

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8895;
Ruling Date: March 18, 2009; Ruling #2009-2252; Agency: Virginia Department of
Transportation; Outcome: No Ruling (untimely).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling Number 2009-2252
March 18, 2009

The grievant has requested that this Department administratively review the hearing decision in Case Number 8895 and the hearing officer's denial of the grievant's request for reconsideration as untimely.

FACTS

The hearing decision for Case Number 8895 was issued February 9, 2009.¹ The grievant requested reconsideration from the hearing officer, but that request was received on February 25, 2009.² As such, the hearing officer denied the request as untimely.³ EDR received the grievant's current request for review on March 12, 2009.

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."⁴ Further, the February 9, 2009 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.⁵ This Department received the grievant's request for review on March 12, 2009, sixteen days beyond the 15 calendar days following the February 9, 2009 hearing decision. Similarly, it appears that the hearing officer's Reconsideration Denial was appropriate. For the grievant's request for reconsideration to be timely, the hearing officer should have received it by February 24, 2009. The request was received one day beyond that date, making it untimely.⁶

¹ Decision of Hearing Officer, Case No. 8895, Feb. 9, 2009 ("Hearing Decision"), at 1.

² Reconsideration Denial, Case No. 8895-R, Mar. 9, 2009, at 1.

³ *Id.*

⁴ *Grievance Procedure Manual* § 7.2(a).

⁵ Hearing Decision at 11-12.

⁶ Reconsideration Denial at 1.

Furthermore, the grievant has presented no evidence of any “just cause” for the delay.⁷ The grievant appears to argue that his request for reconsideration to the hearing officer is timely because the hearing officer received it within 15 days of February 12, 2009, the date the grievant received the hearing decision. However, as indicated above, the proper measure of the 15 calendar day period is from the date of the hearing decision.⁸ This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁹ 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.

The grievant also refers to the fact that the hearing decision was issued approximately five months after the hearing, beyond the general requirement that a hearing decision be issued within 35 calendar days of the hearing officer’s appointment.¹⁰ Consequently, the grievant asserts that he should be entitled to leeway because of this delay. Such an argument does not constitute just cause for his delay in this case. There is no indication that the hearing officer’s delay in issuing the hearing decision in any way prevented the grievant from requesting administrative review in a timely manner. Accordingly, this Department finds that the grievant’s requests for reconsideration and administrative review in Case Number 8895 are untimely without just cause.

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.¹¹ Because the grievant’s requests for review were untimely, the hearing decision in Case Number 8895 became a final hearing decision after the 15 calendar day period expired on February 24, 2009. The parties have 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 be that the final decision was contradictory to law.¹²

Claudia T. Farr
Director

⁷ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁸ *Grievance Procedure Manual* § 7.2(a).

⁹ See, e.g., EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

¹⁰ See *Grievance Procedure Manual* § 5.1. Preferably, hearings take place and decisions are written within the 35-day timeframe set forth in the grievance procedure. This Department recognizes, however, that circumstances may arise that impede the issuance of a timely decision, without constituting noncompliance with the grievance procedure. See, e.g., EDR Ruling No. 2006-1135.

¹¹ See *Grievance Procedure Manual* § 7.2(d).

¹² Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).