

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: October 9, 2018; Ruling No. 2019-4788; Agency: Department of State Police; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of State Police
Ruling Number 2019-4788
October 9, 2018

The Department of State Police (the “agency”) seeks a compliance ruling on whether the grievant’s September 6, 2018 grievance was timely initiated.¹ The agency asserts that the grievant did not initiate his grievance within the 30 calendar-day time period required by the grievance procedure. For the reasons set forth below, this grievance is untimely and will be administratively closed.

The grievant is employed by the agency as a Trooper. On February 16, 2018, during a meeting, the grievant was given a Group II Written Notice by his Captain. On the same day, the Captain drafted a letter to the grievant which summarized the allegations against him. However, an agency secretary misfiled the letter, and the grievant indicates that he did not receive it until July 25, 2018. The grievant did not initiate a grievance to challenge the Group II Written Notice.

On or about September 6, 2018, the grievant initiated a grievance with the agency to challenge the allegations that formed the basis of the February 16 letter as well as the Written Notice. The agency’s first step respondent indicated that, as the grievance was untimely initiated, he would not grant the relief requested; however, the agency did provide the grievant with a second step response from the Captain who issued the Written Notice. Using the Grievance Form A, the grievant indicated that he wished to proceed to the third step; however, the agency now seeks to close the grievance due to its alleged untimeliness.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he 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 thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

The grievant argues that the February 16, 2018 letter, not the Written Notice, constitutes the formal notification of disciplinary action. However, EEDR does not agree with this position. Consistent with its decisions in past rulings, EEDR finds that the event that forms the basis of the

¹ The grievant signed and dated the grievance “09/05/2016,” however, references to the dates upon which the subject matter of the grievance occurred clearly demonstrate that “2016” was a typographical error. As the first step respondent noted “9/6/2018” as the date he received the Grievance Form A, EEDR will consider September 6, 2018 as the date of initiation of the grievance.

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

grievance is the date of delivery of the Written Notice to the grievant on February 16, 2018.³ It was on February 16 that the grievant had actual knowledge of the disciplinary action taken against him as a result of the allegations discussed in the meeting on that day. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than March 19, 2018.⁴ The grievant did not initiate the grievance until September 6, 2018, which would appear to make his filing untimely, absent considerations of just cause.

Here, the grievant presents no reason that would constitute just cause for his untimely filing. EEDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁵ 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. There is evidence in this case that the agency advised the grievant of his rights under the grievance procedure, including the requirement to initiate a grievance within thirty calendar days. Further, we note that the grievant did not initiate a grievance within thirty days of July 25, 2018 (the date he states he finally received the February 16 letter). Thus, we find that the grievant has failed to demonstrate just cause for his delay.

Accordingly, EEDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EEDR's rulings on matters of compliance are final and nonappealable.⁶



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³ See EDR Ruling No. 2016-4189; EDR Ruling Nos. 2014-3878, 2014-3882.

⁴ Pursuant to the *Grievance Procedure Manual*, if the 30th calendar day by which a grievance must be initiated falls on a Saturday, Sunday, or legal holiday, the grievance may be filed on the next business day. In this instance the 30th day was March 18, 2018, a Sunday. Thus, the grievance should have been initiated by Monday, March 19.

⁵ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).