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COMPLIANCE RULING

In the matter of Virginia Military Institute
Ruling Number 2026-5948
September 30, 2025

The grievant has requested a compliance ruling concerning his grievance with the Virginia Military Institute (the “Institute” or “agency”) from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM). For the reasons set forth below, EDR finds that the grievance at issue is considered timely initiated.

FACTS

On or about June 6, 2025, the grievant received a Group II Written Notice. On or about August 14, 2025, the grievant mailed a Grievance Form A to EDR to challenge the Written Notice. The grievant was advised to redirect the grievance to the Institute for the resolution steps of the grievance process, which appears to have been done on or around August 25, 2025. A Deputy Director responded substantively to the issues raised, but also noted the grievant’s noncompliance with the timeliness provision of the grievance procedure. While the respondent did not appear to indicate that the grievance would be closed, it was indicated that the grievance would not proceed to a hearing. The grievant has sought this ruling to address the question as to whether his grievance should be considered timely initiated.

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. 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 Notice to the employee.² 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.”³

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

² E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

³ *Grievance Procedure Manual* § 2.2 n.2. The Written Notice form includes similar language.

In this case, the grievant received the Written Notice on or about June 6, 2025. Thus, a grievance should have been submitted by July 7, 2025 (since July 6 fell on a weekend). Here, the grievant first submitted his grievance by mail to EDR on August 14, 2025,⁴ after the 30-calendar-day period elapsed. Consequently, the Institute is not wrong to point out that the grievance was not submitted within 30 calendar days of the grievant's receipt of the Written Notice. Accordingly, the grievance will only be considered timely if it is determined that there was "just cause" to excuse the late submission.⁵

The grievant states that he went to the human resources office "to address the idea of filing a grievance" on June 26, 2025. The grievant states that the HR Director told him that she wanted to handle the matter "in house." The grievant goes on to state that "[a]fter following up with the Director of HR multiple times on the status of the write ups, due to the 30 calendar days to file a grievance, it was made clear by the Director that she would 'make sure the allotted time to file a grievance would be extended' past the 30 calendar days if I do not get the results I want." The grievant states he was informed of "the outcome of the write up" on August 4. Ten days later, on August 14, the grievant mailed his grievance to EDR.

During this Office's review of the ruling request, EDR inquired as to whether the grievant had any written documentation reflecting any assurances allegedly provided by the HR Director or any of these events. Unfortunately, there is no such written documentation. However, the grievant did reiterate that he "did ask her at least twice before the 30 days were up." The grievant states that one of the contacts was "over the phone and the other was in person" and guesses "it was the third week and fourth week of June," and that he "asked several more times in July." The grievant states that he "even asked her should I get this in writing and she said no that she will make sure I can file if I want to." The grievant further states that he "mentioned to [the HR Director] many many times about the 30 day period and even after the fact and every time she told me to wait and then I know for a fact she told me at least once that 'she would make sure the grievance period can be extended if I want to do so.'" The grievant argues that the Institute, by this conduct of the HR Director, held him back from filing the grievance on time.

The grievance procedure states that agreed extensions of the deadline for filing a grievance must be in writing.⁶ While there was no such extension documented in writing in this case, an agency cannot engage in behavior that improperly induces an employee to miss a filing deadline. The sequence of events described above by the grievant could arguably support such a finding, especially if an employee is told directly the agency would make sure the filing deadline would be extended. However, EDR also inquired of the HR Director about her recollection of events, which were different from the grievant's version.

⁴ EDR has long held that initiating a grievance with the wrong management representative will not bar the grievance for noncompliance. *E.g.*, EDR Ruling No. 2007-1512; EDR Ruling No. 2006-1114. When a grievance is submitted directly to EDR, we generally consider ourselves as the equivalent of a "wrong management representative." *See, e.g.*, EDR Ruling 2004-645. Thus, we consider the date a grievance is mailed to EDR as the date initiated for timeliness purposes. *E.g.*, EDR Ruling No. 2022-5402. Pursuant to the grievance procedure, the "postmark date is considered the initiation date." *Grievance Procedure Manual* § 2.2.

⁵ *Grievance Procedure Manual* § 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.

⁶ *Id.* §§ 1.2, 8.4.

The HR Director states that the grievant came to human resources to report inappropriate statements by his supervisor. The HR Director provided a copy of a written submission from the grievant about these statements, which is dated July 1, 2025. The HR Director states that she was only investigating the conduct of the grievant's supervisor. She states that there appears to be a "miscommunication" about what she was asking the grievant to hold off from filing a grievance about. The HR Director does appear to have discussed the issue of a filing deadline with the grievant and that she could "explain" if the deadline passed, but she was "strictly speaking about what [she] was investigating." The HR Director states that the grievant never asked her to look into the Written Notice he received. Thus, it is the HR Director's position that while she did ask the grievant for time to investigate and to hold off filing a grievance, she only meant as it related to the complaint the grievant was raising about the inappropriate statements by his supervisor.

Based on our consideration of the information made available, EDR does not believe that the HR Director intended to delay the grievant or mislead him into missing the filing deadline for his grievance in some kind of bad faith. With that being said, we do agree that there was a miscommunication that did lead the grievant into missing the deadline to challenge the Written Notice. Although the HR Director is clear about what she was investigating and what she felt she was asking the grievant to hold off from doing, she also was aware from the grievant that he had received the Written Notice. In our review in this case, the HR Director stated that the grievant wanted to file a grievance "about everything." It should have been reasonable for both the grievant and the HR Director to assume that "everything" included the Written Notice he had received from his supervisor, which also arose out of the incident with the truck described to the HR Director by the grievant. Therefore, it is EDR's determination that it was not unreasonable for the grievant to have understood the HR Director's statements to be referring to the entirety of the situation with his supervisor, including the Written Notice. EDR further determines that following the HR Director's assurances to delay filing his grievance and even if the deadline was passed it would be permitted to proceed as a "reason sufficiently compelling to excuse not taking a required action in the grievance process," i.e., just cause, under the facts available to EDR for purposes of this case.

CONCLUSION

For the reasons set forth above, EDR finds that the grievance is deemed to have been timely initiated on the basis of just cause and allowed to proceed through all normal steps of the grievance procedure. To the extent the Institute administratively closed the grievance, EDR directs that the grievance is reopened. This ruling does not address the merits of the claims presented in the grievance and only decides that the grievance is deemed to be timely filed. The grievant has **five workdays** from the date of this ruling to advance the grievance to the next resolution step respondent. If the grievant is unsure to whom the grievance should be directed, he should follow up with the Institute's human resources office.

EDR's rulings on matters of compliance are final and nonappealable.⁷

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⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).