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COMPLIANCE RULING

In the matter of the Virginia Department of Motor Vehicles
Ruling Number 2023-5459
October 5, 2022

The Virginia Department of Motor Vehicles (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the grievant’s dismissal grievance.

FACTS

On August 16, 2022, the agency issued to the grievant a single Written Notice of disciplinary action form that appears to contain a Group I Written Notice and a Group III Written Notice within. The Written Notice indicates that the agency terminated the grievant’s employment on the same date. Documentation submitted by the agency appears to indicate that the Written Notice was provided to the grievant by email on August 16, 2022. The grievant submitted a dismissal grievance to challenge the termination on September 16, 2022. In response to EDR’s notification of receipt of the grievance, the agency asserts that the grievance was initiated untimely.

DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.¹ Because dismissal grievances are initiated directly with EDR,² an agency is essentially unable to follow this process as outlined. Accordingly, the agency in this case has requested a ruling from this Office regarding the issue of alleged noncompliance.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they 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. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written

¹ *Grievance Procedure Manual* § 2.4.

² *Id.* § 2.5.

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

Notice to the employee.⁴ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.”⁵

The grievant received the Written Notice form at issue on August 16, 2022. Thus, a grievance should have been submitted by midnight on September 15, 2022. Here, the grievant submitted her dismissal grievance five minutes after midnight on September 16, 2022, just after the 30-calendar-day period elapsed. Consequently, the agency is correct to point out that the dismissal grievance was not submitted within 30 calendar days of the grievant’s receipt of the Written Notice. The question remains whether there is just cause to excuse the late submission.⁶

The grievant has represented that she was told by EDR that her grievance was due on September 16, 2022. Based on that advice, she claims, she was intending to submit the grievance on the evening of September 15 so that it would be seen and reviewed on September 16. As indicated above, September 16 was the incorrect due date for a dismissal grievance. 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. However, the grievant has provided evidence to substantiate that she was given verbal guidance by EDR that the due date was September 16. Although we are unable to confirm through internal inquiry what advice the grievant received, neither can we reject the grievant’s evidence on that issue. Essentially, the grievant has raised a sufficient question whether this Office provided her with incorrect information on which she relied and, if so, we cannot hold that against the grievant. As the grievance was submitted untimely by only five minutes, and the grievant reasonably believed she was following instructions from EDR in submitting her grievance by September 16, these factors constitute just cause to excuse untimely filing under the particular facts of this case. Accordingly, EDR considers the dismissal grievance timely and will be allowed to proceed.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievant’s dismissal grievance must be allowed to proceed. If it has not already done so, the agency is directed to submit a Form B to EDR within five workdays of the date of this ruling. EDR’s rulings on matters of compliance are final and nonappealable.⁸

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⁴ E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

⁵ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

⁶ *Id.* § 2.2 (providing that failure to timely initiate a grievance “will be excused only in extraordinary cases where just cause is found.”). Under the grievance procedure, “just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Id.* § 9.

⁷ See, e.g., EDR Ruling No. 2020-4991; EDR Ruling No. 2019-4776; EDR Ruling No. 2018-4643.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).