

Issue: Administrative Review of Hearing Decision in Case No. 8660; Ruling  
Date: November 7, 2007; Ruling #2008-1863; Agency: Department of  
Corrections; Outcome: No ruling (untimely).



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

**ADMINISTRATIVE REVIEW OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2008-1863  
November 7, 2007

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 8660. 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 III Written Notice with termination for "sexual misconduct."<sup>1</sup> The hearing decision was issued on September 20, 2007.<sup>2</sup> The hearing officer upheld the disciplinary action and termination.<sup>3</sup> On October 4, 2007, the grievant timely requested that the hearing officer reconsider his decision. In an October 10, 2007 reconsideration decision, the hearing officer declined to reconsider his decision and/or to reopen the hearing.<sup>4</sup> On October 19, 2007, the grievant requested an administrative review by this Department as well as from the Director of the Department of Human Resource Management (DHRM). DHRM subsequently ruled the grievant's request for administrative review untimely.

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>5</sup> Further, the September 20, 2007 hearing

---

<sup>1</sup> Decision of Hearing Officer, Case No. 8660, September 20, 2007 ("Hearing Decision"), at 2.

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

<sup>3</sup> *Id.* at 4.

<sup>4</sup> See Ruling on Request to Reconsider the Decision or Reopen the Hearing, Case No. 8669, October 10, 2007 ("Reconsideration Decision").

<sup>5</sup> *Grievance Procedure Manual* § 7.2(a).

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>6</sup> Here, however, this Department received the grievant's request for administrative review on October 19, 2007, well beyond the 15 calendar days following the September 20, 2007 decision.<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 administrative review requests to this Department and DHRM were untimely, the hearing decision became a final hearing decision on October 10, 2007, the day the hearing officer issued his Reconsideration Decision. The grievant has 30 calendar days from that date, or by **Friday, November 9, 2007**, to appeal the hearing 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.

---

Claudia T. Farr  
Director

---

<sup>6</sup> Hearing Decision at 4-5.

<sup>7</sup> It should be noted that had the grievant's October 19<sup>th</sup> request for administrative review to this Department challenged new findings and/or conclusions in the hearing officer's reconsideration decision that were not part of the original September 20, 2007 hearing decision, the request may have been considered timely because (1) he timely challenged the original September 20<sup>th</sup> decision to the hearing officer; and (2) he could not have anticipated any such new findings and/or conclusions until the reconsideration decision was issued on October 10, 2007. However, the grievant's October 19<sup>th</sup> request for administrative review does not challenge new findings and/or conclusions in the reconsideration decision, but rather challenges the hearing officer's findings and/or conclusions in the original September 20<sup>th</sup> decision. Any requests for administrative review of the original decision had to be made within 15 calendar days of the date of issuance, or by October 5, 2007.

<sup>8</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>9</sup> See *Grievance Procedure Manual* § 7.2(d).