

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: September 20, 2017; Ruling No. 2018-4618; Agency: Virginia Employment Commission; 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 Virginia Employment Commission  
Ruling Number 2018-4618  
September 20, 2017

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) on whether her September 7, 2017 grievance with the Virginia Employment Commission (the “agency”) was timely initiated. The agency asserts that the grievance does not comply with the grievance procedure because it was not timely initiated. For the reasons set forth below, the grievance is untimely and will remain administratively closed.

FACTS

On April 14, 2017, the grievant received an interim performance evaluation rating her as a “Below Contributor” on several of her job responsibilities.<sup>1</sup> The agency sent an email to its staff on June 2, 2017, stating that the General Assembly had approved a 3% salary increase for state employees effective July 10, 2017. The email further explained that employees must have received a “Contributor” rating on their annual performance evaluation in 2016 to be eligible for the salary increase. For employees whose performance had “changed significantly since the 2016 evaluation,” the agency had the discretion “grant” or “block” the increase “based on sufficient documentation,” which included “interim evaluations” and other formal performance management documents. The grievant met with agency management on June 12, 2017, received a second interim performance evaluation noting that certain areas of her work performance remained at a “Below Contributor” level, and was notified that if her work performance did not improve by June 26, she would not be eligible for the salary increase. The grievant’s work performance did not improve and, as a result, the agency blocked the salary increase for the grievant.<sup>2</sup>

The grievant initiated a grievance on September 7, 2017, challenging the agency’s decision to block the salary increase for her and alleging that her work performance should have been considered satisfactory. On or about September 14, 2017, the agency notified the grievant

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<sup>1</sup> The grievant filed a grievance to challenge the interim evaluation, and this Office later issued a qualification ruling finding that the grievance did not qualify for a hearing. *See* EEDR Ruling No. 2017-4578.

<sup>2</sup> The grievant subsequently met with agency management for a third time on August 3 and was given an interim evaluation rating her as a “Below Contributor”, as well as a Notice of Improvement Needed/Substandard Performance.

that the grievance had been administratively closed because it was untimely. The grievant now seeks a ruling from EEDR to determine whether the grievance was timely filed.<sup>3</sup>

### DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.<sup>4</sup> When an employee initiates a grievance beyond the thirty 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 agency contends that the grievance was filed more than thirty calendar days after the grievant knew or should have known that she had not received the 3% salary increase.

In her grievance, the grievant cites August 16, 2017 as the date on which the issue she is grieving occurred or that she became aware of it. However, the email sent by the agency explaining the performance criteria used to determine eligibility for the salary increase clearly states that it was effective on July 10, and further explains that August 1 was the date employees would see the increase reflected in their paychecks.<sup>5</sup> The July 10 letter also set out the grounds on which the increase could be blocked for performance reasons. The grievant also received an interim evaluation on June 12 and was told that she would not receive the increase if her performance did not improve by June 26. The grievant's performance did not improve, as the grievant would have been aware with the receipt of an additional interim evaluation on August 3. Consequently, the grievant knew or should have known that she did not receive the salary increase when it was not included in her August 1 paycheck. Receipt of the August 3 interim evaluation should have confirmed the basis for not receiving the increase. Consequently, even by the most generous of analyses, the grievant knew or should have known no later than August 3, 2017 that she did not receive the salary increase and the basis for that determination. Counting thirty calendar days from August 3, the grievance should have been filed no later than September 5, which is the next business day following a count of 30 calendar days, in order to be timely.<sup>6</sup> Because the grievant did not initiate the grievance until September 7, the grievance is untimely.

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<sup>3</sup> The grievant also requests that EEDR reopen two of her previous grievances. One of those grievances challenged the agency's issuance of formal disciplinary action and was the subject of a grievance hearing. *See* EEDR Ruling No. 2018-4605. The other grievance progressed through the resolution steps and this Office determined that it did not qualify for a hearing. *See* EDR Ruling No. 2017-4548. Upon consideration of the grievant's submission, EEDR finds no basis to reopen any previous grievances for further proceedings at this time.

<sup>4</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

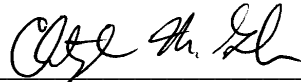
<sup>5</sup> Commonwealth employees are paid bimonthly, usually on the first and sixteenth days of the month. The August 1 payday for the grievant included her salary for July 10 through July 24.

<sup>6</sup> The thirtieth calendar day from August 3, 2017 was Saturday, September 2, 2017. Section 2.2 of the *Grievance Procedure Manual* provides that, when the thirtieth 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 grievance is to be filed is closed during normal business hours, the grievance 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. Further, EEDR has reviewed nothing to indicate that the terms of the salary increase were applied to the grievant differently than any other agency employees, and the grievant has provided no evidence to support such a conclusion.

Furthermore, the grievant has not provided any information that would justify her late filing. EEDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>7</sup> 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. Accordingly, EEDR concludes that the grievant not demonstrated just cause for her delay.

#### CONCLUSION

For the reasons set forth above, EEDR concludes that the grievance was not timely initiated and there is no just cause for the delay. The grievance will be marked as concluded due to noncompliance and EEDR will close its file. EEDR's rulings on matters of compliance are final and nonappealable.<sup>8</sup>



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<sup>7</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>8</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).