

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8957;  
Ruling Date: April 13, 2009; Ruling #2009-2274; Agency: James Madison  
University; Outcome: No Ruling (untimely).



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

**ADMINISTRATIVE REVIEW RULING OF DIRECTOR**

In the matter of James Madison University  
Ruling Number 2009-2274  
April 13, 2009

On April 7, 2009, this Department (EDR) received a letter from the grievant requesting administrative review of the Decision of the Hearing Officer in Case Number 8957. However, the grievant's request is untimely and there is no just cause for the delay.

FACTS

The hearing decision for Case Number 8957 was issued March 20, 2009.<sup>1</sup> EDR received the grievant's request for administrative review on April 7, 2009.

DISCUSSION

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>2</sup> The March 20, 2009 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>3</sup>

In this case, the fifteenth calendar day after the issuance of the decision was Saturday, April 4, 2009. When the 15<sup>th</sup> day falls on a weekend or holiday, as was the case here, the parties have until the following business day to timely seek an administrative review.<sup>4</sup> Although it appears the grievant mailed her letter to this Department on Monday, April 6, 2009, EDR did not receive the grievant's request for review until April 7, 2009, one day beyond the extended 15 calendar day period, which makes it untimely. Furthermore, there

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<sup>1</sup> Decision of Hearing Officer, Case No. 8957, Mar. 20, 2009 ("Hearing Decision"), at 1.

<sup>2</sup> *Grievance Procedure Manual* § 7.2(a).

<sup>3</sup> Hearing Decision at 10-11.

<sup>4</sup> *E.g.*, EDR Ruling No. 2003-486 (extending time period for requesting administrative review when final day fell on a weekend); EDR Ruling No. 2002-140 (same).

does not appear to be “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> If the grievant’s other requests for review to DHRM and/or the hearing officer were also untimely, the hearing decision in Case Number 8957 became a final hearing decision after the 15 calendar day period for filing requests for administrative review expired on April 6, 2009. The parties would 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.<sup>8</sup>

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Claudia T. Farr  
Director

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<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. 2009-2079; EDR Ruling No. 2008-1906; EDR Ruling No. 2002-057.

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

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