

Issue: Appeal Review and Compliance: Permission to appeal to Circuit Court – Case No. 8531/8532; Ruling Date: June 1, 2007; Ruling #2007-1694; Agency: Department of Minority Business Enterprise; Outcome: Permission to appeal denied; Agency not in compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**APPEAL REVIEW AND COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Minority Business Enterprise  
Ruling No. 2007-1694  
June 1, 2007

Pursuant to Va. Code § 2.2-3006(B), the Department of Minority Business Enterprise (the agency) seeks approval from the Director of this Department (the EDR Director) to appeal the final hearing decision in Case No. 8531/8532 on the basis that it is contradictory to law. However, for the reasons discussed below, the agency's request is untimely, and under longstanding grievance procedure rules and precedent, this request to appeal must be denied.

Va. Code § 2.2-3006(B) requires an agency to request and receive prior approval of the EDR Director before filing a notice of appeal with the circuit court. Va. Code § 2.2-1001 mandates the EDR Director to establish the grievance procedure and direct full compliance with the process. The Grievance Procedure Manual (effective August 30, 2004) requires an agency, within 10 calendar days of the issuance of the final hearing decision, to request the EDR Director's approval to appeal the final hearing decision to circuit court.<sup>1</sup>

In this case, the final hearing decision was issued on May 11, 2007.<sup>2</sup> Accordingly, the agency was required to request approval to appeal within ten calendar days of May 11<sup>th</sup>, which was May 21, 2007. The agency's request was not made until May 22, 2007, one day beyond the 10-calendar day period.<sup>3</sup>

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<sup>1</sup> *Grievance Procedure Manual* § 7.3(a).

<sup>2</sup> An original hearing decision becomes a final hearing decision when one of two things occur: (1) the fifteen calendar day period for filing an administrative review has expired and neither party has filed such a request; *or* (2) all timely administrative reviews have been decided and the hearing officer has issued a revised decision (if so ordered). *Grievance Procedure Manual* § 7.2(d). In this case, the agency requested administrative review of the hearing officer's decision. Following the EDR Director's ruling, the hearing officer issued a reconsideration opinion on May 11, 2007, which became the final hearing decision on that date.

<sup>3</sup> In other grievance matters, EDR has ruled that without evidence of good cause, a request made even one day late is untimely and noncompliant with the grievance procedure. *See, e.g.*, EDR Ruling No. 2006-1201 (grievance initiated one day late was closed as untimely); EDR Ruling No. 2006-1078 (grievant's request for administrative review was received one day after expiration of the fifteen calendar day period and ruled untimely); EDR Ruling No. 2004-582 (grievance initiated one day late was closed as untimely).

The only remaining question is whether there was “just cause” for the agency’s delay.<sup>4</sup> The agency’s representative stated that he was unaware of the 10 calendar day requirement for filing the agency’s request for approval to appeal, and asserted he relied upon language in the hearing officer’s Reconsideration Decision that the hearing decision becomes final when the “15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request.” However, this language from the Reconsideration Decision simply addresses how and when a hearing decision becomes final. More importantly, this Department has long held that it is incumbent upon each employee to know his or her rights and responsibilities under the grievance procedure,<sup>5</sup> and has long held agencies to that same standard. Neither a grievant’s nor an agency’s lack of knowledge about the grievance procedure’s time requirements constitutes just cause for failure to act in a timely manner.

The agency’s representative also sought an extension of time on May 30, 2007. Granting such a request would be unprecedented, especially given that it was not made until well *after* the deadline for requesting permission to appeal had expired. Moreover, the agency’s assertions are without merit and establish no evidence of good cause to extend the deadline contained in this patently mandatory provision of the *Grievance Procedure Manual*.<sup>6</sup> Because the agency failed to request permission to appeal within the required timeline, the agency’s request to appeal to the Circuit Court is noncompliant with the grievance procedure and, therefore, must be denied.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>4</sup> “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

<sup>5</sup> See, e.g., EDR Ruling No. 2002-202; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057; EDR Ruling No. 2001-145; EDR Ruling No. 2001-085; EDR Ruling No. 2001-024.

<sup>6</sup> See *Mayo v. Department of Commerce*, 4 Va. App. 520, 522, 358 S.E.2d 759, 761 (1987) (“Generally, rules governing appeal procedures are mandatory and ‘compliance with them is necessary for the orderly, fair and expeditious administration of justice’”) (citing *Condrey v. Childress*, 203 Va. 755, 757, 127 S.E.2d 150, 152 (1962) (quoting *Lawrence v. Nelson*, 200 Va. 597, 598, 106 S.E.2d 618, 620 (1959)).

<sup>7</sup> Va. Code § 2.2-1001(5).