



EMILY S. ELLIOTT  
DIRECTOR

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

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

**COMPLIANCE RULING**

In the matter of the Department of Fire Programs  
Ruling Number 2020-5065  
March 6, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> on whether her February 25, 2020 grievance with the Department of Fire Programs (the “agency”) was timely initiated.

FACTS

The grievant initiated a grievance with the agency on February 25, 2020, challenging her 2018/2019 performance evaluation (“the performance evaluation”). The grievant received the performance evaluation on November 25, 2019. The grievant submitted an appeal to the reviewer on December 6, 2019. Pursuant to that appeal, the reviewer and a human resources representative met with the grievant on December 10, 2019. The reviewer issued a response to the appeal in writing on December 12, 2019. Another meeting was held between the grievant and reviewer on December 19, 2019, in which the grievant asked questions about the documents relied upon by the reviewer in producing the December 12 response to her appeal. The grievant requested documentation from the reviewer that had been discussed during that meeting and sought to further appeal her performance evaluation to the agency head. The grievant was told that she could not seek further appeal of her performance evaluation to the agency head through the policy appeal process, which had concluded. The reviewer provided the requested documentation to the grievant on January 27, 2020.

On February 27, 2020, the agency notified that grievant that her grievance had been administratively closed for failure to comply with the timeliness requirements of Section 2.2 of the *Grievance Procedure Manual*. The grievant disputes the agency’s decision and appeals to EDR for a ruling on whether the grievance may proceed.

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<sup>1</sup> 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.

## 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.<sup>2</sup> 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. Further, when an employee has initiated a timely appeal of a performance evaluation under state or agency policy,<sup>3</sup> that appeal essentially renders the initial evaluation a preliminary rather than a final decision. Thus, when an employee timely appeals a performance evaluation under policy, the 30-day period to initiate a grievance is extended until the agency has taken final action on the appeal.<sup>4</sup>

In this case, the grievant is challenging her performance evaluation, which she received on November 25, 2019. The grievant submitted a timely appeal<sup>5</sup> of her performance evaluation on December 6, 2019, which the reviewer addressed in writing on December 12, 2019. The reviewer's written response represents final action on the grievant's appeal under policy.<sup>6</sup> Thus, the grievant had 30 calendar days following the reviewer's December 12, 2019 written response to file her grievance. Because the grievant did not submit her grievance until February 25, 2020, her grievance was not initiated timely.

Furthermore, the grievant has not provided EDR with any information that would justify her late filing. It appears that the grievant believed that her policy appeal of her performance evaluation was ongoing through her request to have the agency head address the evaluation. However, no provision of state policy provides for appeal review by the agency head.<sup>7</sup> Rather, the policy appeal was complete on December 12, 2019 with the reviewer's response.<sup>8</sup> EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>9</sup> 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.

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<sup>2</sup> *Id.* § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

<sup>3</sup> *E.g.*, DHRM Policy 1.40, *Performance Planning and Evaluation*.

<sup>4</sup> EDR Ruling No. 2007-1512; EDR Ruling No. 2004-920.

<sup>5</sup> *See* DHRM Policy 1.40, *Performance Planning and Evaluation*.

<sup>6</sup> *See id.*

<sup>7</sup> *Id.* It appears that the grievant had submitted a similar request in the prior year's performance evaluation cycle, which was granted. The grievant was notified in December that her request would not be granted this year. There is no provision of state or agency policy that requires the agency head to accede to a request to review an employee's performance evaluation under these facts. Nothing in this situation alters the beginning of the 30-calendar-day period for filing a grievance under the grievance procedure.

<sup>8</sup> *See id.*

<sup>9</sup> *See, e.g.*, EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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. 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.<sup>10</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>10</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).