



EMILY S. ELLIOTT
DIRECTOR

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

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

COMPLIANCE RULING

In the matter of Virginia Department of Health
Ruling Number 2022-5336
January 25, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his November 30, 2021 grievance with the Virginia Department of Health (the “agency”) was timely initiated. For the reasons set forth below, the grievance is untimely.

FACTS

On or about November 30, 2021, the grievant initiated a grievance with the agency to challenge statements made by his supervisor on his performance evaluation. The grievant alleged that his supervisor was “falsifying a document to permanently affect [his] employment with the state of Virginia.” In addition, he alleged that another coworker “[swore] an oath for [him] while logging into [his] account for jury duty.” The grievance includes many additional details and attachments, but the grievant reiterated to the agency that “[t]his grievance is submitted for the 2021 performance evaluation and the incidents that have led up to this evaluation.” On or about December 10, 2021, the agency’s first-step respondent indicated that the grievance would be administratively closed as it was untimely initiated. The grievant now appeals the agency’s 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 they 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.

In this case, the event that forms the basis of the grievance is the grievant’s 2021 performance evaluation. The available evidence is that the performance evaluation was provided to the grievant during a discussion with his supervisor on October 19, 2021. To initiate a timely

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

grievance, therefore, the grievant would have needed to submit it within 30 calendar days of that date, *i.e.* no later than November 18, 2021. Because he did not initiate the grievance until November 30, 2021, it is untimely.

EDR inquired of the grievant as to why the grievance was not timely initiated. The grievant pointed to correspondence with his supervisor on November 23 and 24, 2021 about removal of language in the performance evaluation. However, this discussion appears to have occurred after the 30-calendar-day period for filing a grievance had already lapsed. There is no indication that the grievant had previously filed an appeal² or grievance regarding his 2021 performance evaluation in the requisite time period. As such, the grievant has presented no reason that would constitute just cause for his untimely filing. EDR has long held that it is incumbent upon each employee to know their responsibilities under the grievance procedure. 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, EDR finds that the grievant has failed to demonstrate just cause for his delay.

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.³

Christopher M. Grab
Director
Office of Employment Dispute Resolution

² See DHRM Policy 1.40, *Performance Planning and Evaluation* (stating that an employee who disagrees with their evaluation "may appeal to the reviewer for another review of the evaluation" and that "[a]ny appeal process must provide for the appeal to be made in writing to the reviewer within 10 workdays of the initial performance meeting").

³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).