). On October 29, 2002, the grievant was issued a Group II Written Notice with suspension for failure to follow a supervisor's instructions. On November 4, 2002, the grievant timely initiated a grievance challenging the Group II Written Notice. The grievance was qualified for hearing on November 25, 2002, and a hearing was held on January 2, 2003. In his decision dated January 3, 2003, the hearing officer upheld the Group II Written Notice for failure to follow a supervisor's instructions and vacated the five-day suspension.¹

DISCUSSION

By statute, this Department has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and "[r]ender final decisions in all matters related to procedural compliance with the grievance procedure."² If the hearing officer's exercise of authority is not in compliance with the grievance procedure, this Department does not award a decision in favor of a party; the sole remedy is that the action be correctly taken.³

¹ See Decision of Hearing Officer, Case No. 5608, issued January 3, 2003.

² Va. Code § 2.2-1001(2), (3), and (5).

³ See *Grievance Procedure Manual* § 6.4(3), page 18.

The *Grievance Procedure Manual* further provides however that “all requests for review must be made in writing, and *received* by the administrative reviewer, within 10 calendar days of the date of the original hearing decision.”⁴ In this case, this Department received the grievant’s request for administrative review on January 15, 2003, two days beyond the 10 calendar days that followed the issuance of the original decision. Moreover, the grievant has presented no evidence of a “just cause” for the delay.⁵ Accordingly, the grievant’s request for administrative review by this Department is untimely and the original hearing decision stands.

APPEAL RIGHTS

A hearing officer’s decision becomes a final hearing decision when the 10 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 request to this Department for administrative review was untimely and the grievant did not seek an administrative review from the Department of Human Resource Management (DHRM), the hearing decision became a final hearing decision on January 13, 2003, 10 calendar days after its issuance. The grievant now has 30 calendar days from January 13, 2003 or until February 12, 2003 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 hearing decision is contradictory to law. In noting the further right of appeal to the circuit court, this Department expresses no opinion as to the decision’s conformance to law.

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Director

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⁴ See *Grievance Procedure Manual* § 7.2 (a), page 18 (emphasis in original).

⁵ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9, page 24.

⁶ See *Grievance Procedure Manual* § 7.2(d), page 20 (emphasis added).