

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 27, 2013; Ruling No. 2013-3641; Agency: University of Virginia Medical Center; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2013-3641
June 27, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) of the Department of Human Resource Management (“DHRM”) on whether his grievance with the University of Virginia Medical Center (“agency”) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, EDR determines that the grievance must be allowed to proceed.

FACTS

On or about March 28, 2013, the grievant received a Formal Performance Counseling Form. He states that he subsequently contacted both EDR and DHRM’s Office of Equal Employment Services (“OEES”) to discuss his options for contesting the University’s action. After discussions with both offices, the grievant initiated a complaint with OEES on May 17, 2013. On May 25, 2013, the grievant received a letter from OEES advising him that it had no jurisdiction over his complaint, as the agency is not covered by the Virginia Personnel Act.

After learning that OEES could not take any action on his complaint, on June 5, 2013, the grievant initiated a grievance challenging the formal performance counseling. The agency administratively closed the grievance for non-compliance with the 30-day filing requirement of the grievance procedure. The grievant now appeals that determination to the EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he 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.

Here, the event that forms the basis of the grievance is the grievant’s receipt of the Formal Performance Counseling Form on March 28, 2013. Thus, the 30-calendar-day period ended April 27, 2013. However, the Grievance Form A was not initiated until June 5, 2013, making the grievance untimely. The only remaining issue is whether there was just cause for the delay.

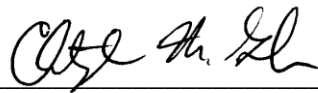
¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

The grievant argues that the late submission of his grievance should be excused because of his prior attempt to submit his complaint to OEES. Based on the grievant's statements, he understood from his conversations with OEES and EDR that he could challenge the formal performance counseling through either the OEES process or the grievance process, but not both. He was also told that, to be timely, he would need to initiate a complaint with OEES within 180 days.² In accordance with this advice, the grievant timely initiated a complaint with OEES on May 17, 2013. The grievant subsequently learned on May 25, 2013 that OEES lacked jurisdiction to handle his complaint and thereafter initiated a grievance on June 5, 2013.

EDR views this unique situation as constituting just cause for the grievant's delay in filing this grievance. The grievant could not simultaneously pursue both a complaint through OEES and EDR, as Section 1.6 of the *Grievance Procedure Manual* expressly provides. Further, the grievant had been advised of this limitation in his conversations with OEES and EDR within 30 calendar days of receiving the formal performance counseling.³ The grievant then attempted to exercise his right to submit a valid and timely complaint to OEES consistent with the information he had been provided. When it became clear that OEES would not take his case, which he was not informed of until well after the 30 calendar-day period for filing a grievance passed, the grievant promptly initiated his grievance. Under these circumstances, EDR finds that just cause exists for the grievant's failure to initiate his grievance within 30 days of March 28, 2013.⁴

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance must be allowed to proceed because just cause exists for the delay. Within five workdays of receipt of this ruling, the grievant must return the grievance paperwork to the agency to begin the grievance process anew. The appropriate first step-respondent must then respond to the grievance within five workdays of receipt. EDR's compliance rulings are final and nonappealable.⁵



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Director
Office of Employment Dispute Resolution

² In contrast to the 30 calendar-day period for filing a grievance, an employee has up to 180 days to initiate a complaint with OEES.

³ Had the grievant been informed at that time that he could not submit a complaint to OEES because of a lack of jurisdiction, the grievant would have had time to file a grievance within the original 30 calendar-day period. The timing of these occurrences and what was purportedly told to the grievant at those times are persuasive factors in this situation.

⁴ See EDR Ruling No. 2010-2526. We further note that finding just cause in this case is consistent with the Memorandum of Understanding ("MOU") between DHRM and EDR, which allows an employee with a timely initiated complaint to OEES to subsequently request termination of that complaint and initiate a grievance within thirty days. While the grievant's situation differs in that his complaint was rejected for lack of jurisdiction, we believe it is consistent with the intent of the MOU to allow the grievant to pursue his grievance, as it was initiated within thirty days of his OEES complaint being dismissed for lack of jurisdiction.

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