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ADMINISTRATIVE REVIEW

In the matter of the Department of Corrections
Ruling Number 2025-5786
November 7, 2024

The Department of Corrections (the “agency”) has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) administratively review the hearing officer’s decision in Case Numbers 12069 and 12070. For the reasons set forth below, EDR will not disturb the hearing decision.

FACTS

The relevant facts in Case Numbers 12069 and 12070, as found by the hearing officer, are set forth in a decision on these consolidated matters on October 18, 2024, and incorporated herein by reference.¹ The grievances challenged three Written Notices (a Group I, a Group II, and a Group III) and the grievant’s resulting termination.² In her decision, the hearing officer upheld the Group II Written Notice, but rescinded the other disciplinary actions and ordered the grievant to be reinstated.³ EDR received the agency’s appeal of the decision fifteen minutes after midnight on November 5, 2024.

DISCUSSION

By statute, EDR has been given the power to establish the grievance procedure, promulgate rules for conducting grievance hearings, and “[r]ender final decisions . . . on all matters related to . . . procedural compliance with the grievance procedure.”⁴ If the hearing officer’s exercise of authority is not in compliance with the grievance procedure, EDR does not award a decision in favor of a party; the sole remedy is that the hearing officer correct the noncompliance.⁵ The Director of DHRM also has the sole authority to make a final determination on whether the hearing

¹ Decision of Hearing Officer, Case Nos. 12069, 12070 (“Hearing Decision”), Oct. 18, 2024, at 3-21.

² *Id.* at 1.

³ Hearing Decision at 27.

⁴ Va. Code §§ 2.2-1202.1(2), (3), (5).

⁵ See *Grievance Procedure Manual* § 6.4(3).

decision comports with policy.⁶ The DHRM Director has directed that EDR conduct this administrative review for appropriate application of policy.

The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** EDR within 15 calendar days of the date of the original hearing decision.”⁷ Accordingly, only issues raised within the 15-calendar-day period can be considered by EDR on administrative review. A hearing decision becomes final after the 15-calendar-day period “for filing requests for administrative review has expired and neither party has filed such a request.”⁸ Here, the original hearing decision was issued on October 18, 2024. Thus, to be timely, a request for administrative review must have been filed on or before November 4, 2024.⁹ EDR did not receive the agency’s ruling request until after midnight on November 5. Accordingly, EDR declines to consider the arguments presented in the agency’s request for administrative review received on November 5, 2024, as the ruling request was not received within the 15-calendar-day period following the issuance of the hearing decision.¹⁰

CONCLUSION AND APPEAL RIGHTS

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.¹¹ Any such appeal must be based on the assertion that the final hearing decision is contradictory to law.¹²

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⁶ Va. Code § 2.2-3006(A); *Murray v. Stokes*, 237 Va. 653, 378 S.E.2d 834 (1989).

⁷ *Grievance Procedure Manual* § 7.2(a).

⁸ *Id.* § 7.2(d).

⁹ The 15th calendar day following issuance of the decision was actually November 2, 2024. However, because November 2 was a Saturday, the parties had until the following business day, November 4, to submit a timely appeal. *See Grievance Procedure Manual* § 7.2(a) (“If the 15th calendar day by which a request for administrative review must be filed falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the request for administrative review is to be filed is closed during normal business hours, the appeal may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed.”) Additionally, the agency’s attorney acknowledged in her submission that the appeal was due on November 4.

¹⁰ In response to the notice of receipt of ruling request for this matter, the agency advocate proffered an explanation for the late submission as being caused by “significant issues with attaching the document and sending it.” EDR has considered this explanation together with the totality of the circumstances and EDR’s past practices with respect to untimely appeals. We cannot find that the agency has provided just cause in this instance for EDR to consider the late submission. *See Grievance Procedure Manual* § 9 (defining “just cause” as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process”).

¹¹ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

¹² *Id.*; *see also* Va. Dep’t of State Police v. Barton, 39 Va. App. 439, 445, 573 S.E.2d 319, 322 (2002).