

Issue: Qualification – Benefits (VSDB); Ruling Date: January 5, 2015; Ruling No. 2015-4068; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of Department of Juvenile Justice
Ruling Number 2015-4068
January 5, 2015

This ruling addresses the partial qualification of the grievant's October 6, 2014 grievance with the Department of Juvenile Justice (the "agency"). The grievant asserts, in part, that he was improperly issued a Group I Written Notice. The agency head qualified the grievant's challenge to the Group I Written Notice for a hearing, but stated that another claim presented in the grievance was not timely and, as such, declined to qualify that issue. The grievant has appealed the agency head's partial qualification of his grievance to the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management. For the reasons discussed below, the grievant's additional claim does not qualify for a hearing.

FACTS

The grievant is employed by the agency as a Probation Officer at a Court Service Unit. On December 3, 2013, the agency restricted the grievant's permission to drive county-owned vehicles due to a medically-related incident that occurred on November 25, 2013. The agency directed the grievant to provide his supervisor with medical clearance from his physician before his permission to drive would be restored. The grievant obtained the required medical documentation and the driving restriction was lifted on February 18, 2014.

The grievant was subsequently issued an unrelated Group I Written Notice on September 12, 2014 for failing to follow instructions and/or policy and disruptive behavior. On or about October 6, 2014, he filed a grievance challenging the Group I Written Notice. The grievant also alleged that the agency had "violated [his] civil rights" under the Americans with Disabilities Act ("ADA") and "failed to follow federal law and guidelines" by temporarily restricting his permission to drive county-owned vehicles between November 2013 and February 2014.

After proceeding through the management resolution steps, the grievant's challenge to the Group I Written Notice was qualified for a hearing by the agency head. The agency head declined to qualify the grievant's claim that the agency had failed to comply with the ADA. In his qualification decision, the agency head explained to the grievant that his allegation that the agency violated the ADA by restricting his permission to drive was untimely because the management actions that gave rise to that claim occurred more than thirty calendar days before the grievance was initiated. The grievant now appeals that determination to EDR and requests that his ADA claim be qualified for a hearing.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date 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 thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. If the agency administratively closes the grievance on the basis of noncompliance with the thirty calendar day requirement, the grievant has the right to request a ruling from EDR to overturn the closure of the grievance.² However, the grievance procedure further states that, “[t]o promote improved employee relations, management may allow a grievance to proceed through the resolutions steps, even if the grievance does not comply with the [thirty calendar day requirement]. If the agency intends to allow the grievance to proceed through the management steps but plans to deny a hearing due to noncompliance, management should inform the employee of that intention as soon as it becomes aware of the noncompliance.”³

In this case, the agency allowed the grievant’s ADA claim to proceed through the management resolution steps, but denied qualification on the basis that it was not timely. The grievant now requests a ruling from EDR to determine whether his ADA claim may be qualified for a hearing. The management actions that form the basis of the grievant’s allegation that the agency violated the ADA occurred between November 2013 and February 2014. He initiated the grievance raising these issues on or about October 6, 2014. Because the final management action relating to the grievant’s ADA claim occurred on February 18, 2014, when the driving restriction was lifted, the grievant should have initiated a grievance challenging those management actions no later than thirty days from that date, i.e., no later than March 20, 2014.⁴ The grievant did not initiate a grievance to challenge the temporary driving restriction or any of the surrounding issues until October 6, 2014, well beyond the thirty calendar-day deadline. Furthermore, he has presented no evidence of just cause for his late filing.

For these reasons, EDR concludes that the grievant’s ADA claim was not timely filed and that there was not just cause for the delay.⁵ As a result, this issue does not qualify for a hearing. If it has not already done so, the agency must provide to EDR a completed Form B for the qualified portions of this grievance within five workdays of this ruling. A hearing officer will be appointed for the grievant’s qualified challenge to the Group I Written Notice in a forthcoming letter.

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

² *Grievance Procedure Manual* § 2.4.

³ *Id.* It appears that the secondstep-respondent considered the merits of the grievant’s ADA claim, but also noted that it was not timely to be raised in a grievance.

⁴ EDR has reviewed no evidence to suggest that any management actions related to the grievant’s assertion that the agency failed to comply with the ADA occurred after February 18, 2014, and the grievant has presented none.

⁵ This ruling only determines that this issue does not qualify for a hearing under the grievance statutes. It does not address whether there may be some other legal or equitable remedy available to the grievant in relation to this claim.

EDR's rulings on matters of compliance and qualification are final and nonappealable.⁶



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