



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

RECONSIDERED COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2021-5272
June 8, 2021

The Department of Social Services (the “agency”) has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management reconsider its determinations in EDR Ruling Number 2021-5258 concerning the grievant’s April 26, 2021 grievance and whether it was properly initiated.

FACTS

On or about April 26, 2021, the grievant submitted a grievance to challenge a denial of outside employment. The agency indicates that a memo was provided on February 22, 2021 to the grievant denying her outside employment request. Because the grievance was initiated more than 30 calendar days from the date of the memo, the agency administratively closed the grievance due to alleged initiation noncompliance. The grievant now appeals that determination to EDR.

DISCUSSION

EDR does not generally reconsider its compliance rulings and will not do so without sufficient cause. For example, EDR may reconsider a ruling containing a mistake of fact, law, or policy where the party seeking reconsideration has no opportunity for appeal. However, clear and convincing evidence of such a mistake is necessary for reconsideration to be appropriate.¹

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.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.³ However, a claim of workplace conduct that is ongoing is raised timely

¹ See, e.g., EDR Ruling Nos. 2010-2502, 2010-2553 n.1.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

³ *Grievance Procedure Manual* § 2.2.

if some agency action alleged to be part of the ongoing conduct occurred within the 30 calendar days preceding the initiation of the grievance.⁴

Upon further review of the facts of this case, EDR is unable to identify a management action that occurred within the period of 30 calendar days prior to the grievance's initiation that is a subject of the grievance. For example, discussions about a management action do not generally extend the time frame for filing a grievance.⁵ Further, although there appear to have been such communications in this case, there was no agreement between the parties to extend the 30-calendar-day deadline for filing a grievance.⁶ EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁷ 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. For these reasons, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating this grievance. As such, EDR reconsiders the determination made in EDR Ruling Number 2021-5258. The grievant's April 26, 2021 grievance is untimely and the grievance can be considered closed.

EDR observes that the grievant appears to still seek to obtain approval for outside employment. We are hopeful that the agency continues working on this matter with the grievant to seek a mutually agreeable resolution. However, if no resolution is reached and if the grievant submits a new request for approval of outside employment, the grievant would be able to file a new grievance concerning the denial of such a new request for approval of outside employment or the agency's failure to act thereon.⁸ If the agency denies such a new request for approval of outside employment, the grievant would have 30 calendar days from receiving the denial to file a new grievance.

CONCLUSION

Accordingly, EDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁹

Christopher M. Grab
Director
Office of Employment Dispute Resolution

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 *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); see, e.g., EDR Ruling No. 2015-4118; EDR Ruling No. 2014-3695 (“[T]he time period(s) listed in the box for ‘date grievance occurred’ on the Grievance Form A is not the sole determining factor of what issues are challenged in a grievance.”).

⁵ See *Grievance Procedure Manual* § 1.2.

⁶ See *id.* § 8.4.

⁷ See, e.g., EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2019-4643

⁸ Depending on the nature of the conversations, a failure to reach a resolution on an issue like seeking approval for outside employment might be considered the equivalent of a new denial of a request and could separately be the subject of a grievance, as well.

⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).