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**COMPLIANCE RULING**

In the matter of the University of Virginia Medical Center  
Ruling Number 2022-5402  
June 28, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her grievance with the University of Virginia Medical Center (the “agency”) was timely initiated.

FACTS

On August 13, 2021, the grievant submitted a grievance directly to EDR. The grievant was informed at that time that EDR could not act on her grievance and she needed to submit the grievance to the agency for it to proceed through the management resolution steps. The grievant did not submit the grievance herself to the agency and EDR did not provide the agency with a copy, per the grievant’s wishes. On April 7, 2022, the grievant informed EDR that she wanted her grievance sent to the agency, whereupon EDR emailed the grievance to Human Resources for the agency. The agency has concluded that the grievance was not timely initiated and administratively closed the grievance. The grievant appealed that determination and requests this ruling.

The grievance at issue appears to describe numerous factual circumstances occurring during the grievant’s employment with the agency. These circumstances can best be described as challenging how the grievant feels she was treated (hostile work environment) and an alleged failure to accommodate under the Americans with Disabilities Act (ADA).<sup>1</sup> The grievance also refers to different disciplinary actions received by the grievant. According to the agency, the last disciplinary action received by the grievant was on July 2, 2021. The agency states the grievant’s last date of employment at the agency before beginning a period of short-term disability was on August 17, 2021. The grievant was then approved for long-term disability<sup>2</sup> and notified of her separation from employment with the agency effective April 8, 2022.

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<sup>1</sup> The ADA claim appears to relate to a request to accommodate how the grievant performed her work while employed.

<sup>2</sup> The beginning of the grievant’s long-term disability period is not clear. The agency states that long-term disability benefits were approved effective Jan. 12, 2022, but documentation from the third-party administrator indicates that long-term disability benefits began on Feb. 7, 2022. Ultimately, the precise date of long-term disability commencement does not impact this ruling.

## DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> 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. Failure to timely initiate a grievance may be excused “only in extraordinary cases where just cause is found.”<sup>4</sup>

The initiation of this grievance, as described above, was an unusual set of circumstances. EDR has long held that initiating a grievance with the wrong management representative will not bar the grievance for noncompliance.<sup>5</sup> When a grievance is submitted directly to EDR, we generally consider ourselves as the equivalent of a “wrong management representative.”<sup>6</sup> Thus, we consider the date a grievance is submitted to EDR as the date initiated for timeliness purposes. However, in such situations, the grievance is usually transmitted to the employing agency within a short period of time by the grievant or EDR to commence the resolution steps. Per the grievant’s request, this grievance was not submitted until nearly eight months later on April 8, 2022. For purposes of this ruling only, EDR will presume the date of initiation of this grievance as August 13, 2021. We do so without reaching the question of whether such a presumption would be appropriate under these facts because it has no impact on the outcome for resolution of this matter.

To the extent the grievance is considered a challenge to any disciplinary actions, the agency states the most recent disciplinary action the grievant received was issued on July 2, 2021. To initiate a timely grievance, therefore, the grievant would have needed to submit a grievance within 30 calendar days, *i.e.* August 2, 2021.<sup>7</sup> Because there is nothing to indicate that the grievance was submitted earlier than August 13, 2021, we conclude that the grievant did not initiate the grievance timely to challenge any disciplinary actions. This is consistent with EDR’s longstanding practice in grievances challenging a disciplinary action of calculating the 30-calendar-day timeframe beginning on the date that management presents or delivers the Written Notice to the employee.<sup>8</sup>

A claim of harassment, discrimination, or other workplace conduct that is ongoing, such as that alleged in the grievance, 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.<sup>9</sup> In presuming that this grievance was submitted on August 13, 2021, shortly before the grievant began a period of short-term disability, EDR will consider the grievance timely initiated as to her claims about treatment in the workplace that was apparently continuing

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<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>4</sup> *Grievance Procedure Manual* § 2.2.

<sup>5</sup> *E.g.*, EDR Ruling No. 2007-1512; EDR Ruling No. 2006-1114.

