

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9220;
Ruling Date: January 22, 2010; Ruling #2010-2482; 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 2010-2482
January 22, 2010

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 9220. Because the grievant's request for administrative review was untimely, this Department will not review the hearing decision.

FACTS

This case involves a grievant who received a Group II Written Notice for failing to follow policy and was terminated due to the accumulation of disciplinary action.¹ The hearing decision was issued on November 16, 2009.² The hearing officer upheld the disciplinary action and termination.³ On December 8, 2009, this Department received a request for administrative review from the grievant.

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 November 16, 2009 hearing 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.⁵ Here, however, this Department received the grievant's request for administrative review on December 8, 2009, well beyond the 15 calendar days following the November 16, 2009 decision. Furthermore, the grievant has offered no just cause

¹ Decision of Hearing Officer, Case No. 9220, November 16, 2009 ("Hearing Decision"), at 1.

² *Id.*

³ *Id.* at 7.

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

⁵ Hearing Decision at 5.

explanation for the delay.⁶ Accordingly, the grievant's request for administrative review by this Department is untimely.

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.⁷ Within 30 calendar days of a final hearing decision, either party may appeal the final decision to the circuit court in the jurisdiction in which the grievance arose.⁸ The basis of any such appeal must have been that the final decision is contradictory to law.⁹

Claudia T. Farr
Director

⁶ The delay appears to have been caused by the grievant's first having sent her request for administrative review to EDR's previous address. In light of the passage of time since EDR moved in November 2008, the inclusion of the proper, current address in the hearing decision provided to the grievant, and the grievant's prior use of EDR's current address in requesting administrative review in an earlier case, we cannot find that this error constitutes just cause.

⁷ See *Grievance Procedure Manual* § 7.2(d). Because the grievant's administrative review request to this Department was untimely, the hearing decision will become a final hearing decision after the Department of Human Resource Management has issued its administrative review.

⁸ See Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

⁹ *Id.*