

Issue: Administrative Review of Hearing Officers' Decisions in Case No. 8513 and Case No. 8593; Ruling Date: September 28, 2007; Ruling #2007-1811; Agency: Department of Correctional Education; Outcome: Request untimely – Hearing Decision Affirmed.



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

**ADMINISTRATIVE REVIEW RULING OF DIRECTOR**

In the matter of the Department of Correctional Education  
Ruling Number 2008-1811  
September 28, 2007

The grievant has sent to this Department appeals of hearing decisions in Case Numbers 8513 and 8593. Because the grievant's requests for review are untimely, this Department will not review the hearing officers' actions or decisions in those cases.

FACTS

The hearing decision for Case Number 8513 was issued June 4, 2007.<sup>1</sup> On August 22, 2007, a different hearing officer in a separate grievance issued a decision on remand for Case Number 8593.<sup>2</sup> EDR received the grievant's appeals in these cases on September 17, 2007.

DISCUSSION

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>3</sup> Further, the June 4, 2007 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>4</sup> In addition, the August 22, 2007 decision on remand indicated that the hearing decision would become final once the 15 calendar day period for filing requests for administrative review expired.<sup>5</sup> This Department

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<sup>1</sup> Decision of Hearing Officer, Case No. 8513, June 4, 2007 ("Hearing Decision"), at 1.

<sup>2</sup> Decision of Hearing Officer on Remand from EDR, Case No. 8593, Aug. 22, 2007 ("Decision on Remand"), at 1. The grievant had requested administrative review from this Department in Case Number 8593. *See* EDR Ruling No. 2007-1729. In EDR Ruling No. 2007-1729, the grievance was remanded to the hearing officer for further consideration, the result of which was the decision on remand dated August 22, 2007.

<sup>3</sup> *Grievance Procedure Manual* § 7.2(a).

<sup>4</sup> Hearing Decision at 10-11.

<sup>5</sup> Decision on Remand at 2. In addition, the decision on remand states that a hearing decision becomes final when all timely requests for administrative review have been decided and, if ordered, the hearing officer has issued a revised decision, which has taken place in this case. *Id.* at 1; *see also* *Grievance Procedure Manual* §

received the grievant's appeals on September 17, 2007, eleven days beyond the 15 calendar days following the August 22, 2007 decision on remand, and over three months after the June 4, 2007 hearing decision.

Furthermore, the grievant has presented no evidence of a "just cause" for the delay.<sup>6</sup> The grievant indicates that there was a delay in obtaining the hearing tapes for Case Number 8513, but that is not sufficient cause to justify the untimeliness in this case. In addition, the grievant submitted an appeal regarding Case Number 8593 to DHRM similar to that received by this Department. DHRM received that appeal on September 7, 2007, one day beyond the 15 calendar day period after the August 22, 2007 decision on remand. 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.<sup>7</sup> However, it appears that the claims now before us were not timely received by DHRM either. Accordingly, the grievant's appeals to this Department in Case Numbers 8513 and 8593 are 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 requests for review were untimely, the hearing decisions in Case Numbers 8513 and 8593 became final hearing decisions on June 19, 2007<sup>10</sup> and August 22, 2007 respectively. The grievant would have had 30 calendar days from those dates to appeal the decisions to the circuit court in the jurisdiction in which the grievances arose. The basis of any such appeals must have been that the final decisions were contradictory to law.

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7.2(d). Therefore, it would appear that the decision in Case Number 8593 became final on August 22, 2007. However, to the extent that decision on remand involved new matters, additional administrative reviews could potentially have been appropriate. See EDR Ruling Nos. 2007-1563, 2007-1637, 2007-1691; EDR Ruling No. 2007-1556. The grievant's appeal was still received beyond the 15 calendar day period after the decision on remand for review of any such new matters. Therefore, it need not be determined in this case whether the August 22, 2007 decision on remand raises any new matters that could have been administratively reviewed.

<sup>6</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>7</sup> E.g., EDR Ruling No. 2007-1635.

<sup>8</sup> This Department would like to note however that although the grievant's requests for review are 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>9</sup> See *Grievance Procedure Manual* § 7.2(d).

<sup>10</sup> This date was calculated consistent with the fact that, based on this Department's records, neither party sought administrative review of the hearing decision in Case Number 8513.

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Director