

Issues: Access to the Grievance Procedure, and Compliance (30-Day Rule); Ruling Date: October 29, 2013; Ruling No. 2014-3746; Agency: Norfolk State University; Outcome: Access Denied, Grievant Not in Compliance.



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

ACCESS AND COMPLIANCE RULING

In the matter of Norfolk State University
Ruling Number 2014-3746
October 29, 2013

Norfolk State University (NSU or the University) challenges the grievant's August 30, 2013 grievance, arguing that as "Administrative/Professional Faculty," the grievant does not have access to the state employee grievance procedure, and furthermore, that the grievance was not timely filed. For the reasons set forth below, EDR concludes that the grievant does not have access to the state employee grievance process and that the grievance is untimely.

FACTS

The grievant was employed as a Residence Hall Director with the University. In December 2012, the grievant was given notice that her contract for employment with the agency would not be renewed after June 30, 2013. On or about August 30, 2013, she initiated a grievance with NSU, challenging the termination of her employment with the University. The agency has declined to process the grievance on the basis that as "Administrative/Professional Faculty," the grievant does not have access to the state employee grievance procedure. Further, NSU asserts that the grievance was not timely filed.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are in positions designated as exempt from the Virginia Personnel Act (VPA) do not have access to the grievance procedure.² When the General Assembly adopted the Restructured Higher Education Financial and Administrative Operations Act in 2005, institutions of higher education, like the University, were given approval to designate "positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field" as administrative and professional faculty, and this provision was included within the VPA.³ Accordingly, EDR has previously held that "Administrative/Professional Faculty" at institutions of higher education are exempt from the

¹ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

² Va. Code §§ 2.2-2905, 2.2-3002.

³ Va. Code § 2.2-2901(E).

VPA and do not have access to the state employee grievance procedure.⁴ In this instance, as Administrative/Professional Faculty, the grievant does not have access to the state employee grievance procedure.

Further, 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.⁵ 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.

In this case, the event that forms the basis of this grievance is the grievant's separation on June 30, 2013. Therefore, even if this grievant had access to the grievance procedure, she should have initiated her grievance within 30 days, i.e., no later than July 30, 2013. Because the grievant did not initiate her grievance until August 30, 2013, the challenge to her separation is untimely. The only remaining issue is whether there was just cause for the delay. In this instance, the grievant presents no information asserting that she had just cause for a delayed filing of her grievance. There is no evidence that the grievant made any attempt to file a grievance or request an extension until after the 30-day period had lapsed, and thus, the grievance is untimely.

CONCLUSION

For the reasons discussed above, EDR concludes that the grievant does not have access to the grievance procedure. Further, this grievance was not timely initiated and there is no evidence of just cause for the delay. The parties are advised that the grievance should be marked as concluded and no further action is required. EDR's rulings on matters of access and compliance are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ See EDR Ruling No. 2013-3477; see also Department of Human Resource Management (DHRM) Policy 2.20 (defining a "non-covered employee" as a "salaried employee who is not subject to the [VPA] ... includ[ing] ... administrative and professional faculty)."

⁵ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

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