

Issue: Administrative review of Hearing decision; Ruling Date: August 24, 2006; Ruling #2007-1422; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: request is untimely



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

**ADMINISTRATIVE REVIEW RULING OF DIRECTOR**

In the matter of the Department of Mental Health, Mental Retardation and Substance Abuse Services

Ruling Number 2007-1422

August 24, 2006

The grievant has requested that this Department administratively review the hearing officer's decision in Case Number 8335. 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 Registered Nurse with the Department of Mental Health Mental Retardation and Substance Abuse Services (DMHMRSAS or the agency). On February 2, 2006, she was issued a Group III Written Notice for neglect and abuse of a client and entering incorrect information on an agency *Seclusion & Restraint Monitoring Form*. On February 16, 2006, the grievant initiated a grievance to challenge the disciplinary action. The grievance was qualified and a hearing was held on May 31, 2006. In his June 16, 2006 decision, the hearing officer concluded that the grievant did not neglect the client as alleged.<sup>1</sup> However, the hearing officer upheld the Group III Written Notice based on his conclusion that the grievant falsified state documents when she entered incorrect information on the *Seclusion & Restraint Monitoring Form*.<sup>2</sup>

On June 27, 2006, the grievant, through her representative, requested that the hearing officer reconsider his June 16, 2006 decision. In an August 1, 2006 decision, the hearing officer denied the grievant's request for reconsideration and upheld his June 16, 2006 decision.<sup>3</sup> Thereafter, on August 15, 2006, this Department received a request for administrative review from the grievant. In her request, the grievant claims that the hearing officer erred by not ordering the agency to remove the abuse and neglect charge from her personnel record. More specifically, the grievant argues that the Group III Written Notice should be expunged all together or at the very least, should be changed to reflect the hearing officer's conclusion that the grievant falsified state documents.

DISCUSSION

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<sup>1</sup> See Decision of Hearing Officer, Case No. 8335, issued June 16, 2006.

<sup>2</sup> *Id.* at p. 5.

<sup>3</sup> See Decision of Hearing Officer, Case No. 8335-R, issued August 1, 2006.

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.”<sup>4</sup> Further, the June 16, 2006 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.<sup>5</sup> In this case, this Department received the grievant’s request for administrative review on August 15, 2006, well beyond the 15 calendar days following the June 16, 2006 decision.<sup>6</sup> Furthermore, the grievant has presented no evidence of a “just cause” for the delay.<sup>7</sup> Accordingly, the grievant’s request for administrative review by this Department is untimely.<sup>8</sup>

### 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.<sup>9</sup> Because the grievant’s request to this Department for administrative review was untimely, the hearing decision became a final hearing decision on August 1, 2006. 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.

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Claudia T. Farr  
Director

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<sup>4</sup> See *Grievance Procedure Manual* § 7.2(a).

<sup>5</sup> See Decision of Hearing Officer, Case No. 8335 at pp. 7-8.

<sup>6</sup> This Department has long held that a timely request for administrative review initiated with the wrong reviewer will be directed to the appropriate reviewer and considered timely initiated with that reviewer even if the request is received by the appropriate reviewer outside the 15 calendar day period. *C.f.* EDR Ruling Nos. 2005-1053 and 2006-1383. This is not a case where the grievant timely challenged the June 16<sup>th</sup> hearing decision but directed her appeal to the wrong reviewer. Rather, in this case, the grievant timely requested a reconsideration by the hearing officer on specific grounds and is now attempting to challenge the June 16<sup>th</sup> hearing decision to this Department on materially different grounds than that stated in the June 27<sup>th</sup> request to the hearing officer.

<sup>7</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>8</sup> 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).

<sup>9</sup> See *Grievance Procedure Manual* § 7.2(d).