

Issue: Administrative Review of Case Number 8073/claims of hearing officer bias;
Ruling Date: August 4, 2005; Ruling #2006-1078; Agency: Department of Corrections;
Outcome: request for administrative review untimely; this Department will not review hearing officer's actions or decisions.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of Department of the Department of Corrections
Ruling Number 2006-1078
August 4, 2005

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8073. The grievant presents several arguments to support her claim that the hearing officer was biased. However, because the grievant's request for administrative review was untimely, this Department will not review the hearing officer's actions or decisions.

FACTS

The grievant is employed as a Corrections Officer Senior. On December 16, 2004, she was issued a Group II Written Notice for intimidating a co-worker. On January 12, 2005, the grievant initiated a grievance to challenge the disciplinary action. The grievance was qualified and a hearing was held on June 20, 2005. The hearing officer upheld the Group II Written Notice in his June 21, 2005 decision, which specified to the parties that any request they may file for administrative review to DHRM or EDR must be received by the reviewer within 15 calendar days of the date the decision was issued.

On July 7, 2005, this Department received an e-mail request for administrative review. An express mail copy arrived the following day.

DISCUSSION

The Grievance Procedure Manual provides that "all requests for review must be made in writing, and *received* by the administrative reviewer, within 15 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 July 7, 2005, one day beyond the 15 calendar days following the June 21, 2005 decision.¹ Furthermore, the grievant has presented no evidence of a "just cause" for the delay.²

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

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.

APPEAL RIGHTS

A hearing officer's decision becomes a final hearing decision when the 15 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 and there were no other timely requests for administrative review, the hearing decision became a final hearing decision on July 6, 2005. The grievant has 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

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