

Issue: Compliance/Timeliness of request for administrative review; Ruling date: July 31, 2003; Ruling #2003-125; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: request not timely, grievant out of compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation, and Substance Abuse
Services
Ruling Number 2003 -125
July 31, 2003

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 5702/5703/5704, which were consolidated for hearing. The grievant presents numerous arguments to support his claim that the hearing officer failed to consider or properly weigh the evidence. However, because the grievant's request for administrative review was untimely, this Department will not review the hearing officer's actions or decisions.

FACTS

Until his termination, the grievant was employed as a Cook Aide II. On November 19, 2002, he was issued a Group I Written Notice for inadequate job performance. On December 17, 2002, the grievant initiated a grievance to challenge the disciplinary action. On January 23, 2003, he was issued another Group I Written Notice for inadequate job performance. On the same date, he was issued a Group III Written Notice with removal for sleeping during work hours. On January 27, 2003, the grievant initiated separate grievances challenging the January 23, 2003 Group I Written Notice and the Group III Written Notice. The grievances were qualified and a consolidated hearing was held on May 28, 2003. In his May 30, 2003 decision, the hearing officer upheld the two Group I Written Notices and the one Group III Written Notice with removal. This Department received the grievant's request for Administrative review on June 25, 2003.

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."¹ 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.²

¹ See Va. Code § 2.2-1001 (2), (3), and (5).

² 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.”³ In this case, this Department received the grievant’s request for administrative review on June 25, 2003, 16 days beyond the 10 calendar days following the May 30, 2003 decision. Moreover, the grievant has presented no evidence of a “just cause” for the delay.⁴

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.⁵ 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 June 9, 2003, 10 calendar days after its issuance.⁶ The grievant had 30 calendar days from June 9, 2003 or until July 9, 2003 to appeal the decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must have been that the final decision is contradictory to law.

Claudia T. Farr
Director

June M. Foy
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³ See *Grievance Procedure Manual* § 7.2(a), page 18.

⁴ “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.

⁵ See *Grievance Procedure Manual* § 7.2(d), page 20.

⁶ See *Grievance Procedure Manual* § 7.3(a), page 20.