

Issue: Administrative Review of Case No. 8536 – Hearing Decision Appeal; Ruling Date:
April 20, 2007; Ruling #2007-1638; Agency: Department of Corrections; Outcome:
Grievant not in compliance (untimely)



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2007-1638
April 20, 2007

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8536. Because the grievant's request for administrative review was untimely, this Department will not review the hearing officer's actions or decisions.

FACTS

This case involves a grievant who received a Group II Written Notice for failure to report to work as scheduled.¹ The hearing decision was issued March 26, 2007.² The hearing officer reduced the disciplinary action to a Group I Written Notice.³ On April 13, 2007, the grievant delivered to this Department a request for administrative review of the hearing officer's decision.

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."⁴ Further, the March 26, 2007 hearing decision advised the parties that any request they may file for administrative review to the hearing officer, the Department of Human Resource Management (DHRM) or EDR must be received by the reviewer within 15 calendar days of the date the decision was issued.⁵ In this case, this Department received the grievant's request for administrative review on April 13, 2007, three days beyond the 15 calendar days following the March 26, 2007 decision. Furthermore, the

¹ Decision of Hearing Officer, Case No. 8536, Mar. 26, 2007 ("Hearing Decision"), at 2.

² *Id.* at 1.

³ *Id.* at 7.

⁴ *Grievance Procedure Manual* § 7.2(a).

⁵ Hearing Decision at 7-8.

grievant has presented no evidence of a “just cause” for the delay.⁶ Accordingly, the grievant’s request for administrative review by this Department is untimely.⁷

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.⁸ Because the grievant’s request to this Department for administrative review was untimely, the hearing decision became a final hearing decision on April 10, 2007. 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

⁶ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁷ This Department would like to note however that although the grievant’s request for administrative review is untimely, she may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the grievant gives notice that she wishes to challenge, correct or explain information contained in her personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth her position regarding the information. Va. Code § 2.2-3806(A)(5). This “statement of dispute” shall accompany the disputed information in any subsequent dissemination or use of the information in question. Va. Code § 2.2-3806(A)(5).

⁸ See *Grievance Procedure Manual* § 7.2(d).