

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 13, 2017; Ruling No. 2018-4614; Agency: Department of Corrections; 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 Department of Corrections
Ruling Number 2018-4614
September 13, 2017

On September 8, 2017, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management received a dismissal grievance submitted by the grievant. The grievant’s former employer, the Department of Corrections (the “agency”), alleges that the grievance does not comply with the grievance procedure and has requested a ruling from EEDR.

The grievant was issued a Group III Written Notice and terminated from employment with the agency on April 18, 2017.¹ The grievant filed an earlier grievance challenging the Written Notice, a hearing was held, and the hearing officer upheld the disciplinary action and the grievant’s termination.² In the recent September 8 grievance, the grievant appears to dispute agency actions relating to his termination and the hearing. Section 2.4 of the *Grievance Procedure Manual* states that a grievance must be “presented to management within 30 calendar days of the date the employee knew or should have known of the management action or omission being grieved” and may not “challeng[e] the same management action or omission challenged by another grievance.”

In the September 8 grievance, the grievant cites April 18, 2017, the day on which he was terminated, as the date when the grieved management action(s) occurred. Not only have more than thirty calendar days passed since the grievant was terminated, but it also appears he is attempting to challenge his termination for a second time in the September 8 grievance. For these reasons, EEDR finds that the grievance was not initiated in compliance with the grievance procedure. As such, the dismissal grievance will not proceed to a hearing and EEDR’s file will be closed.

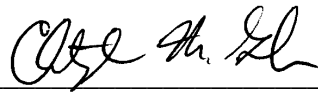
Furthermore, to the extent the grievance could be considered a request for administrative review of the hearing officer’s decision in Case Number 11029, such a request is untimely and will not be considered. The *Grievance Procedure Manual* provides that “[r]equests for administrative review must be in writing and **received by** EEDR within 15 calendar days of the date of the original hearing decision. **Received by** means delivered to, not merely postmarked or

¹ Decision of Hearing Officer, Case No. 11029, August 18, 2017, at 1.

² *Id.* at 1-4.

placed in the hands of a delivery service.”³ In addition, the August 18, 2017 hearing decision clearly advised the parties that any request they may file for administrative review must be received by EEDR within fifteen calendar days of the date the decision was issued.⁴ EEDR received the grievance on September 8, 2017, beyond the fifteen calendar day deadline, which expired on September 5, 2017.⁵ The grievant has presented no evidence of any just cause for the delay in his submission,⁶ and EEDR has long held that it is incumbent upon the parties to know their responsibilities under the grievance procedure.⁷ Any lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner.⁸

EEDR’s rulings on matters of compliance are final and nonappealable.⁹



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Director
Office of Equal Employment and Dispute Resolution

³ *Grievance Procedure Manual* § 7.2(a).

⁴ Decision of Hearing Officer, Case No. 11029, August 18, 2017, at 5.

⁵ The fifteenth calendar day from August 18, 2017 was Saturday, September 2, 2017. Section 7.2(a) of the *Grievance Procedure Manual* provides that, when the fifteenth 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 request for administrative review is to be filed is closed during normal business hours, the appeal 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 Tuesday, September 5, 2017.

⁶ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁷ See, e.g., EDR Ruling No. 2009-2252; EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁸ The hearing decision became a final hearing decision on September 5, 2017, after the fifteen calendar day period expired. Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).

⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).