



EMILY S. ELLIOTT  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

**COMPLIANCE RULING**

In the matter of Norfolk State University  
Ruling Number 2022-5316  
November 10, 2021

Norfolk State University (the “university” or “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s dismissal grievance was timely initiated.

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.<sup>1</sup> However, because dismissal grievances are initiated directly with EDR,<sup>2</sup> an agency is essentially unable to follow the ordinary process of administrative closure. The grievance at issue in this case was not filed directly with EDR but rather with the university directly. In notifying EDR of the grievance, the university contested the timeliness of the grievance. Therefore, EDR opened this ruling to formally address the issue of alleged initiation noncompliance.

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.<sup>3</sup> 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. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>4</sup> Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of *receipt* of the Written Notice.”<sup>5</sup> Failure to timely initiate a grievance may be excused “only in extraordinary cases where just cause is found.”<sup>6</sup>

---

<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> *Id.* § 2.5.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>4</sup> E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

<sup>5</sup> *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

<sup>6</sup> *Id.* § 2.2.

In this case, the event that forms the basis of the grievance is the university's issuance of a Group III Written Notice with termination to the grievant on September 13, 2021. Because the grievant received the Written Notice on September 13, he should have initiated his grievance within 30 calendar days, *i.e.*, no later than October 13. The grievant claims he hand-delivered a Grievance Form A - Expedited Process directly to the university's human resources office on October 13.<sup>7</sup> More specifically, the grievant alleges that he went to the human resources office on the afternoon of October 13, but found the office was closed and no one was available. The grievant states that, at the suggestion of a security guard, he slid his grievance paperwork under the door to the office. However, the university contends that the grievant hand-delivered his grievance to the human resources office on October 14. The university denies that the human resources office was closed on October 13.

For purposes of timeliness, EDR will consider the date the grievance was submitted to the university as its initiation date.<sup>8</sup> 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 email, certified mail, or requesting a date-stamped photocopy of the Grievance Form A.”<sup>9</sup> Here, the parties have offered opposing accounts about the initiation of the grievance. The grievance paperwork is stamped as having been received by the human resources office on October 14, 2021, though the stamp could have been applied on October 14 if the grievance were submitted in the manner alleged by the grievant on October 13 and processed the following day. The university has provided a visitor log purporting to show that the grievant did not enter the building where the human resources office is located on October 13; however, the visitor log also does not indicate that the grievant was at the building on October 14, when the university claims he submitted the grievance in person. Having carefully considered the information offered by the parties, EDR has not reviewed evidence that meets the grievant's burden to establish that the grievance was timely initiated.<sup>10</sup> Most significantly, the grievant has not presented evidence that would confirm or corroborate that he delivered his grievance to the human resources office on October 13 as he claims, in light of the agency's assertion to the contrary. Under these circumstances, EDR cannot find that the grievance was submitted timely within the 30-calendar-day deadline. Therefore, it is untimely.

---

<sup>7</sup> Although the grievance form is dated October 6, 2021, the grievant acknowledges that he did not deliver it to the university until at least October 13.

<sup>8</sup> EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance. *E.g.*, EDR Ruling No. 2019-4789; EDR Ruling No. 2018-4715; EDR Ruling No. 2017-4460. This issue typically arises when a grievance submits their grievance to the wrong step respondent, in which case the remedy is either for management to provide the grievance paperwork to the appropriate step respondent or return the grievance to the grievant for submission to that step respondent. In this case, the university was essentially the equivalent to the “wrong management representative” for purposes of initiating a dismissal grievance. Likewise, the grievant's use of the expedited form instead of the dismissal form also will not bar the grievance for noncompliance, as EDR views using the wrong grievance form as noncompliance similar to initiating with the wrong management representative that should be remedied in the same manner. *See* EDR Ruling No. 2015-3944; EDR Ruling No. 2013-3400.

<sup>9</sup> *Grievance Procedure Manual* § 2.2.

<sup>10</sup> *Id.*

In addition, the grievant has not presented any evidence of just cause for a late filing.<sup>11</sup> Accordingly, EDR 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.

EDR's rulings on matters of compliance are final and nonappealable.<sup>12</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

---

<sup>11</sup> While it appears that the absence that gave rise to the grievant's termination was the result of some medical and/or family issues, the grievant has not argued or presented information that would support a finding that he was prevented from submitting a timely grievance due to any of these issues.

<sup>12</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).