

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 11, 2013; Ruling No. 2013-3591; Agency: University of Mary Washington; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the University of Mary Washington
Ruling Number 2013-3591
June 11, 2013

The Office of Employment Dispute Resolution (EDR) has initiated a compliance ruling to determine whether the grievant's April 12, 2013 grievance with the University of Mary Washington (the agency) is in compliance with the grievance procedure. For the reasons set forth below, EDR determines that the grievance is untimely and may be administratively closed.

FACTS

The agency terminated the grievant on March 1, 2013. On April 12, 2013, the grievant submitted a dismissal grievance directly to EDR to challenge the termination. On April 18, 2013, EDR sent an email to the agency, informing it that the grievant had filed a dismissal grievance and that EDR would set up a compliance ruling to determine whether the grievant's dismissal grievance was timely initiated. On April 30, 2013, the agency responded to EDR, stating that it did not believe the grievant had just cause for initiating her dismissal grievance beyond 30 calendar days from her termination date because the agency had "[r]easonable suspicion that even if under a doctor's care, [the grievant] has had sufficient physical and mental capacity since the beginning of March to initiate her grievance." Moreover, the agency alleges the grievant has altered and/or fabricated medical documentation in the past.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 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.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 this grievance is the grievant's termination, which was effective March 1, 2013. Therefore, she should have initiated her dismissal grievance within 30 days, i.e., no later than March 31, 2013. Because the grievant did not initiate her dismissal grievance until April 12, 2013, the challenge to her termination is untimely. The only remaining issue is whether there was just cause for the delay.

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

The grievant states that she has had certain medical issues that prevented her from filing this grievance on time. However, EDR has long held that illness or impairment does not automatically constitute “just cause” for failure to meet procedural requirements. To the contrary, in most cases it will not.² Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.³

To assess the grievant’s claim of just cause for a delayed filing, we will focus on the period in which she should have filed her grievance, March 2, 2013 to March 31, 2013, to determine what issues may have prevented her from filing the grievance on time. During EDR’s investigation for this ruling, additional information was sought from the grievant in the form of a Health Care Provider Certification. This form, developed by EDR, requests that the grievant have her health care provider, preferably a physician or licensed psychologist, complete a certification as to the grievant’s capacity for initiating a grievance. When the grievant returned this form to EDR, signed by her health care provider, it reflected that the grievant did not have the capacity to initiate her grievance between March 1, 2013 and March 31, 2013. EDR called the grievant’s health care provider to verify the information provided on the form, and on June 4, 2013, the grievant’s health care provider left a voicemail with EDR indicating that she had signed the form on May 21, 2013 and had answered “Yes” to the following question on the form: “Did the grievant have the ability to initiate a grievance during the above time period?” (which was March 1, 2013 through March 31, 2013). The form that EDR received via facsimile from the grievant reflected that the grievant’s health care provider had responded “No” to this question. Therefore, due to the certification and verification provided by the grievant’s health care provider directly to EDR, we are unable to find that the grievant was incapacitated to the point that she was unable to protect her grievance rights to such an extent that there was just cause for her late filing.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. EDR will administratively close the April 12th dismissal grievance and 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.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² See EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 2003-155.

³ *Id.*; see also EDR Ruling No. 2005-1040.

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(6).