

Issue: Administrative Review of Hearing Officer's Decision in Case No. 8957;  
Ruling Date: April 29, 2009; Ruling #2009-2288; 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 2009-2288  
April 29, 2009

On April 21, 2009, this Department (EDR) received a letter from the grievant requesting, again, administrative review of the Decision of the Hearing Officer in Case Number 8957. As EDR has previously ruled, 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. In EDR Ruling No. 2009-2274, issued April 13, 2009, this Department determined that the grievant's request for administrative review was not timely.

DISCUSSION

As previously discussed in EDR Ruling No. 2009-2274, 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>

As determined in EDR Ruling No. 2009-2274, this Department did not receive the grievant's initial request for administrative review until April 7, 2009, one day beyond the expiration of the 15 calendar-day period, making it untimely. This 15-day period was even extended to Monday, April 6, 2009, as the actual fifteenth day following the hearing decision fell on a weekend. Because EDR did not *receive* the grievant's request for review in a timely

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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.

manner, it could not be considered. Furthermore, there does not appear to be “just cause” for the grievant’s delay.<sup>4</sup> The hearing officer’s delay in issuing the hearing decision does not relieve the parties from their responsibility to comply with the deadlines set forth in the grievance procedure. The grievant has presented insufficient grounds to alter the result of EDR Ruling No. 2009-2274. That ruling will stand.

#### 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>5</sup> It appears that 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, as this Department is unaware of any timely requests for administrative review submitted by either party. 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.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>4</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>5</sup> *Grievance Procedure Manual* § 7.2(d).

<sup>6</sup> Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).