

Issue: Compliance/Administrative review of hearing officer's decision #5837; Ruling
Date: December 15, 2003; Ruling #2003-486; Agency: Department of Mental Health,
Mental Retardation, and Substance Abuse Services; Outcome: request untimely.



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 2003-486
December 15, 2003

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 5837. The grievant presents several arguments to support her 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 her termination, the grievant was employed as a Direct Care Aide. On August 22, 2003, she was issued a Group III Written Notice with termination for patient abuse. On August 27, 2003, the grievant initiated a grievance to challenge the disciplinary action. The grievance was qualified and a hearing was held on October 29, 2003. In his October 30, 2003 decision, the hearing officer upheld the Group III Written Notice and termination, and specifically notified the parties that any request they may file for administrative review to DHRM or EDR must be received by the reviewer within 10 calendar days of the date the decision was issued.

On November 13, 2003, the grievant sent a request for administrative review to the Director of Department of Human Resources Management (DHRM), dated November 12, 2003. The request was received by DHRM on November 14, 2003. On November 25, 2003, DHRM forwarded the request to this Department (EDR) having concluded that the appeal was based on evidentiary and procedural issues. EDR received the forwarded request on November 26, 2003.

DISCUSSION

The Grievance Procedure Manual provides 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."¹ In this case, this Department received the grievant's request for administrative review on November 26, 2003, well beyond the 10 calendar days following the October 30, 2003 decision.¹ Moreover, while the grievant

¹ See *Grievance Procedure Manual* § 7.2(a), page 18.

appears to have mistakenly sent her request for administrative review to DHRM instead of this Department, the request was not received by DHRM within 10-calendar days of the issuance of the decision either. Furthermore, the grievant has presented no evidence of a “just cause” for the delay.²

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.³ Because the grievant’s request to this Department for administrative review was untimely, the hearing decision became a final hearing decision on November 10, 2003.⁴ The grievant had 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 have been that the final decision is contradictory to law.

Claudia T. Farr
Director

² “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.

³ See *Grievance Procedure Manual* § 7.2(d), page 20.

⁴ See *Grievance Procedure Manual* § 7.3(a), page 20. When the 10th day falls on a weekend as was the case here, the next business day is considered the 10th day. See EDR Ruling 2002-140.