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COMPLIANCE RULING

In the matter of the Department of Wildlife Resources
Ruling Number 2025-5807
July 9, 2025

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to his December 9, 2024 grievance with the Department of Wildlife Resources (the “agency”).

FACTS

On or about December 9, 2024, the grievant submitted a grievance to the agency challenging the fact that he had not received a performance evaluation for the 2022-23 evaluation period. The grievant notes in his grievance that the agency’s “neglect is harmful to [his] career and constitutes an adverse employment action in that there is no official record for future management to review in considering beneficial employment actions (e.g. promotions).” As relief, the grievant sought that the agency adopt his self-evaluation for the 2022-23 evaluation period as his official performance evaluation. In addition to responding to the subject matter raised in the grievance, the agency provided a response that administratively closed the grievance as untimely. The grievant appeals that determination and requests this ruling from EDR.

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.¹ 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.

In his ruling request, the grievant cites to Section 2.2 of the *Grievance Procedure Manual*, which states that the “agency bears the burden of establishing the date the employee knew or should have known of the management action or omission being grieved if the agency contests the timeliness of the grievance on that basis.”² In addition to subsequent correspondence, the agency

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

² *Grievance Procedure Manual* § 2.2.

has referenced a communication apparently sent to all agency employees about the 2022-23 performance evaluation cycle, noting that the cycle concluded on October 24, 2023 and that all performance evaluations were due to human resources by December 1, 2023. The grievant contends that the agency has failed to meet its burden to establish a date by which he knew or should have known to file a grievance, specifically by not giving a deadline for the performance evaluation meeting, and thus, his grievance should be considered timely.

EDR understands and appreciates the grievant's argument in that it can be difficult to pinpoint a date on which a failure to act has occurred for purposes of determining when the 30-calendar-day period begins to file a grievance. However, under the facts of this case, we cannot view the grievant's December 9, 2024 grievance as timely to contest the failure to issue an evaluation that should have been completed over a year earlier. Additionally, EDR finds that there is not just cause to excuse the late submission.³

Nevertheless, EDR took note in the agency's response to the grievance that a proposal was made to have the grievant's 2022-23 evaluation completed. Accordingly, EDR inquired of the agency in January 2025 as to whether that could still occur. While the completion of the evaluation took longer than EDR and the agency anticipated, the agency has since indicated that the grievant has now received a completed evaluation for the 2022-23 period. Inasmuch as the grievant was seeking to address the harm to his career by the lack of an official evaluation for that period that could be referenced by future management for consideration of beneficial employment actions, that issue has now been resolved.⁴

CONCLUSION

For the reasons set forth above, the grievant's December 9, 2024 grievance will remain administratively closed. EDR's rulings on matters of compliance are final and nonappealable.⁵

Christopher M. Grab
Director
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³ *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.

⁴ To the extent the grievant wishes to challenge the recently issued 2022-2023 evaluation, he can choose to do so through the processes available to him, including the filing of a new grievance within 30 calendar days of the issuance of the evaluation.

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