

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 5, 2016; Ruling No. 2017-4460; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2017-4460
January 5, 2017

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her October 7, 2016 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) was timely initiated. For the reasons discussed below, the grievance was timely filed and may proceed.

FACTS

The grievant is employed by the agency as a Human Resources Generalist. On or about September 9, 2016, the grievant received two Group I Written Notices for unsatisfactory work performance. On October 7, 2016, the grievant initiated a grievance by placing a date-stamped Grievance Form A in a “properly addressed sealed envelope marked confidential” in the human resources mailbox. At the time the grievant placed the grievance in the mailbox, neither her supervisor (the first step-respondent) nor the facility director was available.

During a conversation with her supervisor on December 2, 2016, the grievant learned that the first step-respondent was unaware of the grievance. When the grievant provided an additional copy of the grievance to her first step-respondent, it was returned to the grievant, indicating that the grievance was being administratively closed as untimely. The grievant now appeals that determination to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date she 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 thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

The agency asserts that the grievance in this case was untimely because the grievant failed to ensure the grievance was signed as received by the first step-respondent within 30

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

calendar days, and it notes that the grievant bears the burden of proving timeliness. The agency does not, however, dispute the grievant's assertion that she date-stamped the grievance on October 7, 2016, and placed it in the human resources mailbox because the first step-respondent was absent. Rather, the agency argues, in effect, that proper initiation of a grievance necessitates some form of personal delivery to the appropriate step-respondent and/or proof of receipt, as indicated by the signature of the step-respondent.

Such a requirement is not contemplated by the *Grievance Procedure Manual*, however. The grievant's duty is merely to initiate the grievance within 30 calendar days, which can be by mail, email, fax, or hand-delivery. There is no requirement that a grievance be signed by a step-respondent to be considered initiated: to the contrary, EDR has long held that initiating a grievance with the wrong management representative (or indeed, with EDR itself) will not bar the grievance for noncompliance.² Further, the grievance procedure provides that the initiation date for a grievance that is mailed will be considered the postmark date,³ i.e., when the grievance is placed in the mail, not when it is received. As the available evidence indicates that the grievant placed her grievance in the human resources mailbox within 30 calendar days of her receipt of the Written Notices, similar to a grievance that is mailed within the deadline, EDR finds that the grievant timely and appropriately initiated the October 7, 2016 grievance. The grievance must therefore be allowed to proceed.

Within five workdays of receipt of this ruling, the first step-respondent is directed to provide a response to the grievance on the Grievance Form A. EDR's rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² E.g., EDR Ruling No. 2008-1858; EDR Ruling No. 2007-1512; EDR Ruling No. 2006-1114; EDR Ruling No. 2004-645; EDR Ruling No. 2001-230.

³ *Grievance Procedure Manual* § 2.2.

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