

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 30, 2015; Ruling No. 2016-4189; Agency: Virginia Department of Health; 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 Virginia Department of Health
Ruling Number 2016-4189
July 31, 2015

The Virginia Department of Health (“the agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s June 26, 2015 grievance was timely initiated.

FACTS

The grievant was employed by the agency as a Public Health Nurse Manager. On March 26, 2015, the Health Director issued a Due Process Memorandum to the grievant, informing the grievant of her intention to issue a Written Notice based upon alleged issues with the grievant’s attendance and performance. The Memorandum indicated that the grievant should provide a written response, advising of any mitigating circumstances, by March 30, 2015. On March 27, 2015, the grievant initiated a claim for short-term disability benefits through the Virginia Sickness and Disability Program. The grievant’s claim was approved and she received short-term disability benefits from March 27, 2015 through May 21, 2015. On March 30, 2015, the grievant provided the agency with a 69 page written response to the Due Process Memorandum.

On April 7, 2015, the agency issued to the grievant, via certified mail, a Group II Written Notice. The grievant indicates that she received this mailing, but did not open it or read the contents as she was unable to think about her job while she was out of work on short-term disability. Subsequently, but before the termination of her short-term disability benefits, the grievant obtained employment with another state agency. She did not return to work with the Virginia Department of Health, but commenced employment with the new agency on May 26, 2015.

On June 26, 2015, the grievant initiated a grievance with the Virginia Department of Health to challenge the April 7, 2015 issuance of the Written Notice. She indicates that she did not see this Written Notice until Human Resources at the new agency reviewed her personnel record with her on either June 9 or June 19, 2015. The agency responded on the Grievance Form A that it would administratively close the grievance due to its untimely filing and advised the grievant that she could appeal this determination to EDR. In her response, the grievant alleges that just cause for her late filing exists, and requests that EDR determine that her grievance should be allowed to proceed through the grievance procedure.

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.¹ 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.

In this case, the event that forms the basis of the grievance is the date of delivery of the Written Notice to the grievant. The agency states that the grievant signed for delivery of the certified mailing containing the Written Notice on April 9, 2015. The grievant states she did not open this mailing and thus was not aware of it until she met with human resources at her new agency in June. An employee cannot willfully refuse to read a properly delivered mailing to avoid notice of its contents.² Thus, for purposes of this ruling, EDR considers that the grievant had, at a minimum, constructive notice of the issuance of the Written Notice upon receipt of the mailing on April 9, 2015. The grievant did not initiate the grievance until June 26, 2015, which would appear to make her filing untimely, absent considerations of just cause.

The grievant asserts she was unable to file her grievance timely because of a medical condition that caused her to be on leave for the entirety of the 30-day period. EDR has long held that illness or impairment does not automatically constitute “just cause” for failure to meet procedural requirements.³ To the contrary, in most cases it will not.⁴ 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.⁵

In this instance, EDR has reviewed no evidence that indicates that the grievant’s condition was so debilitating that she was unable to comply with the requirements of the grievance procedure. The grievant provided a lengthy response to the due process memorandum that was issued to her while she was out of work and receiving short-term disability benefits. She also obtained new employment during this time period. Further, even if EDR were to rule that the grievant’s time on short-term disability effectively stayed the 30-day time period, she did not initiate the grievance until more than 30 days had elapsed following her return to work from short-term disability. When considering the totality of the circumstances in this case, we find that the grievant had no just cause to excuse the late filing of her grievance.

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

² The grievant also appears to argue that her medical condition, discussed below, rendered her unable to open and review certified mail from the agency. For the reasons addressed below, the grievant has presented no evidence that would support a finding that her medical condition was so debilitating that she could not open correspondence while on short-term disability.


³ See EDR Ruling No. 2007-1447.

⁴ See, e.g., EDR Ruling No. 2006-1201; EDR Ruling Nos. 2003-154, 2003-155.

⁵ *Id.*; see also EDR Ruling No. 2005-1040.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not initiated timely 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.⁶



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