

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 4, 2014; Ruling No. 2015-4008; Agency: Department of Juvenile Justice; Outcome: Grievant in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2015-4008  
November 4, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her September 10, 2014 grievance with the Department of Juvenile Justice (the “agency”) was timely initiated.

FACTS

The grievant is employed by the agency as an Office Manager. On or about July 21, 2014, the grievant was advised that she was being transferred from one agency office to another. The transfer took effect on July 25. On July 29, the grievant was evaluated by a health care provider and diagnosed with a serious health condition that required surgical treatment. She underwent surgery on the following day, July 30, and initiated a claim for short-term disability benefits through the Virginia Sickness and Disability Program on July 31. The grievant’s claim was approved and, based on the information provided by the parties, it appears that she is still out of work on short-term disability as of the date of this ruling.

On September 10, 2014, the grievant initiated a grievance with the agency to challenge her transfer and the subsequent posting of her former position for recruitment.<sup>1</sup> The agency mailed the grievant a letter advising her that the grievance had been administratively closed due to noncompliance on or about September 11. In the letter, the agency explained that the grievance was not timely filed because the grievant was transferred on July 25, but did not file her grievance until more than thirty calendar days had elapsed. The grievant now appeals that determination to EDR.

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.<sup>2</sup> When an employee initiates a grievance beyond the thirty calendar-

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<sup>1</sup> Although the grievance is dated September 9, 2014, it was not submitted to the agency until the following day. This ruling will, therefore, consider the grievance as having been initiated on September 10.

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

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 the grievance is the effective date of the grievant's transfer, July 25, 2014.<sup>3</sup> Thus, she should have initiated the grievance within thirty days of the effective date of the transfer, i.e., no later than August 24, 2014. She did not initiate the grievance until September 10, 2014, and thus it was untimely. The only remaining issue is whether there was just cause for the delay.

The grievant asserts she was unable to file her grievance timely because of a medical condition that caused her to be on leave for a substantial portion of the 30-day period and that has continued to prevent her from returning to work. EDR has long held that illness or impairment does not automatically constitute "just cause" for failure to meet procedural requirements.<sup>4</sup> To the contrary, in most cases it will not.<sup>5</sup> Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.<sup>6</sup>

The grievant asserts that her medical condition and her subsequent approval for short-term disability should excuse the fact that she filed her grievance outside the thirty-day period. Several days after the transfer took effect, the grievant was diagnosed with a serious physical impairment that required surgery and hospitalization. She has subsequently experienced related conditions that require medication and treatment and have precluded her from returning to work. The grievant submitted a claim for short-term disability benefits, her claim was approved, and she has not worked since July 28, 2014.

An employee's absence from work, even when that absence is due to illness or medical treatment, will not always act to extend the thirty-day timeline to initiate a grievance.<sup>7</sup> In this case, however, the grievant worked for a total of four calendar days after the grieved management action occurred, was not able to work due to her medical condition after that time, and does not appear to have yet been released by her health care provider to return to work. In addition, she filed the grievance with the agency sixteen calendar days after the thirtieth day had passed. When considering the totality of the circumstances in this case, including the grievant's diagnosis shortly after the transfer took effect, her need for immediate surgical treatment, her apparent continued absence from work on approved short-term disability, and the relatively

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<sup>3</sup> On the grievance, the grievant listed the date of the challenged management action as August 13, 2014, the date on which her former position was posted for recruitment. While the posting of her former position for recruitment appears to be the issue that triggered the grievant's desire to file the grievance, the grievance procedure provides that all grievances must be "presented to management within 30 calendar days of the date the employee knew or should have known of the management action or omission being grieved . . . ." *Grievance Procedure Manual* § 2.4. The primary management action challenged in this case is the grievant's transfer to a new position, which took effect on July 25. Accordingly, for purposes of this ruling, we will assess the question of whether the grievance was timely filed using July 25 as the date from which the thirty-day period began to run.

<sup>4</sup> See EDR Ruling No. 2007-1447.

<sup>5</sup> See, e.g., EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 2003-155.

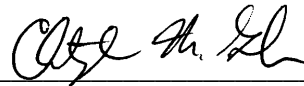
<sup>6</sup> *Id.*; see also EDR Ruling No. 2005-1040.

<sup>7</sup> See, e.g., EDR Ruling No. 2007-1447.

insignificant time lapse between the thirtieth calendar day and the initiation of the grievance, we find that the grievant had just cause to excuse the late filing of her grievance in this case.<sup>8</sup>

### CONCLUSION

For the reasons set forth above, EDR concludes that there was just cause for the grievant's delay in initiating the grievance in a timely manner, and the grievance should be allowed to proceed. This ruling does not address the merits of the grievance and only decides that it was timely filed. The grievance must be returned to the appropriate step-respondent to be addressed at that level and proceed through the grievance process. EDR's rulings on matters of compliance are final and nonappealable.<sup>9</sup>



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<sup>8</sup> The agency further argues that the grievant failed to timely request a compliance ruling on the issue of whether there was just cause for her delay in filing the grievance. The grievance procedure provides that an employee must request a compliance ruling from EDR to appeal an agency's closure of a grievance due to initiation noncompliance "within 5 workdays of the notice of closure . . ." *Grievance Procedure Manual* § 2.4. Even if missing this deadline would render the grievant's appeal defective, in this case, the grievant's failure to request a compliance ruling from EDR within five workdays of the agency's notice of closure would be excused for the same reasons that there is just cause to excuse her failure to file the grievance within thirty calendar days. Furthermore, we would note that the grievance procedure defines a "workday" as the "[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action." *Grievance Procedure Manual* § 9. Because the grievant has not worked since July 28, 2014 and has been on approved short-term disability for the entirety of time period at issue in this case, it appears that no workdays would have elapsed.

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