

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: January 26, 2017; Ruling No. 2017-4469; Agency: Department of Social Services; Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

COMPLIANCE RULING

In the matter of the Virginia Department of Social Services
Ruling Number 2017-4469
January 26, 2017

The Virginia Department of Social Services (the agency) seeks a compliance ruling concerning the grievant's filing of two dismissal grievances. The agency asserts that the grievant did not initiate her grievances within the 30 calendar day time period required by the grievance procedure. For the reasons discussed below, the dismissal grievances may proceed as outlined in this ruling.

FACTS

The grievant initiated two dismissal grievances directly with the Office of Employment Dispute Resolution (EDR) on December 27, 2016, the date she signed and presented each grievance to EDR. According to the grievant, she was terminated pursuant to two Written Notices, each dated November 16, 2016, but not received by her until November 29, 2016. In response to EDR's notification of receipt of the two grievances, the agency asserts that the grievant had actual notice of her termination on November 18, 2016, and as such, the grievances were initiated 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.² Because dismissal grievances are initiated directly with EDR,³ an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as "EDR" in this ruling to alleviate any confusion. EDR's role with regard to the grievance procedure remains the same post-merger.

² *Grievance Procedure Manual* § 2.4.

³ *Id.* § 2.5.

that is the basis of the grievance.⁴ 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.

Generally, EDR's past rulings have held that the date of delivery of the Written Notice forms the basis of the grievance for purposes of determining when a grievance should have been initiated.⁵ In this case, the Written Notices were mailed to the grievant via certified and U.S. Mail on November 17, 2016. On November 18, 2016, the grievant was sent an email from the agency's Organizational Development Division advising her that her employment with the agency ended effective November 16, 2016. The grievant received and responded to this email, and came to the agency in order to retrieve her personal belongings that day. Additionally, on November 18, 2016, she initiated a claim with the Virginia Employment Commission. Thus, the agency argues that the grievant had actual notice of her separation from employment on November 18, 2016.

In response, the grievant asserts that, while she may have known she was separated from employment on November 18, 2016, she had not seen the Written Notices in order to respond to the allegations on that date. She categorically denies having received the Written Notices until November 29, 2016, the date upon which she picked up the certified mail from the post office.⁶ While we agree with the agency that the grievant had actual notice of her separation on November 18, 2016, nevertheless, we find compelling the argument advanced by grievant that she was unable to intelligently initiate a grievance challenging the underlying substance of the disciplinary actions without first having received the actual disciplinary actions. Though the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt by the addressee,⁷ the facts in this case do not support a presumption that the grievant received the Written Notices prior to November 29, 2016.

Therefore, in this instance, the grievant should have initiated a grievance to challenge the Written Notices within 30 days of November 29, 2016, i.e., no later than December 29, 2016. As such, her grievances initiated on December 27, 2016 are timely and will be allowed to proceed. We note that while the grievant initiated two separate grievances to challenge two Written Notices, in this instance, EDR deems it appropriate to hold one hearing where both Written Notices will be at issue.⁸ If it has not already done so, the agency is directed to submit a Form B to EDR within five workdays of the date of this ruling.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

⁵ See EDR Ruling Nos. 2016-4276, 2016-4277; EDR Ruling No. 2016-4189; EDR Ruling No. 2014-3882; EDR Ruling No. 2014-3878.

⁶ Tracking information for the certified letter indicates that, on November 18, 2016, delivery was attempted and a notice was left at the grievant's address. On November 19, 2016, delivery was attempted again, but "refused." While a grievant's refusal of a certified mailing should not allow her to escape notice of disciplinary action, based upon the facts presented in this instance and the variety of ways a refusal might occur, it is impossible for EDR to determine whether the grievant had constructive notice of the Written Notices on November 19.

⁷ *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

⁸ Ordinarily, a single termination, regardless of number of Written Notices issued to the grievant, should be considered a single case. See EDR Ruling Nos. 2015-3959, 2015-3960, 2015-3961.

CONCLUSION

For the reasons set forth above, EDR concludes that the two December 27, 2016 grievances must be allowed to proceed as discussed above. EDR's rulings on matters of compliance are final and nonappealable.⁹



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⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).