



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

## COMPLIANCE RULING

In the matter of the Department of Agriculture and Consumer Services  
Ruling Number 2023-5539  
April 13, 2023

The Department of Agriculture and Consumer Services (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether the grievant’s dismissal grievance was timely initiated. The agency asserts that the grievant did not initiate his grievance within the 30-calendar-day period required by the grievance procedure. For the reasons set forth below, this grievance is untimely and will be administratively closed.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>1</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. Ordinarily, the agency notifies the employee directly of an administrative closure, using the Grievance Form A.<sup>2</sup> However, because dismissal grievances are initiated directly with EDR,<sup>3</sup> an agency is essentially unable to follow the ordinary process of administrative closure. As a result, the agency in this case requested a compliance ruling based on the grievance information received by EDR.

EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>4</sup> Further, 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.”<sup>5</sup> Failure to timely initiate a grievance may be excused “only in extraordinary cases where just cause is found.”<sup>6</sup>

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<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>2</sup> *Grievance Procedure Manual* § 2.4.

<sup>3</sup> *Id.* § 2.5.

<sup>4</sup> E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

<sup>5</sup> *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

<sup>6</sup> *Id.* § 2.2.

In this case, the event that forms the basis of the grievance is the grievant's disciplinary dismissal from employment, based on a Group II Written Notice dated February 10, 2023, indicating termination based on accumulation of discipline. The parties do not appear to dispute that the grievant received the Written Notice on the date it was issued. Therefore, in order to challenge a Written Notice received on February 10, the grievant should have initiated his grievance within 30 calendar days, *i.e.*, no later than March 13, 2023.<sup>7</sup> On March 23, 2023, the grievant contacted EDR to inquire whether this Office had received a grievance he purportedly sent via U.S. mail in late February. Upon a thorough review of EDR records, we concluded that we had no record of receiving grievance documents from the grievant. The grievant then submitted a new dismissal grievance form electronically on March 24, 2023. Throughout this process, the grievant has maintained that he mailed his dismissal grievance in late February, but has no confirmation of mailing or other evidence tending to show the date of his submission.

The grievance procedure provides that “[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using email, certified mail, or requesting a date-stamped photocopy of the Grievance Form A.”<sup>8</sup> Here, although the grievant asserts he mailed his dismissal grievance to EDR on or about February 24, 2023, it appears no evidence exists to establish submission on that date. Without more than the grievant's assertion, EDR cannot find that the grievance was submitted within the 30-calendar-day period. In addition, the grievant has not presented any evidence that he had just cause for a late filing.

Accordingly, EDR must conclude that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance, and no further action is required.

EDR's rulings on matters of compliance are final and nonappealable.<sup>9</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

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<sup>7</sup> Although 30 calendar days from February 10 would have been March 12, that date in this case would have fallen on a Sunday. Per section 2.2 of the *Grievance Procedure Manual*, “[i]f the 30th calendar day by which a grievance must be filed falls on a Saturday, Sunday, or legal holiday . . . , the grievance 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.” In this case, therefore, the next business day following the end of the 30-calendar-day period would have been Monday, March 13, 2023.

<sup>8</sup> *Grievance Procedure Manual* § 2.2.

<sup>9</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).