

Issue: Compliance – Grievance Procedure: Other Issue; Ruling Date: September 13, 2007; Ruling #2008-1797; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling No. 2008-1797
September 13, 2007

The grievant has requested that this Department reconsider its Ruling Number 2008-1764 concerning the grievant's request for administrative review with the Department of Human Resource Management (DHRM). There is no basis to change the determinations made in that Ruling and the original decision will stand.

FACTS

The facts as stated in EDR Ruling Number 2008-1764 are incorporated by reference into this Ruling. In his request, the grievant also argues that in the January 17, 2006 submission to DHRM, it was stated that the grievant was preparing an Appeal Brief. The grievant appears to have made similar notifications by letters of September 26, 2006, and November 6, 2006, *after* DHRM had issued its ruling on March 9, 2006.

DISCUSSION

While the grievant apparently notified DHRM on January 17, 2006 that he was intending to prepare an Appeal Brief, there is no indication that the grievant ensured that DHRM would provide him the time needed or that he requested sufficient time to submit such a brief.¹ Moreover, without any agreement for a defined period of delay, it is wholly unreasonable that DHRM would simply refrain from issuing its decision while the grievant waited almost a full year to prepare a brief. There is no basis to rule that the grievant's appeal brief was timely. DHRM issued its decision on March 9, 2006, and that decision is final.²

¹ The subsequent notifications in September and November 2006 have no effect given that DHRM had already issued its decision months before.

² *Grievance Procedure Manual* § 7.2(c). Moreover, the grievant's argument that DHRM's ruling should be considered void because it was issued "over 50 days" after the grievant's submission on January 17, 2006, is incorrect. The provision cited by the grievant is not a requirement. Rather, the *Grievance Procedure*

September 13, 2007

Ruling #2008-1797

Page 3

There is no basis to re-open this matter. The grievant's request for reconsideration is denied. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

Manual states that DHRM "should" issue a written decision within the defined period. *Grievance Procedure Manual* § 7.2(c). For a more complete discussion of this section and the related statutory provision, see EDR Ruling No. 2007-1507.

³ See Va. Code § 2.2-1001(5).