

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9409;
Ruling Date: November 15, 2010; Ruling #2011-2829; 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 2011-2829
November 15, 2010

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 9409. 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 II Written Notice.¹ The hearing decision was issued on October 18, 2010.² The hearing officer upheld the disciplinary action.³ On November 5, 2010, 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 October 18, 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 days of the date the decision was issued.⁵ The hearing decision also notified the parties that the 15 calendar day period begins with the date of issuance of the decision, not receipt of the decision.⁶ Here, however, this Department received the grievant's request for administrative review on November 5, 2010, which was three days beyond the 15 calendar days following the October 18, 2010 decision. Accordingly, the grievant's request for administrative review by this Department is untimely.

¹ Decision of Hearing Officer, Case No. 9409, issued October 18, 2010 ("Hearing Decision"), at 1.

² *Id.*

³ *Id.* at 11.

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

⁵ Hearing Decision at 12.

⁶ *Id.*

Furthermore, the grievant has presented no evidence of any “just cause” for the delay.⁷ This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁸ 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.⁹ 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.¹⁰ The basis of any such appeal must have been that the final decision is contradictory to law.¹¹

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

⁹ *See Grievance Procedure Manual* § 7.2(d).

¹⁰ *See* Va. Code § 2.2-3006 (B); *Grievance Procedure Manual* § 7.3(a).

¹¹ *Id.*