

**CHAPTER 73. SPECIAL RULES OF ADMINISTRATIVE
PRACTICE AND PROCEDURE**

Sec.

73.1. Appeals and petitions for administrative review.

Source

The provisions of this Chapter 73 adopted February 7, 1975, effective February 8, 1975, 5 Pa.B. 248, unless otherwise noted.

§ 73.1. Appeals and petitions for administrative review.

(a) *Appeals.*

(1) An interested party, by counsel unless unrepresented, may appeal a revocation decision. Appeals shall be received at the Board's Central Office within 30 days of the mailing date of the Board's order. When a timely appeal of a revocation decision has been filed, the revocation decision will not be deemed final for purpose of appeal to a court until the Board has mailed its decision on the appeal. This subsection supersedes 1 Pa. Code § 35.226 (relating to final orders).

(2) The scope of review of an appeal will be limited to whether the decision is supported by substantial evidence, an error of law has been committed or there has been a violation of constitutional law.

(3) The failure of an appeal to present with accuracy, brevity, clearness and specificity whatever is essential to a ready and adequate understanding of the factual and legal points requiring consideration will be a sufficient reason for denying the appeal.

(4) Second or subsequent appeals and appeals which are out of time under these rules will not be received.

(b) *Petitions for administrative review.*

(1) A parolee, by counsel unless unrepresented, may petition for administrative review under this subsection of determinations relating to revocation decisions which are not otherwise appealable under subsection (a). Petitions for administrative review shall be received at the Board's Central Office within 30 days of the mailing date of the Board's determination. When a timely petition has been filed, the determination will not be deemed final for purposes of appeal to a court until the Board has mailed its response to the petition for administrative review. This subsection supersedes 1 Pa. Code § 35.226.

(2) The failure of a petition for administrative review to present with accuracy, brevity, clearness and specificity whatever is essential to a ready and adequate understanding of the factual and legal points requiring consideration will be a sufficient reason for denying the petition.

(3) Second or subsequent petitions for administrative review and petitions for administrative review which are out of time under this part will not be received.

(4) An employe of the Board designated by the Chairperson may review and respond to a petition for administrative review.

Authority

The provisions of this § 73.1 amended under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. §§ 331.1—331.34).

Source

The provisions of this § 73.1 adopted February 7, 1975, effective February 8, 1975, 5 Pa.B. 248; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial page (100667).

Notes of Decisions

Applicability of Provisions

Where the petitioner's letter was a request for reconsideration under 1 Pa. Code § 35.241 and not a subsequent appeal, the Board of Probation and Parole's regulation did not apply. This is evidenced by the Board's statement in its regulation that § 73.1 supersedes one specified section of the General Rules of Administration, but does not mention 1 Pa. Code § 35.241, which governs reconsiderations. *Shaw v. Board of Probation and Parole*, 812 A.2d 769 (Pa. Cmwlth. 2002).

Although these regulations distinguish between appeals of revocation decisions and petitions for administrative review, there is nothing in the Parole Act to indicate that 61 P. S. § 331.4(d) applies only to appeals of revocation hearings as that term is defined in the regulations. *Watkins v. Board of Probation and Parole*, 685 A.2d 226 (Pa. Cmwlth. 1996).

Authority of Board

Under 61 P. S. § 331.4 and this regulation, the Board of Probation and Parole may permit its assistant chief counsel to review and deny revocation decisions and petitions for administrative review. *Williams v. Board of Probation and Parole*, 654 A.2d 235 (Pa. Cmwlth. 1995).

A prisoner must file an administrative appeal from the Board's determination within 30 days of the determination's mailing date. Failure to file such an appeal will result in a dismissal for being untimely. *McCaskill v. Board of Probation and Parole*, 631 A.2d 1092 (Pa. Cmwlth. 1993); appeal denied 644 A.2d 739 (Pa. 2004).

A petition for administrative review of a Board order filed and signed on behalf of a parolee by a person identifying himself as the paralegal of the parolee and not signed by the parolee did not comply with this section which only permits a parolee or his attorney to file a petition for review. *Cruz v. Board of Probation and Parole*, 623 A.2d 381 (Pa. Cmwlth. 1993).

The Board's failure to send counsel of record a copy of a recommitment order constituted negligence by the Board and the parolee's attorney's submission of a request for administrative relief 34 days after the order was issued was excused. *Calcagni v. Board of Probation and Parole*, 582 A.2d 1141 (Pa. Cmwlth. 1990).

A pro se application for administrative relief was properly dismissed as untimely and appointed counsel's failure to recognize a clear jurisdictional defect so presented rendered the subsequent appeal frivolous. *Robinson v. Board of Probation and Parole*, 582 A.2d 857 (Pa. 1990).

