

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9065, 9210; Ruling Date: July 19, 2010; Ruling #2011-2718; Agency: Virginia Department of Transportation; Outcome: No Ruling (untimely).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2011-2718
July 19, 2010

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Numbers 9065 and 9210. Because the grievant's request for administrative review was untimely, this Department will not review the hearing officer's actions or decisions.

FACTS

This case involves a grievant who received a Group I Written Notice and a Group II Written Notice with termination.¹ The hearing decision was issued on June 22, 2010.² The hearing officer upheld the disciplinary actions and termination.³ On or about June 28, 2010, the grievant timely requested that the hearing officer reconsider her decision. In a July 1, 2010 reconsideration decision, the hearing officer upheld her June 22, 2010 hearing decision.⁴ On July 15, 2010, the grievant's request for an administrative review by this Department was received. By letter dated July 14, 2010, the grievant also requested an administrative review by the Director of the Department of Human Resource Management (DHRM).

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."⁵ Further, the June 22, 2010 hearing decision clearly advised the parties that any request they may file for administrative review to the hearing officer, DHRM or EDR must be received by the reviewer within 15 calendar

¹ Decision of Hearing Officer, Case Nos. 9065 and 9210, issued June 22, 2010 ("Hearing Decision"), at 1.

² *Id.*

³ *Id.* at 9.

⁴ See Reconsideration Decision of Hearing Officer, Case Nos. 9065 and 9210, issued July 1, 2010 ("Reconsideration Decision") at 3.

⁵ *Grievance Procedure Manual* § 7.2(a).

days of the date the decision was issued.⁶ Here, however, this Department received the grievant's request for administrative review on July 15, 2010, well beyond the 15 calendar days following the June 22, 2010 decision.⁷ Accordingly, the grievant's request for administrative review by this Department is untimely.

Furthermore, the grievant has presented no evidence of any "just cause" for the delay.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.

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.¹⁰ Because the grievant's administrative review requests to this Department and DHRM were untimely, the hearing decision became a final hearing decision on **July 1, 2010**, the day the hearing officer issued her Reconsideration Decision. The grievant has 30 calendar days from that date to appeal the hearing decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must have been that the final decision is contradictory to law.

Claudia T. Farr
Director

⁶ Hearing Decision at 10-11.

⁷ It should be noted that had the grievant's July 15, 2010 request for administrative review to this Department challenged new findings and/or conclusions in the hearing officer's reconsideration decision that were not part of the original June 22, 2010 hearing decision, the request may have been considered timely because (1) she timely challenged the original June 22nd decision to the hearing officer; and (2) she could not have anticipated any such new findings and/or conclusions until the reconsideration decision was issued on July 1, 2010. However, the grievant's July 15th request for administrative review does not challenge new findings and/or conclusions in the reconsideration decision, but rather challenges the hearing officer's findings and/or conclusions in the original June 22nd decision. Any requests for administrative review of the original decision had to be made within 15 calendar days of the date of issuance, or by July 7, 2010.

⁸ "Just cause" is defined as a "reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9.

⁹ See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

¹⁰ See *Grievance Procedure Manual* § 7.2(d).