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COMPLIANCE RULING

In the matter of the Virginia Museum of Fine Arts
Ruling Number 2023-5508
February 8, 2023

The Virginia Museum of Fine Arts (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the grievant’s dismissal grievance. For the reasons set forth below, EDR finds that the grievance was not timely initiated.

FACTS

On December 19, 2022, the agency issued to the grievant a Group III Written Notice with termination of employment effective on the same date. Documentation submitted by the agency appears to indicate that the Written Notice was provided to the grievant by email on December 19, 2022 following a call to discuss the matter. The grievant submitted a dismissal grievance to challenge the termination on January 19, 2022. In response to EDR’s notification of receipt of the grievance, the agency asserts that the grievance was initiated in an untimely manner.

DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.¹ Because dismissal grievances are initiated directly with EDR,² an agency is essentially unable to follow this process as outlined. Accordingly, the agency in this case has requested a ruling from this Office regarding the issue of alleged noncompliance.

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.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. 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

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 2.5.

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

Notice to the employee.⁴ 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.”⁵

The grievant received the Written Notice form at issue on December 19, 2022. Thus, a grievance should have been submitted by midnight on January 18, 2023. Here, the grievant submitted their dismissal grievance on January 19, 2023, just after the 30-calendar-day period elapsed. Consequently, the agency is correct to point out that the dismissal grievance was not submitted within 30 calendar days of the grievant’s receipt of the Written Notice. Further, there is no evidence of just cause to excuse the late submission.⁶ The grievant provided evidence regarding the receipt of the physical letter of dismissal via certified mail, as they were not home at the time of delivery for personal reasons, but this does not change the analysis of the issue. As was previously stated, the 30-calendar-day timeframe begins on the date that the grievant receives the disciplinary action from the agency. The receipt is effective by email or mailed letter. Here, the grievant received an email with the attached dismissal notice and Written Notice on December 19, 2022. This date, therefore, begins the 30-calendar-day timeframe, not the date of December 28 on which the grievant received the letter by mail. Accordingly, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating their grievance.

CONCLUSION

For the reasons set forth above, EDR concludes that the dismissal grievance was not timely initiated and that there was no just cause for 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.⁷

Christopher M. Grab
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⁴ *E.g.*, EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

⁵ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

⁶ *Id.* § 2.2 (providing that failure to timely initiate a grievance “will be excused only in extraordinary cases where just cause is found.”). Under the grievance procedure, “just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Id.* § 9.

⁷ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).