



JANET L. LAWSON
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

COMPLIANCE RULING

In the matter of George Mason University
Ruling Number 2024-5695
May 1, 2024

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) concerning his grievance with George Mason University (the “university” or “agency”), submitted March 31, 2024. The university administratively closed the grievance on grounds that it was not timely initiated. The grievant asks EDR to permit his grievance to proceed.

FACTS

On or about January 29, 2024, the grievant received a Notice of Improvement Needed (“NOIN”). In addition to performance issues, the NOIN cited “[a]ttendance and [r]eliability” as areas of improvements needed. The grievant states that during the meeting when the NOIN was issued, the grievant’s supervisor noted that his absence on January 2 was one of the reasons for the issuance of the NOIN. The grievant contests this facet of the NOIN, arguing that he timely put the university on notice regarding his absences related to his ongoing medical concerns. The grievant states that he notified his supervisor of his aggravation of medical issues on January 2, and the supervisor allegedly permitted him to stay home and rest. The grievant also informed the university weeks ahead of time of a planned surgery that was scheduled for January 12, along with subsequent necessary time off for recovery. Later that month, prior to the NOIN, the grievant sought information about applying for FMLA leave by reaching out to the appropriate university personnel. It appears that the grievant’s doctor completed the appropriate FMLA documentation on January 31.

On March 31, 2024, the grievant initiated a grievance with the university, contesting the issuance of the NOIN, citing his previous communications with the university regarding the medical reasons for his recent absences.¹ The university administratively closed the grievance on grounds that it was not timely initiated. The grievant now appeals the university’s administrative closure to EDR.

¹ While the grievance form is dated March 12, the information available to EDR indicates that the form was first emailed to the university on March 31.

DISCUSSION

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.² When an employee initiates a grievance beyond the 30-calendar-day period, the grievance is not in compliance with the grievance procedure and may be administratively closed. Failure to initiate a grievance timely “will be excused only in extraordinary cases where just cause is found.”³ The grievance procedure defines just cause as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”⁴ In this case, the management action challenged was the NOIN dated January 29, 2024. Because the grievant did not file a grievance until March 31, 2024, the grievance is not timely and may only be accepted for just cause.

While the grievant does not point to any particular just cause for delay in the filing of the grievance, the record does suggest that the grievant was proactive in attempting to resolve the matter with the university by immediately corresponding with the appropriate personnel who handle the grievant’s medical documentation. However, the grievant’s proactive steps toward attempted resolution are not sufficient to establish a claim of just cause under these facts. Instead, the grievant has the burden to demonstrate, with some specificity, circumstances that would have reasonably presented an obstacle to timely filing. Here, the grievant has not provided such information to EDR. EDR has no other information to suggest that the grievant was not reasonably able to submit a timely Grievance Form A during this time. Because the grievance appears to be untimely and no just cause for untimely filing has been provided, the grievance will remain administratively closed.

While this grievance will not proceed, the grievant is encouraged to file another grievance if there are ongoing or future actions or omissions by the university that could potentially violate DHRM or university policy. EDR would also observe that the NOIN does not provide much in the way of specificity about the dates of absences that justify addressing the grievant’s attendance. EDR would encourage the university to be sure to clarify such matters for the grievant, to the extent the grievant has any uncertainties. The university should be mindful to take into account any justifications for the grievant’s absences, especially when approved under FMLA. For example, the grievant states that he was told the reason for the issuance of the NOIN was his absence on January 2. If that is the case, the basis for the university’s assessment is unclear if the facts are as the grievant described – that he told his supervisor about the medical situation he was experiencing and sought to telework that day but was told to rest and recover instead. Nevertheless, it is apparent that there are performance issues and improvements needed identified in the NOIN other than attendance. EDR simply observes that more detail would be beneficial for clear communication about the basis for the university’s actions and to identify those matters the grievant must improve with specificity.

EDR’s rulings on matters of compliance are final and nonappealable.⁵

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

³ *Grievance Procedure Manual* § 2.2.

⁴ *Id.* § 9.

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

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Christopher M. Grab
Director
Office of Employment Dispute Resolution