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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2023-5482
November 21, 2022

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) concerning the grievant’s November 2, 2022 dismissal grievance. The agency asserts that the grievant did not initiate her grievance within the 30-calendar-day time period required by the grievance procedure. For the reasons discussed below, EDR will permit the grievance to proceed.

FACTS

On September 14, 2022, the agency issued a Group III Written Notice to the grievant with termination. On October 12, 2022, it appears the grievant was admitted to a medical facility for eight days due to severe and escalating mental health concerns. After providing inpatient treatment, facility staff discharged the grievant on October 20, 2022. With the assistance of a representative, the grievant submitted a dismissal grievance to EDR on November 2, 2022. The agency has objected to the grievance on grounds that it is untimely.

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 has requested a ruling from EDR on the issue of alleged noncompliance.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she 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, the grievance is not in compliance with the grievance procedure and may be administratively closed.

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 2.5.

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

Failure to initiate a grievance timely “will be excused only in extraordinary cases where just cause is found.”⁴ The grievance procedure defines just cause as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”⁵

The grievance record indicates that the grievant’s employment was terminated effective September 14, 2022 via Group III Written Notice. Assuming that the grievant received the Written Notice on this date,⁶ a timely grievance challenging the agency’s discipline would have had to be filed on or before October 14, 2022. EDR received a dismissal grievance on the grievant’s behalf on November 2, 2022. Accordingly, the dismissal grievance is not timely and may only be accepted for good cause shown.

EDR finds that the grievant has shown a sufficiently compelling reason to excuse her failure to file her dismissal grievance within the 30-calendar-day period. The grievant has presented medical documentation reflecting a psychiatric hospital admission on October 12, 2022 – two days prior to the deadline to file her grievance – with discharge more than a week later. Moreover, the admission documentation suggests that the grievant had been exhibiting symptoms of severe psychiatric distress for at least some days before she was admitted. These circumstances are consistent with agency documentation showing that, in the days leading up to the grievant’s termination, her coworkers reported concerns for her and others’ safety due to her unusual behavior at work. The grievant’s apparent response to the agency’s disciplinary action could also appear to be consistent with potential mental health concerns at that time. According to the grievant’s representative, she has continued to require extensive care following her hospital discharge and therefore was unable to immediately initiate her dismissal grievance.

In summary, it appears that, during and after the period for the grievant to file a timely grievance, she was experiencing significantly disabling medical problems that EDR finds to be sufficiently good cause to excuse the late filing. Based on this showing of just cause, EDR will accept the dismissal grievance as if it had been filed timely.

Accordingly, within **five workdays** of this ruling, the agency should submit to EDR a fully completed Form B requesting the appointment of a hearing officer.⁷

EDR’s rulings on matters of compliance are final and nonappealable.⁸

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⁴ *Grievance Procedure Manual* § 2.2.

⁵ *Id.* § 9.

⁶ EDR has not been presented with information about when the grievant received the Written Notice. For purposes of this ruling, we will assume that the grievant received the Written Notice on the day it was issued because it does not affect the outcome reached in this ruling.

⁷ *Id.* § 2.5.

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