

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: June 30, 2017; Ruling No. 2017-4569; Agency: Department of Behavioral Health and Developmental 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 Behavioral Health and Developmental Services
Ruling Number 2017-4569
June 30, 2017

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her May 22, 2017 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) was initiated in compliance with the grievance procedure.

FACTS

On May 22, 2017, the grievant initiated a grievance with the agency, alleging that it had failed to approve a salary increase that she initially requested in 2016 and that agency management had engaged in “retaliatory action” after she contacted the human resources office “regarding the status of [her] salary alignment request.” In the grievance, the grievant cites a series of actions that occurred in 2016 as support for her argument that the agency has created an ongoing “hostile environment.” Upon receiving the grievance, the agency administratively closed it for failure to comply with Sections 2.2 and 2.4 of the *Grievance Procedure Manual*. The agency asserts that the grievance was not timely filed because no management action occurred within the thirty calendar days preceding May 22, 2017. The grievant disputes the agency’s assertions and appeals to EDR for a ruling on whether the grievance may proceed.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty 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.² When an employee initiates a grievance beyond the thirty 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 Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

Grievant's Salary Alignment Request

In this case, the grievant alleges that she was notified her request for a salary alignment had been approved in March 2016, but that the alignment has never taken effect. The grievant emailed several managers about the status of the salary alignment on May 11, 2017, and was informed that the request had “been forwarded” to the appropriate person “for consideration.” With regard to grievances raising salary disputes, EDR applies the “paycheck rule” where it is applicable in such cases.³ The “paycheck rule” provides that every payday for which an employee receives compensation reduced by the alleged impropriety constitutes a separate accrual, or “trigger date,” for timeliness purposes; thus, with the issuance of each paycheck that is alleged to be improper, a new 30 calendar day period begins to run.⁴ To the extent the grievant is alleging that the agency’s actions relating to her compensation are inconsistent with state and/or agency policy or are otherwise improper in some way, the grievance is timely to dispute such alleged improper compensation practices raised in the grievance for the thirty calendar days preceding the May 22, 2017 date on which it was initiated.⁵

Hostile Work Environment

The grievant further alleges that agency management has engaged in retaliatory harassment that has created a hostile work environment. A claim of harassment, retaliation, or other workplace conduct that is ongoing, such as that alleged here, is raised in a timely manner if some agency action alleged to be part of the harassing or intimidating conduct occurred within the thirty calendar days preceding the initiation of the grievance.⁶ In this case, the grievant claims that the agency’s response to her May 11, 2017 email consisted of “circular non-responses” to her concerns. However, the primary subjects of the May 11, 2017 email are the agency’s alleged failure to approve a salary alignment for the grievant or investigate her claims relating to a 2016 counseling memo with which she disagreed.

Although the issue of the grievant’s request for a salary alignment may proceed, as discussed above, the grievant previously filed a grievance on July 6, 2016 to challenge the issuance of the counseling memo. The agency argues that the grievant’s claims relating to the counseling memo are duplicative of claims presented in her earlier grievance. Section 2.4 of the *Grievance Procedure Manual* states that a grievance must not challenge the same management action challenged by another grievance. To the extent the grievant continues to disagree with the basis for the counseling memo and is attempting to raise that issue again in the current grievance, such claims are duplicative of the July 6, 2016 grievance and may not proceed. In addition, it appears the grievant is now supervised by a different manager than the one who issued the

³ E.g., EDR Ruling No. 2013-3581; EDR Ruling No. 2010-2441; EDR Ruling No. 2005-991.

⁴ See EDR Ruling No. 2010-2441 (and authorities cited therein).

⁵ It should be noted, however, that even if such a grievance were to qualify for an administrative hearing, a hearing officer may only order an agency to grant an increase in compensation if required by policy. Such an increase would “commenc[e] at the beginning of the 30 calendar day period preceding the initiation of the grievance.” *Rules for Conducting Grievance Hearings* § VI(C)(1).

⁶ See *Nat'l R.R. Pass. Corp. v. Morgan*, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221-24 (4th Cir. 2016).

counseling memo and allegedly retaliated against the grievant in the past. The grievant does not appear to allege that her current supervisor has engaged in similar improper conduct. EDR has been unable to identify any other specific management actions that occurred within the thirty calendar days preceding the initiation of the grievance that are part of the alleged ongoing pattern of retaliatory and/or harassing conduct, and the grievant has not alleged any such actions outside of the May 11, 2017 email. Accordingly, EDR concludes that the grievance is not timely as to the grievant's claim that the agency has engaged in retaliatory harassment that has created a hostile work environment.

CONCLUSION

Based on the foregoing, the grievant's May 22, 2017 grievance is re-opened and shall be permitted to proceed. The agency need only address the grievant's timely claim relating to her request for a salary alignment. The grievant's claim of retaliatory harassment is not timely and will not proceed further. The grievance should be returned to the appropriate first step-respondent to be addressed on the merits of the claims raised therein, as they relate to the grievant's salary alignment request. The first step-respondent must issue a written response within five workdays of receiving the grievance.⁷

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



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⁷ *Grievance Procedure Manual* § 3.1.

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