

Issue: Compliance/Other; Ruling Date: February 7, 2003; Ruling #2003-015; Agency: Virginia Department of Transportation; Outcome: grievant out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation Case No. 5609
February 7, 2003

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 5609. The grievant claims that the hearing officer's written decision did not comply with the grievance procedure in several respects.

The Grievance Procedure Manual requires that all requests for administrative review must be in writing, and *received* by the administrative reviewer, within 10 calendar days of the date of the original hearing decision.¹ In this case, the original hearing decision was issued on January 7, 2003.² Accordingly, the request for review had to be received by this Department within ten calendar days of January 7th, which was January 17th. Although the appeal was dated January 17, 2003, it was not postmarked until January 18, 2003 nor received by this Department until January 21, 2003, and, therefore, was untimely. The grievant provided no evidence of "just cause" for the delay.³

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.⁴ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.⁵ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.⁶ This Department's rulings on matters of procedural compliance are final and nonappealable.

¹ *Grievance Procedure Manual* § 7.2(a), p. 18, (emphasis in original)

² See Case Number 5609, Issued: January 7, 2003.

³ "Just cause" is defined as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9, pg. 24.

⁴ *Grievance Procedure Manual*, § 7.2(d), page 20.

⁵ Va. Code § 2.2-3006 (B); *Grievance Procedure Manual*, § 7.3(a), page 20.

⁶ *Id.*

This Department's toll-free AdviceLine (1-888-23ADVICE) may be contacted for guidance and information regarding the grievance procedure and related rules.

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