

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: September 2, 2016; Ruling No. 2017-4412; Agency: College of William and Mary; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the College of William and Mary
Ruling Number 2017-4412
September 2, 2016

The College of William and Mary (the College) seeks a compliance ruling concerning the grievant's filing of a 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 set forth below, this grievance is untimely and will be administratively closed.

FACTS

On August 24, 2016, the Office of Employment Dispute Resolution (EDR) received a Dismissal Grievance Form A challenging the grievant's separation from employment. Although dated August 3, 2016, the Form A was enclosed in an envelope sent by the grievant and stamped with a postmark date of August 23, 2016. According to the Dismissal Grievance Form A, the grievant's dismissal date was July 12, 2016, which the agency confirms. As such, the agency asserts that the grievance was initiated untimely.¹

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.

DISCUSSION

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 The agency also asserts that the grievance is non-compliant because the Grievance Form A does not state the requested relief. However, the *Rules for Conducting Grievance Hearings* provide that "the hearing officer is not limited to the specific relief requested by the employee on the Form A." *Rules for Conducting Grievance Hearings* § VI(A). Awarding appropriate relief to remedy the actions challenged would be squarely within the purview of a hearing officer, regardless of relief requested on the Form A. Thus, the grievance will not be considered non-compliant on this basis.

² *Grievance Procedure Manual* § 2.4.

³ *Grievance Procedure Manual* § 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.

In this case, the event that forms the basis of this grievance is the grievant's termination on July 12, 2016. Therefore, the grievant should have initiated her grievance within 30 days, i.e., no later than August 11, 2016. Based on the postmark on the envelope in which EDR received the grievance,⁵ the grievance was not initiated until August 23, 2016.⁶ Because the grievant initiated her grievance more than 30 calendar days beyond the date on which she was terminated, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant presents no facts that would constitute evidence of just cause for a delay in initiating her grievance. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁷ 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. Thus, we conclude that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no just cause for the delay. The grievance will be marked as concluded due to noncompliance and EDR will close its file. EDR's rulings on matters of compliance are final and nonappealable.⁸



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

⁵ As provided in the grievance procedure, "for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date." *Grievance Procedure Manual* § 2.2.

⁶ EDR has reviewed nothing to indicate why the grievance was dated August 3, 2016, but not mailed until August 23, 2016. Accordingly, EDR must assume that the grievance was mailed on the date indicated by the postmark on the envelope.

⁷ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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