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**COMPLIANCE RULING**

In the matter of the Virginia Department of Fire Programs  
Ruling Number 2023-5461  
October 5, 2022

The Virginia Department of Fire Programs (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s September 16, 2022 dismissal grievance. The agency asserts that the grievant did not initiate her grievance within the 30-calendar-day time period required by the grievance procedure.

FACTS

On September 16, 2022, through counsel, the grievant initiated a grievance directly with EDR, using a Grievance Form A – Dismissal Grievance, to challenge her separation from employment. In response, the agency asserted that the grievance was untimely because the grievant “received notification [...] of the termination of her employment on 8/16/22” and did not file the grievance with 30 calendar days of that date.

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.<sup>1</sup> Because dismissal grievances are initiated directly with EDR,<sup>2</sup> an agency is essentially unable to follow this process as outlined. Accordingly, the agency has requested a ruling from EDR on 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.<sup>3</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.

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> *Id.* § 2.5.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

On or about August 16, 2022, the agency informed the grievant of her termination via UPS mail. Grievant's counsel stated that on August 17, 2022, the grievant received a UPS delivery slip that required adult signature before the package could be delivered. Upon receipt of the delivery slip, the grievant states that she was unaware of the contents of the package. After the grievant signed the UPS delivery slip, UPS delivered the package on August 18, 2022. EDR's longstanding practice in grievances challenging a disciplinary action is to calculate the 30-calendar-day timeframe beginning on the date that management presents or delivers the Written Notice to the employee.<sup>4</sup> The grievant received written notification of her removal on August 18. The agency has not presented information to demonstrate that the grievant received the Written Notice prior to this date. As a result, the grievant should have initiated her grievance within 30 calendar days of that date, *i.e.*, no later than September 19, 2022.<sup>5</sup> Her grievance initiated on September 16, 2022 is therefore timely and must be allowed to proceed as described below.

### CONCLUSION

Based on the discussion above, EDR finds that the grievant's September 16, 2022 dismissal grievance was timely initiated and must be allowed to proceed. As the agency has already submitted a Form B to EDR, we will continue with the dismissal grievance process to appoint a hearing officer in this case.

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

*Christopher M. Grab*  
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<sup>4</sup> *E.g.*, EDR Ruling No. 2019-4845; EDR Ruling No. 2019-4844; EDR Ruling No. 2017-4469; EDR Ruling No. 2015-4181. Significantly, 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." *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form itself includes similar language.

<sup>5</sup> The 30<sup>th</sup> calendar day was actually September 17, but since that day was a Saturday, the grievant would have had until the following business day, September 19, to initiate the grievance. *See Grievance Procedure Manual* § 2.2.

<sup>6</sup> *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).