

Issue: Compliance – Request for administrative review of Hearing Officer's Decision in Case No. 8183; Ruling Date: August 17, 2007; Ruling #2008-1764; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievant Not In Compliance (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 No. 2008-1764
August 17, 2007

The grievant has requested a compliance ruling concerning his request for administrative review with the Department of Human Resource Management (DHRM) regarding a grievance hearing decision in Case No. 8183. Based on the following, it is this Department's determination that the grievant's "Appeal Brief" was not provided to DHRM in a timely manner.

FACTS

The grievant was terminated on August 15, 2005. After filing a grievance, the termination was upheld by a hearing decision issued on October 31, 2005. The grievant timely requested administrative review from this Department (EDR) and DHRM on November 15, 2005. EDR issued its administrative review ruling on January 4, 2006. That ruling instructed the grievant, if he so chose, to submit a further appeal to DHRM as to certain issues. The grievant submitted such an appeal on January 17, 2006. DHRM issued its decision in this matter on March 9, 2006.

On December 28, 2006, the grievant submitted an "Appeal Brief" to DHRM in support of his request for administrative review. By letter of August 6, 2007, the grievant seeks a compliance ruling stating that this "Appeal Brief" was submitted in a timely fashion and should be considered. The grievant alleges that he never received a briefing schedule or any other deadline in this matter.

DISCUSSION

Pursuant to the grievance procedure, the administrative reviewer must receive requests for administrative review within fifteen calendar days of the date of the hearing

decision.¹ Moreover, the grievance procedure requires that the party provide the grounds for the administrative review at the time of submitting the request. There is no provision of the grievance procedure that provides for a “briefing schedule,” as the grievant appears to have assumed would be followed.

If the grievant had wanted to submit additional information subsequent to his initial letter, such as a complete appeal brief, there is nothing in the grievance procedure that would have prevented him from doing so. However, he should have notified DHRM of his intentions to ensure he would be allowed sufficient time to prepare the document. The grievant has provided no evidence that he ever attempted to notify DHRM of his intentions.² On the contrary, it appears that the grievant simply waited and assumed that a briefing schedule would be issued, even though there is no provision in the grievance procedure for such a practice. It is not reasonable for a party to rely on an assumed course of action without any basis in the applicable policy or statutes.

This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ A grievant’s lack of knowledge about the grievance procedure and its requirements does not constitute just cause for delay. DHRM need not consider the grievant’s “Appeal Brief” as it was not timely. DHRM issued its decision on March 9, 2006, and there is no basis to re-open the matter. Consequently, the hearing decision in this case became final on March 9, 2006.⁴

This Department’s rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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

² The grievant also mentions that he did not obtain a transcript of the hearing until after DHRM had issued its decision. If the grievant needed more time to obtain a transcript to draft an appeal brief, that information also should have been conveyed to DHRM.

³ *See, e.g.*, 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. In the future, if the grievant or his representative has questions about the grievance process, they might consider calling EDR’s toll-free, confidential AdviceLine for assistance. EDR’s AdviceLine is available to state employees and agency management Monday through Friday from 8:30 a.m. to 4:30 p.m., and can be reached at 1-888-23ADVICE (1-888-232-3842).

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

⁵ *See* Va. Code § 2.2-1001(5).