

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 20, 2018; Ruling No. 2019-4764; Agency: Department of Corrections; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2019-4764
August 20, 2018

The Department of Corrections (the “agency”) seeks a compliance ruling concerning the grievant’s filing of a dismissal grievance. The agency asserts that the grievant did not initiate his 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.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he 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.

In this case, the event that forms the basis of the grievance is the grievant’s termination by Written Notice dated June 13, 2018. Thus, the grievant should have initiated the grievance within thirty days, i.e., no later than July 13, 2018. EEDR first received the dismissal grievance on July 24, 2018, though it is dated July 6, 2018. The grievant submitted the grievance by email on July 24 following a telephone call he placed to inquire as to the status of his grievance. EEDR forwarded the grievance to the agency on that date. Upon notice of the agency’s request for this ruling, the grievant provided EEDR with documentation that on July 9, 2018, he attempted to email the grievance to EEDR; however, he sent the grievance to an incorrect email address.² The grievant further advised EEDR that he was provided with the email address by another individual who frequently acts as an advocate for employees.

The grievance procedure provides that “[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy of the Grievance Form A.”³ In this instance, the grievant provided EEDR with documentation that would demonstrate that it was in fact initiated within thirty calendar days of the issuance of the Written Notice; however, it was mistakenly directed to an incorrect email address.

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

² It appears that the grievant sent his email to [EEDR employee’s name]@dhrm.va.gov; however, the correct email address should have been [EEDR employee’s name]@dhrm.virginia.gov.

³ *Grievance Procedure Manual* § 2.2.

EEDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ 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. EEDR's correct mailing and email address appear at the bottom of the Dismissal Grievance Form A, available on its website. Unfortunately, in this case the grievant received and relied upon incorrect information from a person who was not a member of the agency's human resource department, nor was that employee acting as a representative of the agency or DHRM. Thus, EEDR must conclude that the grievant did not initiate the grievance until July 24, 2018, and that he has not presented sufficient evidence of just cause for his late filing.

Accordingly, EEDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required.⁵ EEDR's rulings on matters of compliance are final and nonappealable.⁶



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⁴ See, e.g., EDR Ruling No. 2015-4017; EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159.

⁵ This ruling does not address whether the grievant might have a legitimate claim under a different process, such as, for example, filing a complaint with the federal Equal Employment Opportunity Commission or other legal proceeding.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).