<sup>6</sup> *See, e.g.*, EDR Ruling 2004-645.

<sup>7</sup> The 30th calendar day was actually August 1, 2021, but because that day fell on a weekend, the deadline would have been August 2, 2021. *See Grievance Procedure Manual* § 2.2.

<sup>8</sup> *E.g.*, EDR Ruling No. 2019-4845; EDR Ruling No. 2019-4844; EDR Ruling No. 2017-4469; EDR Ruling No. 2015-4181. Significantly, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.” *Grievance Procedure Manual* § 2.2 n.2 (emphasis added).

<sup>9</sup> *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).

as of the last date she worked at the agency. Nevertheless, because of subsequent events, this grievance will not proceed.

In general, “*any* management actions or omissions may be grieved” by an employee, so long as the grievance complies with the initiation requirements of the grievance procedure.<sup>10</sup> However, an employee’s separation from employment after initiating a grievance may render challenges to certain management actions or omissions moot.<sup>11</sup> In such a situation, EDR will consider administrative closure of a former employee’s grievance, in part, on the theory that a grievance may not be “used to . . . impede the efficient operations of government.”<sup>12</sup> For example, further relief may not be available through the grievance procedure after an employee has separated, even though the challenged management actions may have been appropriately the subject of a grievance.<sup>13</sup>

Even assuming that the grievant’s allegations described in her grievance, viewed in their totality, sufficiently describe conduct pervasive enough to constitute an adverse employment action, EDR perceives no meaningful relief that a hearing officer could grant. If an issue of discrimination or workplace harassment is qualified for hearing and the hearing officer finds that it occurred, the hearing officer may order the agency to create an environment free from the behavior, and to take appropriate corrective actions necessary to cure the violation and/or minimize the potential for its reoccurrence.<sup>14</sup> Since initiating her grievance, the grievant has been separated from employment following placement on long-term disability. EDR therefore finds that the issues concerning the grievant’s work environment that may have been created during her employment are moot for purposes of this grievance.

EDR’s determination is also premised upon the absence of an active grievance challenging the grievant’s separation. EDR would acknowledge that the circumstances of the grievant’s disability leave and eventual separation are confusing and unclear in some respects, especially in consideration of the grievant’s perspective. Nevertheless, the circumstances of the grievant’s disability leave and separation are not challenged in the grievance at issue in this ruling. While the grievant submitted a subsequent grievance, dated May 3, 2022, which appears to challenge some of those circumstances and, presumably, her separation,<sup>15</sup> the agency has closed that grievance for an asserted lack of access and/or noncompliance. The grievant has not appealed that determination and, thus, the grievance remains closed.

Given these circumstances, there is currently no reasonably foreseeable opportunity for the grievant to return to the workplace as relief through the grievance process. Thus, a hearing officer would be unable to provide relief for the workplace matters addressed in the grievance at issue in this ruling. As these matters are effectively moot, the grievance will remain administratively

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<sup>10</sup> *Grievance Procedure Manual* § 2.4.

<sup>11</sup> See EDR Ruling No. 2020-5063.

<sup>12</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(4); see EDR Ruling No. 2020-4973.

<sup>13</sup> See, e.g., EDR Ruling No. 2018-4722; EDR Ruling No. 2018-4724; EDR Ruling No. 2018-4586.

<sup>14</sup> *Rules for Conducting Grievance Hearings* § VI(C)(3).

<sup>15</sup> It is unclear whether the grievant sought reinstatement in her May 3, 2022 grievance. Rather, the grievant seems to have sought removal from being ineligible for rehire at the agency. The agency has declined to make the grievant eligible for rehire because at the time of the grievant’s absence from work in August 2021, the agency was in the process of issuing notice of the grievant’s termination for unsatisfactory performance. The agency has provided the grievant with an appeal of her ineligibility for rehire after a one-year period lapses.

closed. This ruling does not address whether there may be some other legal or equitable remedy available to the grievant in relation to these claims. However, any remedy would be unavailable in this forum.

EDR's rulings on matters of compliance are final and nonappealable.<sup>16</sup>

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<sup>16</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).