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## COMPLIANCE RULING

In the matter of the Virginia Department of Corrections  
Ruling Number 2023-5451  
September 2, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his August 8, 2022 grievance with the Department of Corrections (the “agency”) was timely initiated. For the reasons set forth below, the grievance is untimely.

### FACTS

On or about August 8, 2022, the grievant initiated a grievance with the agency to “complain about a job promotion being pre-selected before the interview process.” The grievant stated that during a conversation with the Captain and the Manager that took place July 12, 2022, the Manager shared with the grievant that a position at the agency “was created for [a colleague]” because they knew “[he] could handle it.”<sup>1</sup> The Manager added that the colleague was “now constantly complaining to him that he didn’t sign up for this.” These statements troubled the grievant because he “was a finalist on that same interview board when [the colleague] was selected for [the position].” The grievant stated that the Manager’s “statements made [him] feel [he] was placed at an unfair disadvantage and didn’t have a chance at getting the position.” As relief, the grievant requested that human resources “review interview notes, possibl[y] re-interview of the finalist, possibly compensation, and/or if founded, those involved be subject to Standards of Conduct.” On or about August 15, 2022, the agency’s first-step respondent indicated that the grievance would be administratively closed as it was untimely initiated. The grievant now appeals the agency’s determination and requests 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>2</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.

<sup>1</sup> The grievant’s initial interview for the same supervisor position was on July 25, 2019.

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

Here, the grievant initiated his grievance on August 8, 2022, well beyond 30 calendar days after he interviewed for the position unsuccessfully in 2019. Upon receipt of the first-step response, the grievant requested to move forward with his grievance stating, “The unethical practices were not found out until 7/12/2022.” Generally speaking, a grievance filed to challenge a selection process must be filed within 30 calendar days of when the employee becomes aware they were not selected for the position.<sup>3</sup> Discovering information after the fact that might be relevant to such a grievance will not usually restart the filing period to challenge the selection process.<sup>4</sup> Under the facts presented in this case and given the length of time involved, EDR does not find that just cause exists to warrant this grievance to be considered timely. We are sympathetic to the grievant’s concerns because preselection is a serious issue necessitating an appropriate level of attention by the agency. The grievant may have the option to submit a complaint through another process or to his human resources office for review, but the grievance procedure is not an available forum to challenge the original selection process from 2019. For these reasons, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating his grievance. Consequently, the agency is correct that the grievance is not timely to challenge the outcome of the hiring process.

#### CONCLUSION

For the reasons set forth above, the grievant’s August 8, 2022 grievance will remain closed. The parties are advised that the grievance should be marked as concluded due to initiation noncompliance and no further action is required.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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<sup>3</sup> See, e.g., EDR Ruling No. 2019-4776.

<sup>4</sup> See *id.*

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