

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9852;  
Ruling Date: August 10, 2012; Ruling No. 2013-3408; Agency: Virginia  
Community College System; Outcome: Hearing Decision in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**ADMINISTRATIVE REVIEW**

In the matter of the Virginia Community College System  
Ruling Number 2013-3408  
August 10, 2012

The grievant has requested that the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management administratively review the hearing officer's decision in Case Number 9852. Because the grievant's request for administrative review was untimely, EDR will not review the hearing officer's actions or decision.

FACTS

The hearing decision in Case 9852 was issued on July 19, 2012.<sup>1</sup> On August 7, 2012, EDR 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."<sup>2</sup> Further, the July 19, 2012 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.<sup>3</sup> However, EDR received the grievant's request for administrative review on August 7, 2012, four days beyond the 15 calendar day deadline which expired on August 3, 2012. Accordingly, the grievant's request for administrative review by EDR is untimely.

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<sup>1</sup> Decision of Hearing Officer, Case No. 9852, issued on July 19, 2012 ("Hearing Decision"), at 1.

<sup>2</sup> *Grievance Procedure Manual* § 7.2(a).

<sup>3</sup> Hearing Decision at 10-11.

Furthermore, the grievant has presented no evidence of any “just cause” for the delay.<sup>4</sup> EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>5</sup> A grievant’s lack of knowledge about the grievance procedure and its requirements do 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.<sup>6</sup> Because the grievant’s administrative review request to EDR was untimely, the hearing decision became a final hearing decision on **August 4, 2012**, after the 15 calendar day period expired. The grievant has 30 calendar days from August 4, 2012 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.<sup>7</sup>

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

<sup>6</sup> See *Grievance Procedure Manual* § 7.2(d).

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