

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9666;
Ruling Date: September 20, 2011; Ruling No. 2012-3107; Agency:
Department of Corrections; Outcome: No Ruling – Untimely.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ADMINISTRATIVE REVIEW OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2012-3107
September 20, 2011

The grievant has requested that this Department (EDR) administratively review the hearing officer's decision in Case Number 9666. Because the grievant's request for administrative review was untimely, this Department will not review the hearing officer's actions or decision.

FACTS

The hearing decision in Case 9666 was issued on August 23, 2011.¹ On September 13, 2011, this Department received the grievant's request for an administrative review. The request provided no explanation for the delayed filing.

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."² Further, the August 23, 2011 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.³ However, this Department received the grievant's request for administrative review on September 13, 2011, six days beyond the 15 calendar day deadline which expired on September 7, 2011. Accordingly, the grievant's request for administrative review by this Department is untimely. Similarly, the grievant's appeal to the Department of Human Resource Management (DHRM) was received by DHRM on September 15, 2011. Thus, the DHRM appeal is also untimely.

¹ Decision of Hearing Officer, Case No. 9666, issued on August 23, 2011 ("Hearing Decision"), at 1.

² *Grievance Procedure Manual* § 7.2(a).

³ Hearing Decision at 5-6.

Furthermore, the grievant has presented no evidence of any “just cause” for the delay.⁴ This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁵ 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.⁶ Because the grievant’s administrative review requests to this Department and DHRM were untimely, the hearing decision became a final hearing decision on **September 7, 2011**, after the 15 calendar day period expired. The grievant has 30 calendar days from September 7, 2011 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.⁷

Claudia T. Farr
Director

⁴ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁵ See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁶ See *Grievance Procedure Manual* § 7.2(d).

⁷ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).