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COMPLIANCE RULING

In the matter of Virginia Commonwealth University
Ruling Number 2023-5464
November 2, 2022

The grievant, who is employed with Virginia Commonwealth University (the “university”), has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s August 19, 2022 grievance was timely initiated.

FACTS

The grievant received a Written Counseling and 90 Day Improvement Plan on April 21, 2022. On or about August 19, 2022, the grievant submitted a grievance form challenging the issuance of the Written Counseling and 90 Day Improvement Plan. On or about September 21, the agency notified the grievant that his grievance had been administratively closed because it was untimely. The grievant now seeks a ruling from EDR to determine whether the grievance was timely filed.

DISCUSSION

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.

In this case, the event that forms the basis of the grievance is the grievant’s receipt of written counseling and a 90-day Improvement plan on April 21, 2022. Because the grievant received written counseling on April 21, he should have initiated the grievance within 30 days, *i.e.*, no later than May 23.² He did not initiate the grievance until August 19, and thus it is untimely.

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

² The 30th calendar day, May 21, fell on a weekend and, accordingly, the grievant would have had until the following business day to initiate the grievance. *See Grievance Procedure Manual* § 2.2.

According to the grievant, the reason that he received the written counseling and 90-day Improvement Plan was the result of a “6 month investigation where [he] was escorted off premises by law enforcement.” According to the grievant’s supervisor, the catalyst of the investigation was when “several of [his] coworkers reported to the investigators that [he] engaged in conduct that is in violation of [the University’s] ethical standards.” A few examples of the alleged violations were, “failing to perform essential duties,” “sleeping during work hours” on one night shift, “watching movies on [his tablet] during one of [his] day shifts,” and “failure or refusal to collaborate with [his] coworkers when they requested ... assistance with a work-related task.” The grievant asked about the task that he allegedly refused to assist with, he was told “they did not know any specifics.” The grievant added that “no one knows a date of when [he] was sleeping or what dayshift [he] was watching movies either.” In addition, the grievant said that he “would have thought that they would tell [him] exactly what [he] did wrong so that [he] did not repeat it again.” After the grievant submitted a FOIA request to determine what the accusations were, he states he was informed that “these records do not exist.”

As just cause for his late filing, the grievant argues that he had only recently found out that no records existed. However, the grievant clearly received the written counseling on April 21, 2022, and, thus, should have initiated a grievance within 30 calendar days of receipt. Although the information the grievant received in response to his FOIA request is potentially confusing, these circumstances do not support a finding of just cause. The university conducted an investigation into the grievant’s conduct and determined that the allegations for which the investigation was conducted were not founded against the grievant. In the course of that investigation, however, the university gathered evidence of additional performance issues, which led to the written counseling he received. Though we are sympathetic to the grievant’s concerns, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ A grievant’s lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. For these reasons, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating his grievance.

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.⁴

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³ See, e.g., EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2019-4643

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).