

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 13, 2018; Ruling No. 2019-4776; Agency: Virginia Employment Commission; 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 Virginia Employment Commission
Ruling Number 2019-4776
September 11, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether her August 18, 2018 grievance with the Virginia Employment Commission (the “agency”) was timely initiated. The agency asserts that the grievance does not comply with the grievance procedure because it was not timely initiated. For the reasons set forth below, the grievance is untimely and will remain administratively closed.

FACTS

In June 2018, the grievant applied and was interviewed for a managerial position with the agency. The grievant was notified by email on July 11, 2018 that she had not been selected for the position. The grievant filed a grievance with the agency on August 18, 2018, in which she challenges the selection process and argues that she was more qualified for the managerial position than the successful candidate.¹ In her grievance, the grievant alleges that she received an email from management on July 20, 2018, which caused her to question whether the selection process had been conducted properly, and that this email was the event that prompted her to file the grievance. On or about August 22, 2018, the agency notified the grievant that her grievance had been administratively closed because it was untimely. The grievant now seeks a ruling from EEDR to determine whether the grievance was timely filed.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.² 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 agency contends that the grievance was filed more than thirty calendar days after the grievant knew or should have known that she had not been selected for the managerial position.

¹ The Grievance Form A is dated August 17, 2018; however, the agency has indicated that the grievant actually submitted her grievance by email on August 18. Regardless of whether EEDR considers the grievance to have been initiated on August 17 or August 18, it was not timely filed for the reasons discussed below.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

In her grievance, the grievant cites July 20, 2018 as the date on which the issue she is grieving occurred because she received the agency's email announcement about the hiring of the successful candidate on that date. Although the grievant argues that she was not aware of the specific issues she alleges with regard to the agency's selection process until she received the July 20, 2018 email, the grievant was notified by email on July 11, 2018 that she had not been selected for the position. Furthermore, the grievant received a second email from agency management on July 13, 2018, also advising her that she not been chosen for the position. Consequently, even by the most generous of analyses, the grievant knew or should have known no later than July 13, 2018 that another candidate had been hired for the managerial position. The grievance should have been filed no later than August 13, which is the next business day following a count of 30 calendar days from July 13, in order to be timely.³ Because the grievant did not initiate the grievance until August 18, the grievance is untimely.

Furthermore, the grievant has not provided any information that would justify her late filing. 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. Accordingly, EEDR concludes that the grievant not demonstrated just cause for her delay.

CONCLUSION

For the reasons set forth above, EEDR 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 EEDR will close its file. EEDR's rulings on matters of compliance are final and nonappealable.⁵



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³ The 30th calendar day from July 13, 2018 was Sunday, August 12, 2018. Section 2.2 of the *Grievance Procedure Manual* provides that, when the 30th calendar day "falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the grievance is to be filed is closed during normal business hours, the grievance may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed." In this case, therefore, the filing deadline was extended to Monday, August 13, 2018.

⁴ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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