

Issues: Compliance – Grievance Procedure (Documents), and Administrative Review of Hearing Officer's Decision in Case No. 8738; Ruling Date: January 11, 2008; Ruling #2008-1906; Agency: Department of Corrections; Outcome: Agency In Compliance, Administrative Review Request untimely (no ruling).



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

**COMPLIANCE AND ADMINISTRATIVE REVIEW RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling Number 2008-1906  
January 11, 2008

On January 3, 2008, this Department (EDR) received a letter from the grievant challenging the Decision of the Hearing Officer in Case Number 8738. The grievant's challenge is untimely and there is no just cause for the delay.

**FACTS**

The hearing decision for Case Number 8738 was issued November 28, 2007.<sup>1</sup> On December 10, 2007, the grievant submitted to the hearing officer a letter objecting to the Department of Corrections' (the agency's) alleged noncompliance. The grievant asserted that the agency had failed to provide documents pursuant to section 8.2 of the Grievance Procedure Manual and had improperly changed the date on the Written Notice at issue. The hearing officer addressed these matters in a Reconsideration Decision issued on December 20, 2007.<sup>2</sup> The grievant now raises the same arguments to this Department on the basis of party noncompliance. EDR received the grievant's request for review on January 3, 2008.

**DISCUSSION**

Section 6.3 of the Grievance Procedure Manual provides that

*If a party disagrees with a hearing officer's decision or order on a matter of compliance, an objection should be made to the hearing officer, and a ruling from EDR must be requested in writing and received by EDR within 15 calendar days of the date of the hearing decision.*

Additionally, appeals to this Department considered under section 7.2 of the Grievance Procedure Manual as administrative reviews "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>

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<sup>1</sup> Decision of Hearing Officer, Case No. 8738, Nov. 28, 2007 ("Hearing Decision"), at 1.

<sup>2</sup> Reconsideration of Decision of Hearing Officer, Case No. 8738, Dec. 20, 2007 ("Reconsideration Decision").

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

The November 28, 2007 hearing decision also 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 original decision was issued.<sup>4</sup> This Department received the grievant's request for review on January 3, 2008, three weeks beyond the 15 calendar days following the November 28, 2007 hearing decision, which makes it untimely. Furthermore, the grievant has presented no evidence of a "just cause" for the delay.<sup>5</sup> This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>6</sup> A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner.

### 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>7</sup> The only timely request for administrative review the grievant asserted in this matter was the December 10, 2007 letter to the hearing officer. Because the hearing officer issued a Reconsideration Decision in response to that request on December 20, 2007, the hearing decision became final on that date. The grievant has 30 calendar days from December 20, 2007 to appeal the hearing decision to the circuit court in the jurisdiction in which the grievance arose.<sup>8</sup> The basis of any such appeal must be that the final decision is contradictory to law.<sup>9</sup>

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Claudia T. Farr  
Director

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

<sup>5</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>6</sup> See, e.g., EDR Ruling No. 2002-159; EDR Ruling No. 2002-057; EDR Ruling No. 2001-024.

<sup>7</sup> See *Grievance Procedure Manual* § 7.2(d).

<sup>8</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

<sup>9</sup> *Id.*