



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2020-4991
October 16, 2019

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ on whether her September 13, 2019 grievance with the Department of Corrections (the “agency”) was timely initiated.

FACTS

The grievant initiated a grievance with the agency on September 13, 2019, alleging that a manager at her facility had discriminated and retaliated against her. On the Grievance Form A, the grievant identified the dates on which the alleged retaliation occurred as ranging from September 25, 2018 to July 18, 2019, and the date on which the alleged discrimination occurred as August 16, 2019. In an attachment to the Grievance Form A, the grievant explains that she previously engaged in grievance activity and opposed allegedly discriminatory practices, and that the manager changed her post assignment in September 2018 “as a form of punishment.” The grievant further describes an incident that occurred on July 18, 2019 and led to her reassignment to yet another post at the facility. In addition, the grievant claims that, on August 16, 2019, she discovered that an employee of a different race had failed to follow post orders on August 1, 2019 and was not disciplined. The grievant argues that she would have been treated differently if she had engaged in the same behavior, and further contends that several employees of her race have been reassigned for violating post orders.

On September 18, 2019, the agency notified that grievant that her grievance had been administratively closed for failure to comply with Section 2.2 of the *Grievance Procedure Manual*. In the letter, the agency informed the grievant that her grievance was not timely filed because her allegation of retaliation challenged management actions that had occurred more than 30 calendar days preceding September 13, 2019, and because her allegation of discrimination did not relate to her own employment, but was instead about her concern that another employee had not been

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

disciplined for possible misconduct. The grievant disputes the agency's decision and appeals to EDR for a ruling on whether the grievance may proceed.

DISCUSSION

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.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. The grievance procedure further states that a grievance must “[p]ertain[] directly and personally to the employee’s own employment”³ In this case, the agency essentially contends that the grievant did not file the grievance within 30 calendar days of a management action or omission that relates to her employment.

In order to be timely, a grievance must challenge a management action or omission that relates to the grievant’s employment in some manner and occurred within the 30-calendar-day period; in this case, within the 30 calendar days preceding September 13, 2019, i.e., on or after August 14, 2019. In this case, the grievant contends that a manager at her facility has engaged in ongoing discriminatory and/or retaliatory behavior that is directed at her. 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 harassing or intimidating conduct occurred within the 30 calendar days preceding the initiation of the grievance.⁴ With regard to the grievant’s allegation that the manager retaliated against her by reassigning her to a different post between September 25, 2018 and July 18, 2019, the grievance is untimely. To the extent the grievant believes that that her current post assignment is also retaliatory, she was assigned to that post on July 18, 2019, and did not challenge that action until September 13, 2019 (i.e., after 30 calendar days had passed).

Similarly, that the grievant learned within the 30-calendar-day period of another employee who was not disciplined for allegedly failing to follow post orders is not a sufficient basis for EDR to conclude the grievance was timely initiated. The agency’s action (or inaction) with respect to another employee did not extend the 30-calendar-day period within which the grievant could initiate a grievance to address issues with her own employment, nor did the allegedly discriminatory management action—the agency’s failure to discipline another employee—sufficiently relate to the grievant’s employment such that a new 30-calendar-day period began. Most significantly, EDR has been unable to identify any other specific management actions that occurred within the 30 calendar days preceding the initiation of the grievance that are part of the alleged ongoing pattern of discriminatory and/or retaliatory conduct, and the grievant has not identified any such actions that relate to her own employment.

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

³ *Grievance Procedure Manual* § 2.4.

⁴ *See 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); *see also Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221-24 (4th Cir. 2016).

Furthermore, the grievant has not provided EDR with any information that would justify her late filing. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁵ A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. Thus, EDR concludes that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

For the reasons set forth above, EDR finds that the grievance was not timely initiated and there is no just cause for the delay.⁶ Accordingly, the grievance will be marked as concluded due to noncompliance and EDR will close its file.

EDR's rulings on compliance are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁵ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁶ Although EDR finds that the grievance is not timely to challenge the management actions identified in the Grievance Form A and attachments, this ruling in no way prevents the grievant from raising future concerns about alleged discrimination and/or retaliation at a later time if such treatment continues or worsens, so long as any grievance challenging those issues is timely filed.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).