

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: December 16, 2016; Ruling No. 2017-4455; Agency: Department of Corrections; 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 Corrections
Ruling Number 2017-4455
December 16, 2016

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether her October 6, 2016 and November 15, 2016 grievances with the Department of Corrections (“agency”) are in compliance with the grievance procedure. The agency asserts that the grievances do not comply with the grievance procedure because they were not timely initiated. For the reasons discussed below, the grievance dated October 6, 2016 may proceed as outlined in this ruling.

FACTS

On or about October 6, 2016, the grievant initiated a grievance essentially alleging workplace harassment, bullying by her supervisor, and perceived favoritism by management of particular employees. In her attachment to the Grievance Form A, the grievant also refers to an incident regarding the use of a particular computer which occurred in August 2016, and asserts that she had brought her questions regarding computer use to the attention of management, but had never received a response.

On or about November 15, 2016, the grievant initiated a second grievance, stating that she had never received a response to her grievance of October 6, 2016, and re-alleging her complaints of favoritism and harassment in the workplace. After reviewing the allegations contained within each grievance, personnel from the agency’s employee relations department concluded that the last action challenged by the two grievances occurred on August 22, 2016. Thus, on November 21, 2016, the agency notified the grievant that both grievances had been administratively closed due to initiation noncompliance. 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.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, each grievance, fairly read, raises a

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

claim of ongoing workplace harassment. A claim of harassment, retaliation, or other workplace conduct that is ongoing, such as that alleged here, is raised in a timely manner if some agency action alleged to be part of the improper conduct occurred within the thirty calendar days preceding the initiation of the grievance.² Considering the totality of the circumstances in light of the issues set forth in the grievance, EDR concludes that the grievant has presented evidence that at least some actions by agency managers that are related to the ongoing pattern of allegedly discriminatory, harassing, and/or improper behavior occurred within the thirty calendar days that preceded the initiation of the grievance, i.e., on or after September 6, 2016. For instance, the grievant cites to a meeting held on September 27 with her supervisor in attendance, where she states that she learned she should have been eligible for a laptop computer. Her grievance questions the motive of her supervisor in failing to obtain a laptop computer for her use. The October 6, 2016 grievance was initiated within thirty calendar days from the September 27 meeting. As the grievant has identified at least one agency action allegedly occurring within the thirty calendar-day period, EDR considers the grievant's claim of ongoing workplace harassment to be timely.

The *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”³ In this instance, it appears that the November 15, 2016 grievance challenges the same actions as the October 6, 2016 grievance. EDR is troubled by the grievant's allegations that agency management has ignored her repeated attempts to resolve concerns regarding her workplace, and has failed to respond to her grievance of October 6, 2016.⁴ However, there exists a basis to close the November 15, 2016 grievance as it appears that this grievance is (and was intended to be) duplicative of the October 6, 2016 grievance. Accordingly, the grievance dated November 15, 2016 will be considered closed and only the grievance dated October 6, 2016 will proceed forward.

CONCLUSION

For the reasons set forth above, EDR concludes that the October 6, 2016 grievance must be allowed to proceed as discussed above. EDR's rulings on matters of compliance are final and nonappealable.⁵



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² See EDR Ruling 2016-4313; see also *Nat'l R.R. Pass. Corp. v. Morgan*, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); *Graham v. Gonzales*, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at *23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); *Shorter v. Memphis Light, Gas & Water Co.*, 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003).

³ *Grievance Procedure Manual* § 2.4.

⁴ The grievant could have utilized the process outlined in Section 6.3 of the *Grievance Procedure Manual* to remedy any alleged noncompliance regarding the October 6, 2016 grievance.

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