

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: February 12, 2019; Ruling No. 2019-4844; Agency: University of Virginia; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the University of Virginia
Ruling Number 2019-4844
February 12, 2019

The University of Virginia (the “University”) has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management on whether the grievant’s January 12, 2019 dismissal grievance was timely initiated. For the reasons set forth below, this grievance is timely and may proceed as outlined in this ruling.

FACTS

The grievant initiated a dismissal grievance challenging his termination from employment with the University directly with EEDR on January 12, 2019.¹ In response to EEDR’s notification of receipt of the grievance, the University asserts that the grievant knew or should have known of his termination on December 12, 2019, and as such, the grievance was initiated untimely.

DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.² Because dismissal grievances are initiated directly with EEDR,³ an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.⁴ 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. EEDR has long held that in a grievance challenging a

¹ While the grievance is dated January 11, 2019, the envelope in which it was mailed is postmarked January 12, 2019. Section 2.2 of the *Grievance Procedure Manual* states that, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” Accordingly, EEDR will consider the grievance as having been initiated on January 12, 2019.

² *Grievance Procedure Manual* § 2.4.

³ *Id.* § 2.5.

⁴ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

disciplinary action, the thirty calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.⁵ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of *receipt* of the Written Notice.”⁶

In this case, the event that forms the basis of the grievance is the grievant’s termination via the issuance of a Group III Written Notice that is dated December 10, 2018. The University contends that the grievant was aware of the issuance of the Written Notice, and his termination, on December 12, 2018, and that he refused the University’s attempts to deliver the Written Notice to him either in person or by mail. Depending on the facts and circumstances, such conduct by a grievant could be sufficient to determine that he or she had constructive notice of the disciplinary action. The information provided by the University here, however, does not support such a conclusion. The University states it mailed a copy of the Written Notice to the grievant by certified mail on December 14, 2018, and that the letter was returned unclaimed on January 30, 2018. The tracking information for the certified mailing further shows that no delivery at the grievant’s address was ever attempted and, indeed, it appears the University’s letter containing the Written Notice may have been improperly addressed.

Section 2.2 of the *Grievance Procedure Manual* provides that “[t]he agency bears the burden of establishing the date the employee knew or should have known of the management action or omission being grieved, if the agency contests the timeliness of the grievance on that basis.” Moreover, if a Written Notice is sent to an employee by regular mail, “evidence of proper mailing presented by the agency will create a presumption that the action was received seven calendar days from the mailed date.”⁷ Had the Written Notice at issue here been sent to the grievant via regular mail on December 14, 2018, EEDR would have therefore presumed a delivery date of December 21, 2018. Because the Written Notice was not sent by regular mail to a proper address, the presumption is not available. It is unclear whether the grievant had received the Written Notice at all. The basic content of the grievance in this case would appear to reflect as much. In the absence of evidence presented by the University to show whether, and when, the grievant actually received a copy of the Written Notice, and without a presumption of receipt, EEDR cannot find that the grievance was not initiated within an appropriate 30 calendar day timeframe. As such, his January 12, 2019 dismissal grievance is timely and will be allowed to proceed.

CONCLUSION

For the reasons set forth above, EEDR concludes that the grievant’s January 12, 2019 grievance must be allowed to proceed as discussed above. If it has not already done so, the

⁵ E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147.

⁶ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

⁷ *Grievance Procedure Manual* § 2.2.

University is directed to submit a Form B to EEDR **within five workdays of the date of this ruling**. EEDR's rulings on matters of compliance are final and nonappealable.⁸



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).