

Issues: Compliance – Grievance Procedure (30-Day Rule) (2 grievances); Ruling Date: August 12, 2015; Ruling No. 2016-4190; Agency: Department of Corrections; Outcome: Grievant Not in Compliance (Grievance 1); Grievant in Compliance (Grievance 2).



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2016-4190
August 12, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her two June 30, 2015 grievance with the Department of Corrections (the “agency”) are in compliance with the grievance procedure. The agency asserts that the grievance do not comply with the grievance procedure because they were not timely initiated.

FACTS

The grievant was employed as a Corrections Officer at one of the agency’s facilities. On or about November 11, 2014, the grievant was attacked by an offender while she was at work. After the incident occurred, the grievant alleges that she asked about and was told that an injury report was not necessary. The grievant was approved to receive short-term disability (“STD”) benefits under the Virginia Sickness and Disability Program as a result of her injury on or about December 4, 2014. The grievant filed a request for a reasonable accommodation with the agency’s Americans with Disabilities Act (“ADA”) committee in April 2015, while she was still on STD. On June 4, 2015, while her request for an accommodation was still pending with the ADA committee, the grievant transitioned to long-term disability (“LTD”) and was separated from employment with the agency. The grievant received a response from the ADA committee on or about June 18, 2015, advising her that, based on the information submitted by her physician, no accommodation was available.

The grievant initiated two grievance with the agency on June 30, 2015. In the first grievance (“Grievance 1”), the grievant alleges that the agency “failed to complete and [sic] accident injury report” after the incident with the offender on November 11, 2014, which has impacted her ability to obtain workers’ compensation benefits. In the second grievance (“Grievance 2”), the grievant claims that the agency’s ADA committee “fail[ed] to respond to [her] request for reasonable accommodations in a timely manner” and asks that she “receive the accommodations” she requested. On or about July 6, 2015, the grievant was notified by the agency that both grievance had been administratively closed on the basis that they were untimely.¹ The grievant now seeks a ruling from EDR to determine whether her grievance were timely filed.

¹ The agency also originally asserted that the grievant had voluntarily concluded her employment before initiating the grievance. Though the agency states that its record indicated the grievant resigned on the date she transitioned

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty 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.² 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 agency contends that “the incidents” that were the subject of the grievances “occurred well after 30 calendar days” preceding the initiation of the grievances.

Grievance 1

The event that forms the primary basis of Grievance 1 is the agency’s alleged failure to file an “accident injury report” relating to the work-related injury suffered by the grievant on November 11, 2014. The grievant asserts that she notified a supervisor when the incident occurred, but that he did not file the form and her human resources office was not notified, with the result that she was denied workers’ compensation benefits. According to the agency, the grievant reported that she had suffered a work-related injury on November 27. EDR is unable to determine precisely what document the “accident injury report” cited by the grievant is, but she alleges that, during the “ongoing process of trying to gain worker compensation [sic],” she learned that it “would have played a key role” in her ability to receive workers’ compensation benefits.

Even assuming that Grievance 1 was timely filed, Section 2.4 of the *Grievance Procedure Manual* provides that the grievance process must not be “used to harass or otherwise impede the efficient operations of government.” Grievance 1 is best described as an attempt to challenge a denial of a workers’ compensation claim. In effect, the grievant argues that she did not receive workers’ compensation benefits because the agency did not take proper action when her injury occurred. While a grievant might arguably be entitled to pursue a grievance raising some issues relating to a workers’ compensation claim, a grievance challenging a denial of workers’ compensation benefits is not suitable for resolution through the grievance process. Questions about matters related to workers’ compensation claims are determinations for the Virginia Workers’ Compensation Commission (the “Commission”), not the grievance procedure.³ Neither the agency, EDR, nor a hearing officer would have any authority to modify a decision regarding workers’ compensation benefits, as the Commission is the state agency with

to LTD, it has effectively withdrawn its claim that the grievant does not have access to the grievance procedure on the basis that she voluntarily concluded her employment, *see Grievance Procedure Manual* § 2.3, and instead argues only that the grievances were not timely filed. See EDR Ruling Number 2003-137 for additional discussion about the ability of an employee who has transitioned to LTD to exercise his or her grievance rights, subject to the initiation and other requirements of the grievance procedure.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

³ *See, e.g.,* Va. Code §§ 65.2-700, 65.2-702; *see also* DHRM policy 4.57, *Virginia Sickness and Disability Program* (describing workers’ compensation benefits for state employees and the role of the Commission in approving a claim for benefits). If the grievant has questions about any workers’ compensation claims available to her or concerns about the agency’s actions pursuant to that program, the grievant should contact the Commission.

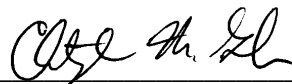
jurisdiction to administer claims and determine disputes related to those issues.⁴ Further, the “damages” the grievant seeks as relief would not be available under the grievance procedure.⁵ For these reasons, allowing Grievance 1 to proceed would serve no purpose other than to impede the efficient operations of the agency. Accordingly, we find that Grievance 1 does not comply with the initiation requirements of the grievance procedure and will, therefore, remain administratively closed.

Grievance 2

The events that form the basis of Grievance 2 surround the grievant’s request for a reasonable accommodation under the ADA and her later receipt of the ADA committee’s notice that her request had been denied. The grievant alleges that the agency failed to provide a timely response to the grievant’s request for a reasonable accommodation, and seeks as relief that she “receive the accommodations” that she originally requested from the ADA committee. A fair reading of Grievance 2 indicates that the grievant disputes both the agency’s procedural management of her request for accommodation because it was not issued until after she had transitioned to LTD, as well as the ADA committee’s ultimate decision that no accommodation was available and her resulting separation under LTD. The grievant transitioned to LTD on June 4, 2015 and was notified by the ADA committee that it had not approved her request for accommodation on or about June 18, 2015. She filed Grievance 2 on June 30. Grievance 2 was, therefore, timely filed to challenge any alleged procedural deficiencies in the ADA committee’s response as well as the agency’s decision not to grant the grievant an accommodation and her resulting transition to LTD, and must be allowed to proceed.

CONCLUSION

For the reasons set forth above, we conclude that Grievance 1 does not comply with the initiation requirements of the grievance procedure and will remain administratively closed. Grievance 2 was timely initiated and must be allowed to proceed. This ruling does not address the merits of Grievance 2 and only decides it was timely filed. Grievance 2 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.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ Va. Code §§ 65.2-700, 65.2-702.

⁵ *Grievance Procedure Manual* § 5.9(b).

⁶ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).