Board's rescission of parole amounting to correction of a clerical error was not an appeal of its own order and 30-day appeal period does not apply to the correction; this section applies only to administrative appeals of Board revocation decisions. *Lord v. Board of Probation and Parole*, 580 A.2d 463 (Pa. Cmwlth. 1990); appeal denied 596 A.2d 801 (Pa. 1991).

Panel which decided request for administrative relief is limited to determining whether revocation panel's finding is supported by substantial evidence. *Burgess v. Board of Probation and Parole*, 568 A.2d 268 (Pa. Cmwlth. 1989); appeal denied 577 A.2d 545 (Pa. 1990).

Writ of Mandamus filed in Commonwealth Court to require Board to set final dates of recommitment for parole violation improper; administrative review is adequate and appropriate remedy. *Harper v. Board of Probation and Parole*, 565 A.2d 1244 (Pa. Cmwlth. 1989).

Board did not have jurisdiction to hear appeal filed beyond 30 days from date of hearing. *Avers v. Board of Probation and Parole*, 565 A.2d 1257 (Pa. Cmwlth. 1989); appeal denied 588 A.2d 511 (Pa. 1990).

Failure to appeal parole revocation within time required precludes challenge of recommitment order absent proof of ineffective assistance of counsel. *Epps v. Board of Probation and Parole*, 565 A.2d 214 (Pa. Cmwlth. 1989).

Parole appeals are due 30 days from the date the decisions are mailed and not from the date of receipt. *Lewis v. Board of Probation and Parole*, 562 A.2d 957 (Pa. Commw. 1989); appeal denied 584 A.2d 322 (Pa. 1990).

The Board lacks jurisdiction to hear an untimely appeal despite petitioner's contention that he was denied effective assistance of counsel. *Larkin v. Board of Probation and Parole*, 555 A.2d 954 (Pa. Cmwlth. 1989).

Board Responsibility

The Board of Probation and Parole does not have a duty to expressly state a reparole eligibility date. *Johnson v. Board of Probation and Parole*, 676 A.2d 1242 (Pa. Cmwlth. 1996).

Burden

A petitioner who appeals for administrative review of the Board of Probation and Parole's recalculation order bears the burden of specifying the requisite factual or legal basis for the relief sought. *Meehan v. Board of Probation and Parole*, 783 A.2d 362 (Pa. Cmwlth. 2001).

General Comment

The Board of Probation and Parole does not have a duty to expressly state a reparole date. *Johnson v. Board of Probation and Parole*, 676 A.2d 1242 (Pa. Cmwlth. 1996).

Petition for Administrative Review

Where an inmate failed to specifically set forth facts regarding the rehabilitation program which he claims would entitle him to credit against his maximum expiration date of sentence, he has not met his main burden of including facts or a legal basis for the relief he seeks. Therefore, the Board of Probation and Parole properly denied the relief requested. *Jackson v. Board of Probation and Parole*, 781 A.2d 239 (Pa. Cmwlth. 2001).

An inmate's petition for review is dismissed although he alleges that his maximum sentence date was miscalculated, when the board provided an administrative appeal process from its decision and the inmate failed to timely avail himself of that process. *Evans v. Department of Corrections*, 713 A.2d 741 (Pa. Cmwlth. 1998).

Sufficiency

Although petitioner may have failed to allege every fact which supports his appeal, his allegations as to the custodial nature of the rehabilitation program provided a sufficient basis for the Board to allow him to develop a factual record. Failing to allow the Petitioner to do so was an abuse of discretion requiring remand. *Meehan v. Board of Probation and Parole*, 783 A.2d 362 (Pa. Cmwlth. 2001).

Timeliness

The prisoner mailbox rule deems that a prisoner's pro se appeal is filed at the time it is given to prison officials or put in the prison mailbox. *Sweesy v. Board of Probation and Parole*, 955 A.2d 501, 502 (Pa. Cmwlth. 2008).

Although the "prisoner mailbox rule" applies to the prisoner's appeal, the record is not clear as to the date his appeal was mailed; therefore, the matter was remanded for a factual determination on that issue. *Coldren v. Board of Probation and Parole*, 795 A.2d 457 (Pa. Cmwlth. 2002).

Where petitioner's administrative appeal was mailed, but not received, within 30 days of the mailing date of the decision of the Board of Probation and Parole, the "prisoner mailbox rule" applies, and the appeal is deemed to have been timely filed. *Pettibone v. Board of Probation and Parole*, 782 A.2d 605 (Pa. Cmwlth. 2001).

The Board of Probation and Parole received Petitioner's request for administrative relief on July 3, 1996, which was within the 30-day limitation required by this regulation with respect to the mailing date of June 3, 1996, and the re-mailing date of June 19, 1996; therefore, Petitioner's appeal is remanded to the Board for consideration of the merits. *Pometti v. Board of Probation and Parole*, 705 A.2d 953 (Pa. Cmwlth. 1998).

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