

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8646;  
Ruling Date: August 22, 2007; Ruling #2008-1770; Agency: Virginia  
Commonwealth University; Outcome: Grievant Not In Compliance (untimely).



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

**ADMINISTRATIVE REVIEW OF DIRECTOR**

In the matter of Virginia Commonwealth University  
Ruling Number 2008-1770  
August 22, 2007

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 8646. 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 of disciplinary action with removal based on the accumulation of disciplinary action for leaving the work site during work hours without permission."<sup>1</sup> The hearing decision was issued July 26, 2007.<sup>2</sup> The hearing officer upheld the disciplinary action and removal.<sup>3</sup> On August 13, 2007, this Department received the grievant's request for administrative review of the hearing officer's decision. The hearing officer and the Director of the Department of Human Resource Management (DHRM) received requests for administrative review on August 13, 2007 as well.

The grievant states that he contacted EDR on or about August 8, 2007, and someone at EDR told him that to be timely, he only needed to have his request for administrative review postmarked by August 10, 2007. His requests for administrative review were postmarked August 10, 2007. However, the grievant's claim concerning the alleged advice he received from EDR is not consistent with EDR practice and is not supported by EDR records or by any other supporting evidence provided by the grievant.

**DISCUSSION**

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<sup>1</sup> Decision of Hearing Officer, Case No. 8646, July 26, 2007 ("Hearing Decision"), at 1.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 5.

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 July 26, 2007 hearing decision clearly 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> Here, however, this Department received the grievant’s request for administrative review on August 13, 2007, three days beyond the 15 calendar days following the July 26, 2007 decision. Moreover, it is the requesting party’s burden to show evidence of timeliness and/or “just cause” for untimeliness.<sup>6</sup> The grievant’s unsupported and disputed statement of alleged advice received from EDR is insufficient to establish just cause for the delay in this case. Accordingly, the grievant’s request for administrative review by this Department is untimely.<sup>7</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>8</sup> Because the grievant’s administrative review requests to the hearing officer, this Department, and the Director of DHRM were untimely, the hearing decision became a final hearing decision on August 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.

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Claudia T. Farr  
Director

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

<sup>5</sup> Hearing Decision at 5-6.

<sup>6</sup> *See Grievance Procedure Manual* § 7.2(a). “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>7</sup> This Department would like to note that although the grievant’s request for administrative review is untimely, he 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 he wishes to challenge, correct or explain information contained in his 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 his 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>8</sup> *See Grievance Procedure Manual* § 7.2(d).