

Issue: Qualification – Grievance Procedure (30-Day Rule); Ruling Date: January 13, 2016; Ruling No. 2016-4285; Agency: Department of Environmental Quality; Outcome: Partially Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Environmental Quality
Ruling Number 2016-4285
January 13, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her grievance filed on or about October 9, 2015 with the Department of Environmental Quality (the agency) qualifies for a hearing. For the reasons set forth below, this grievance is qualified for a hearing in part, as described below.

FACTS

The grievant is employed by the agency as an Environmental Specialist II. On August 24, 2015, the grievant was informed that her ability to participate in an Alternate Work Location (AWL) agreement would be rescinded. On September 17, 2015, she was issued a Group II Written Notice for alleged failure to follow instructions and/or policy, failure to seek approval in advance to modify her work schedule, and failure to demonstrate respect for Agency supervisors. On or about October 9, 2015, the grievant initiated a grievance challenging the Written Notice and requesting reinstatement of her AWL agreement. After proceeding through the management resolution steps, the agency head partially qualified the grievance for a hearing, indicating that the Written Notice may be properly challenged at a grievance hearing, but the revocation of her alternate work location agreement did not qualify for a hearing. In his qualification decision, the agency head also raised the issue of timeliness with respect to the revocation of the grievant's AWL agreement, asserting that the October 9, 2015 grievance was not timely filed to challenge this matter. The grievant now appeals that determination to EDR.

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.

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

In this case, the basis of the grievance is two-fold. The grievance primarily challenges a Group II Written Notice issued on September 17, 2015; however, it also implicitly challenges the revocation of the grievant's AWL agreement, which occurred on August 24, 2015. To timely challenge the Written Notice, the grievant should have initiated her grievance within 30 days of September 17, 2015, i.e., no later than October 17, 2015, which she has done. To timely challenge the revocation of the AWL agreement, the grievant should have initiated her grievance no later than September 23, 2015. Because the grievant initiated her grievance more than 30 calendar days beyond September 23, 2015, the grievance is untimely as to the AWL agreement. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant has presented no facts that would constitute evidence of just cause for a delay in initiating her grievance. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.² 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 in filing a grievance to challenge the revocation of her AWL agreement.³

CONCLUSION

The grievant's October 9, 2015 grievance is qualified for hearing in part, solely as to the challenge to the September 17 Group II Written Notice. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer to hear those claims qualified for hearing, using the Grievance Form B, if it has not already done so.

EDR's qualification rulings are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

³ Because the grievance is untimely filed as to the revocation of the grievant's AWL agreement, we do not reach the question of whether this issue may otherwise be qualified for a hearing.

⁴ See Va. Code § 2.2-1202.1(5).