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COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2023-5522
March 8, 2023

The Department of Motor Vehicles (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.¹ 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.² However, because dismissal grievances are initiated directly with EDR,³ 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.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 Failure to timely initiate a grievance may be excused “only in extraordinary cases where just cause is found.”⁶

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

² *Grievance Procedure Manual* § 2.4.

³ *Id.* § 2.5.

⁴ *E.g.*, EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

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

⁶ *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 January 24, 2023, and signed by the grievant on the same date. Because the grievant received the Written Notice on January 24, he should have initiated his grievance within 30 calendar days, *i.e.*, no later than February 23, 2023. On February 24, 2023, the grievant emailed EDR to say that he "sent Grievance forms out 01/31/2023 and did not receive a response" but was "worried the documents did not send correctly." A dismissal grievance dated January 31, 2023 was attached to the email. However, EDR has confirmed that neither our office nor the grievant has any record or other evidence that he submitted the grievance on or before February 23, 2023.

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."⁷ Here, although the grievant asserts he emailed his dismissal grievance to EDR on January 31, 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 concludes 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.⁸

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⁷ *Grievance Procedure Manual* § 2.2.

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