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COMPLIANCE RULING

In the matter of the Department of Treasury
Ruling Number 2020-5041
January 16, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management¹ on whether her December 16, 2019 grievance with the Department of Treasury (the “agency”) was timely initiated.

FACTS

The grievance at issue appears to relate to a number of ongoing occurrences involving the grievant’s employment. The grievance form purports to challenge an event that occurred on November 18, 2019, which appears to be the date that the grievant received a counseling memo. The grievant first attempted to file a grievance about this situation on November 22, 2019, when she delivered a previous version of the grievance to EDR. As related in her grievance, EDR informed her that she needed to submit the grievance to her agency rather than EDR. The grievant states that she attempted to discuss the grievance matter with her supervisor on the same day, but, according to the grievant, she was rebuffed. EDR is unaware as to whether the grievant actually delivered her grievance to the agency at that time.

Following subsequent events in her employment, the grievant resubmitted an updated grievance form. For example, it appears that the grievant received a new Employee Work Profile (EWP) on December 12, 2019.² She delivered the grievance to EDR on December 16, 2019. EDR informed her by e-mail that she needed to provide the grievance form to her agency instead of EDR. It appears that the grievant delivered her grievance to the agency on January 13, 2020. The agency takes the position that the grievance was not timely initiated and administratively closed the grievance. The grievant now appeals that determination to EDR.

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.

² It is not clear whether this new EWP was finalized as of December 12, or whether it was a draft for review and discussion. Whether the EWP was final does not affect the outcome of this ruling.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.³ 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. Some of the issues raised in this grievance appear to be ongoing matters (such as the daily assignment e-mails) that are timely raised. The date-specific management actions that appear to be challenged are the November 18, 2019 counseling memo and the new EWP received by the grievant on December 12, 2019.

As to the new EWP, the grievance is clearly timely. Even if the grievant had only submitted the grievance on January 13, 2020, that would have been the date by which she needed to initiate the grievance to challenge something that occurred on December 12, 2019. As the 30th calendar day following receipt of the new EWP fell on a weekend, she would have had until the following business day, January 13, 2020, to initiate the grievance.⁴ Because the grievance was presented to management on that date, it would be timely to challenge that issue.

As to the November 18, 2019 counseling memo, this Department has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance. EDR has long considered itself the equivalent of the wrong management representative.⁵ Accordingly, a grievance that is delivered to EDR is considered initiated on the date it is either mailed or delivered to EDR. Thus, the grievance at issue is considered initiated on December 16, 2019, which is timely to challenge the November 18, 2019 counseling memo.

The agency's administrative closure letter does not make reference to the grievant's initiation of the grievance with EDR on December 16, 2019, notwithstanding the appearance of an EDR date-stamp on the original document. While not identified by the agency in its administrative closure notice, there was a delay between the grievant's original initiation on December 16, 2019 and delivery of the grievance paperwork to the agency on January 13, 2020. In some instances, a delay could render a grievance noncompliant if the delay is lengthy and/or in bad faith. The delay here does not appear lengthy and EDR has reviewed no evidence of bad faith, nor has the agency submitted any such evidence. Further, it does not appear that the agency is prejudiced at all in this instance. Accordingly, there would be no basis to find that the grievant's delay between December 16, 2019 and January 13, 2020 was inappropriate to the point that the grievance should be closed.

CONCLUSION

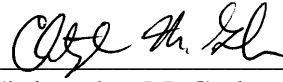
For the reasons set forth above, EDR concludes that the grievance was timely initiated and must be allowed to proceed. This ruling does not address the merits of the claims presented in the grievance and only decides that the grievance was timely filed. The agency is directed to return grievance form and all attachments submitted by the grievant to the appropriate first step-respondent for a substantive response.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

⁴ *Grievance Procedure Manual* § 2.2.

⁵ *E.g.*, EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2004-645.

EDR's rulings on matters of compliance are final and nonappealable.⁶



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