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COMPLIANCE RULING

In the matter of Northern Virginia Community College
Ruling Number 2022-5308
October 20, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his September 27, 2021 grievance was timely initiated. For the reasons set forth below, the grievance is untimely.

FACTS

The grievant works as a police officer for Northern Virginia Community College (the “college” or “agency”). As alleged in the grievance, the grievant learned on or about August 16, 2021 that he would not be assigned to his preferred shift upon beginning full-duty work at one of the college’s campuses. He alleges that the sergeant responsible for assigning shifts disregarded the grievant’s seniority and made the assignment for an improper reason. On August 18, 2021, the grievant expressed to the college’s human resources staff that he wished to file a grievance about the matter. The staff member allegedly asked if the grievant “would be willing to try and resolve the matter informally before filing [a] grievance.” The grievant agreed, but ultimately did not receive a substantive response to his internal complaint. As a result, he initiated a grievance on September 27, 2021. On or about September 28, 2021, the agency administratively closed the grievance on the grounds that it was not timely to address the issues it cited. The grievant now appeals this determination and requests this ruling.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 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 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. Failure to timely initiate a grievance may be excused “only in extraordinary cases where just cause is found.”²

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

² *Grievance Procedure Manual* § 2.2.

In this case, the event that forms the basis of the grievance is the grievant's discovery on August 16 that he would not be assigned to his preferred shift. To initiate a timely grievance, therefore, he would have needed to submit it within 30 calendar days, *i.e.* September 15. Because he did not initiate the grievance until September 27, it is untimely.

The grievant argues that the 30-calendar-day period should begin on September 17, the day he "realized that the matter wasn't being effectively handled informally." However, the circumstances identified on the Grievance Form A are most reasonably read to take issue with the grievant's shift assignment (and its alleged motivation), rather than the agency's review. The Form A identifies the issue as: "My supervisor assigned a less senior officer to a shift I should have been offered." The grievant also expresses that, when he agreed to try informal resolution, he "was under the impression that the time to file the grievance was on hold until it was determined if the matter could be resolved informally." Under the grievance procedure, however, informal discussions to resolve a dispute can extend the initiation period only if the parties agree in writing to the extension.³ The record does not indicate that the parties made any such agreement. Although we support the grievant's openness to informal resolution, EDR 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. For these reasons, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating his grievance.

That said, we note that "management may allow a grievance to proceed through the resolution steps" in order to promote employee relations, even if the grievance fails to meet one or more requirements of the grievance procedure.⁵ If the agency chooses to take this approach, management should inform the grievant that the grievance may proceed but that a hearing will be denied. If not, the grievance may be marked as concluded due to noncompliance, and no further action is required.

EDR observes that the grievant may still be seeking to address his shift assignment. We are hopeful that management continues working on the issue with the grievant to seek a mutually agreeable resolution. However, if no resolution is reached and if the grievant submits a new request for a change in shift assignment, the grievant would be able to file a new grievance concerning the denial of such a request or of management's failure to act thereon. If the agency denies such a new request for a shift assignment, the grievant would have 30 calendar days from receiving the denial to file a new grievance.

EDR's rulings on matters of compliance are final and nonappealable.⁶

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³ *Id.* § 1.2.

⁴ *See, e.g.*, EDR Ruling No. 2020-4991; EDR Ruling No. 2018-4643; EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159.

⁵ *Grievance Procedure Manual* § 2.4.

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