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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2022-5340
January 12, 2022

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s December 28, 2021 dismissal grievance.

FACTS

On November 29, 2021, the agency issued to the grievant a Group II Written Notice, with termination based on her accumulation of two active Group II Written Notices, for alleged unsatisfactory work performance and failure to follow instructions and/or policy. The grievant submitted a dismissal grievance directly to EDR on December 28, 2021, challenging the agency’s alleged “[u]nfair/inconsistent application of personnel policies and procedures that led to the disciplinary process, including the Group II Written Notice with termination that I was issued on November 29, 2021.” The grievant’s requested relief includes reinstatement to her former position and “rescission and removal of applicable disciplinary actions.”

In addition to the November 29, 2021 Group II Written Notice with termination identified on the dismissal grievance, the agency had previously issued to the grievant a Notice of Improvement Needed/Substandard Performance (“NOI”) on September 2 and a Group II Written Notice on October 22. In response to EDR’s notification of receipt of the grievance, the agency has objected that the dismissal grievance is untimely to challenge the September 2 NOI and the October 22 Group II Written Notice.

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. EDR has long held that in a grievance challenging a disciplinary action,

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

the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² 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.”³

Here, the dismissal grievance was filed more than 30 calendar days after the grievant’s receipt of the September 2, 2021 NOI and October 22, 2021 Written Notice. Consequently, the agency is correct that the dismissal grievance is not timely to challenge the merits of those management actions, and thus they are both outside the hearing officer’s authority to award relief. Nonetheless, some of the facts relating to the NOI and the October 22 Written Notice may be relevant to the grievant’s arguments about the November 29 Written Notice and accompanying termination. If the hearing officer finds that this is the case, both parties may present evidence about the NOI and October 22 Written Notice (and their underlying facts) as background information at the hearing on this matter.

CONCLUSION

The December 28, 2021 dismissal grievance is timely to challenge the November 29, 2021 Group II Written Notice with termination. Because we find that the grievance is untimely to challenge the September 2, 2021 NOI and the October 22, 2021 Group II Written Notice as discussed above, the hearing officer will not have the authority to order relief regarding those management actions.⁴ A hearing officer will be appointed for the grievant’s qualified challenge to the November 29, 2021 Written Notice and the accompanying termination, including the surrounding issues, in a forthcoming letter.

EDR’s rulings on matters of compliance are final and nonappealable.⁵

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² E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

³ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

⁴ See *Rules for Conducting Grievance Hearings* § V(C) (“Challenges to management actions or omissions that have not been qualified in the grievance assigned to the hearing officer are not before that hearing officer, and may not be resolved or remedied.”).

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