

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: January 26, 2017; Ruling No. 2017-4482; 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

RECONSIDERED COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2017-4482
January 26, 2017

The Department of Behavioral Health and Developmental Services (“agency”) has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) reconsider EDR Ruling Number 2017-4460.

In Ruling Number 2017-4460, EDR concluded that, based on the available evidence, the grievant had timely initiated her October 7, 2016 grievance challenging two Group I Written Notices for unsatisfactory performance.¹ In reaching its conclusion, EDR relied on a date-stamped copy of the grievance, indicating a date of October 7, 2016, the grievant’s own statement that she had placed “a date-stamped Grievance Form A in a ‘properly addressed sealed enveloped marked confidential’ in the human resources mailbox,”² and the totality of the circumstances.

In its request for reconsideration, the agency asserts that the grievant failed to meet her burden of proving timeliness. In particular, the agency argues that 1) there is no evidence the grievance was in fact date-stamped on October 7, 2016, “as [i]t is common knowledge that the date of any date-stamp tool can be changed”; 2) the original document was never received by the agency, thus calling into question the grievant’s assertion that she placed the document in the human resources mailbox; and 3) the grievant’s failure to mention her grievance until December 2016, despite having at least one meeting with her supervisor during that period, demonstrates that she never in fact initiated a grievance prior to December 2016.

EDR’s decision in Ruling 2017-4460 was based on the grievant’s assertions regarding her conduct, which can be assessed and weighed as factual matters, as well as the totality of the circumstances and available information. In this case, while the agency has offered speculation and supposition, those are insufficient to offset the evidence presented by the grievant. Although the agency appears to suggest that the grievant changed the date-stamping tool, there is no evidence to support this hypothesis. Mere failure to receive a document does not establish, in

¹ See EDR Ruling Number 2017-4460.

² *Id.* In addition to the documents available prior to the issuance of Ruling 2017-4460, the grievant has also subsequently provided a print screen from her computer indicating that the last date her grievance was modified was October 7, 2016, consistent with the date-stamp on the grievance and the grievant’s other statements.

itself, that the document was never provided.³ Finally, there are many reasons why a grievant would not address a grievance during a meeting with management—in this case, the grievant has stated that she believed the agency was “so far out of compliance that [she] felt like [she] no longer had recourse for action.” In review of the agency’s request for reconsideration, EDR finds no basis to change the outcome of the original ruling.

EDR’s rulings on matters of compliance are final and nonappealable.⁴



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³ For example, the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

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