

Issue: Compliance – Grievance Procedure (30-day rule); Ruling Date: April 5, 2017; Ruling No. 2017-4521; Agency: Department of Criminal Justice Services; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

COMPLIANCE RULING

In the matter of the Department of Criminal Justice Services
Ruling Number 2017-4521
April 5, 2017

The grievant has requested a compliance ruling regarding her March 1, 2017 grievance with the Department of Criminal Justice Services (the agency). The agency asserts that the grievant did not initiate her grievance within the 30 calendar-day time period required by the grievance procedure. For the reasons discussed below, the grievance is timely and may proceed.

FACTS

The grievant initiated a grievance on March 1, 2017, challenging her 2015-2016 performance evaluation, which she appears to have received on November 14, 2016. Pursuant to Department of Human Resource Management (DHRM) Policy 1.40, *Performance Planning and Evaluation*, the grievant initiated an appeal of that evaluation by emailing a "Request for Reconsideration" on November 27, 2016 to the agency's director and human resources representative. The agency director, serving as the reviewer, issued a response to the grievant's request for reconsideration on January 30, 2017, which the grievant indicates she received on January 31, 2017. As the agency director declined to modify the grievant's performance evaluation, on March 1, 2017, she initiated a grievance. At the second resolution step,² the agency alleged that the grievance was untimely and notified the grievant it was administratively closing her grievance. The grievant now appeals that determination.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.³ When an employee initiates a grievance beyond the 30 calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as "EDR" in this ruling to alleviate any confusion. EDR's role with regard to the grievance procedure remains the same post-merger.

² Due to the grievant's role within the organization, the first and second steps appear to collapse for purposes of this grievance.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

Further, when an employee has initiated a timely appeal of a performance evaluation under state or agency policy,⁴ that appeal essentially renders the initial evaluation a preliminary rather than a final decision. Thus, when an employee timely appeals a performance evaluation under policy, the 30-day period to initiate a grievance is extended until the agency has taken final action on the appeal.⁵ Additionally, if an agency fails to take action on the grievant's appeal, the 30-day period to challenge the agency's final action may be stayed indefinitely, until such time as the agency chooses to act.

In this case, the grievant is challenging her performance evaluation, which she received on November 14, 2016, as well as the agency's failure to change that evaluation as requested in her timely Request for Reconsideration.⁶ Thus, the grievant had thirty calendar days following the reviewer's response to her appeal to file her grievance. In this instance, the grievant should have initiated a grievance within 30 days of January 30, 2017, i.e., no later than March 1, 2017.⁷ As such, her March 1, 2017 grievance is timely and will be allowed to proceed.

CONCLUSION

For the reasons discussed above, EDR has determined that this grievance was filed timely within the 30 calendar-day period. By copy of this ruling, the parties are advised that **within five workdays of the receipt of this ruling**, the second step-respondent must respond substantively to the grievance, or, if a face-to-face meeting has not yet occurred, schedule the meeting.

EDR's rulings on matters of compliance are final and nonappealable.⁸



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⁴ *E.g.*, DHRM Policy 1.40, *Performance Planning and Evaluation*.

⁵ EDR Ruling No. 2009-2309; EDR Ruling No. 2007-1512; EDR Ruling No. 2004-920.

⁶ *See* DHRM Policy 1.40, *Performance Planning and Evaluation*.

⁷ Arguably, if the grievant did not actually receive the January 30, 2017 response until January 31, 2017, she would have had until March 2, 2017 to timely initiate a grievance. As she initiated the grievance on March 1, 2017, any discrepancy between these two dates would not change the outcome of this ruling.

⁸ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).