

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 29, 2015; Ruling No. 2015-4175; Agency: Department of Corrections; 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 Department of Corrections  
Ruling Number 2015-4175  
June 29, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her April 23, 2015 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure. 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, this grievance is untimely and may be administratively closed.

**FACTS**

The grievant is employed by the agency as Probation and Parole Officer. She was issued a Group II Written Notice with a ten-day suspension for failure to follow instructions and/or policy on March 23, 2015. The grievant completed a Grievance Form A – Expedited Process and took it to her Regional Office on April 22 because she was concerned that her supervisor would retaliate against her. At the regional office, she was directed to file the grievance with her appropriate single management step-respondent, not at the regional office. While at the regional office, the grievant spoke with an agency employee knowledgeable of the grievance process, who confirmed that this information was accurate. The agency employee told the grievant to take the grievance to the single management step-respondent before the grievant left work that day to ensure that it was timely filed. This interaction occurred at approximately 4:30 p.m. The agency employee recalled that the grievant expressed some concern that the step-respondent had already left for the day. The agency employee told the grievant that she should deliver the grievance to the step-respondent’s administrative assistant so it could date-stamped as having been received on April 22. The grievant delivered the grievance to the single management step-respondent on the following day, April 23.

After allowing the grievance to proceed to the single management resolution step meeting and issuing a written response, the agency declined to further process the grievance on the basis that it was untimely. The grievant now appeals that decision to EDR.

**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>1</sup> 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.

### *Group II Written Notice*

In this case, the issuance of a Group II Written Notice on March 23, 2015 is the event that forms the primary basis of this grievance. EDR has long held that in a grievance challenging a disciplinary action, the thirty-calendar-day timeline begins on the date that management presents or delivers the Written Notice to the employee.<sup>2</sup> Therefore, the grievant should have initiated the grievance within thirty calendar days of March 23, 2015, i.e., no later than April 22, 2015. She did not initiate the grievance until the following day, April 23, 2015. Because the grievant initiated the grievance more than thirty calendar days beyond the date on which the Group II Written Notice was issued, the grievance is untimely. The only remaining issue is whether there was just cause for the grievant's delay in initiating the grievance.

As evidence of just cause for her delay in filing the grievance, the grievant claims she attempted to initiate the grievance at the regional office on April 22, but was "given wrong information" in an effort to delay [the] grievance process." While EDR may not, in certain situations, permit the wrong management representative to refuse to accept a grievance on the basis that it must be delivered to the correct step-respondent,<sup>3</sup> we do not find that the agency's response in this case was inappropriate or intentionally misleading. At the regional office, the grievant was correctly informed of the proper management step-respondent with whom she should initiate the grievance.<sup>4</sup> Furthermore, the grievant was specifically told to file the grievance on April 22 in order to comply with the thirty-calendar-day deadline. Based on the information provided to EDR, it is unclear whether the grievant returned to work after leaving the regional office that day. What is clear, however, is that the grievant had notice that April 22 was the thirtieth calendar day for her to initiate the grievance. The grievant could have taken action to initiate the grievance that day by briefly returning to work to deliver a paper copy to the step-respondent or his assistant. Alternatively, she could have emailed an electronic copy of the grievance to the step-respondent from home.

After considering all of the facts and circumstances we must conclude that the grievant's late filing is not justified in this case. The grievant has not presented information to show that the agency intentionally limited her ability to file the grievance in a timely manner. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>5</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. Thus, we conclude that the grievant has failed to demonstrate just cause for her delay.

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<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

<sup>2</sup> E.g., EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147.

<sup>3</sup> Similarly, EDR has consistently held that the initiation of a grievance in a timely manner but with the wrong management representative will not bar a grievance for noncompliance. *See, e.g.*, EDR Ruling No. 2004-892; EDR Ruling No. 2004-645.

<sup>4</sup> *Grievance Procedure Manual* § 3.4.

<sup>5</sup> *See, e.g.*, EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

*Hostile Work Environment Claims*

In the grievance, the grievant further asserts that her supervisor behaves in a way that has “created extreme anxiety and hostility” and otherwise amounts to a hostile work environment. A claim of harassment or other workplace conduct that is ongoing, such as that alleged by the grievant here, is raised in a timely manner if some agency action alleged to be part of the harassing or intimidating conduct occurred within the thirty calendar days preceding the initiation of the grievance.<sup>6</sup> In this case, the grievant has presented no evidence that any action related to the ongoing pattern of allegedly harassing behavior occurred within the thirty calendar days that preceded the initiation of the grievance, i.e., on or after March 24, 2015. As a result, we must conclude that this claim, like the grievant’s allegations relating to the Group II Written Notice, is not timely.<sup>7</sup>

The grievant also appears to argue that the agency waived its right to challenge the timeliness of the grievance because it did not notify her that the grievance was untimely in the single management step response. We do not agree with this contention. Pursuant to the *Grievance Procedure Manual*, the agency “may raise the issue of timeliness at any point through the agency head’s qualification decision.”<sup>8</sup> Here, no evidence was presented to indicate that this grievance had reached the qualification step. Thus, it was appropriate for the agency to challenge the timeliness of the grievance, even after holding the single management resolution step meeting and issuing a written response to the grievant.

CONCLUSION

For the reasons set forth above, EDR 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 EDR will close its file. EDR’s rulings on matters of compliance are final and nonappealable.<sup>9</sup>



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<sup>6</sup> See Nat’l R.R. Pass. Corp. v. Morgan, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also Graham v. Gonzales, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at \*23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); Shorter v. Memphis Light, Gas & Water Co., 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003).

<sup>7</sup> In the grievance, the grievance makes reference to an alleged failure by her supervisor to take certain actions on or after April 6. We find that the grievance may not proceed because the grievant’s claims regarding the Group II Written Notice, which are the primary focus of the grievance, and the grievant’s claims of harassment all relate to management actions or conduct that occurred on or before March 23. This ruling in no way prevents the grievant from raising her concerns about her supervisor’s allegedly harassing conduct at a later time if such conduct continues or worsens, so long as any grievance presenting those issues is timely filed.

<sup>8</sup> *Grievance Procedure Manual* § 2.2.

<sup>9</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).