

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 24, 2013; Ruling No. 2013-3506; Agency: Department of Corrections; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2013-3506
January 24, 2013

The grievant has requested a compliance ruling in his grievance challenging his October 12, 2012 performance evaluation. The grievant's employing agency, the Department of Corrections ("agency"), asserts that he did not initiate his grievance within the 30 calendar day time period required by the grievance procedure. For the reasons discussed below, EDR determines that the grievance is untimely and may be administratively closed.

FACTS

In his grievance, the grievant has challenged his 2012 performance evaluation. According to the Grievance Form A and the first-step respondent, the grievant's performance evaluation was presented to him on October 12, 2012. The grievant submitted the Grievance Form A directly to the Human Resource office, which marked it as "received" on Tuesday, November 13, 2012, after having been apparently closed on Monday, November 12, 2012, in observance of the Veterans' Day holiday. The grievant asserts that he met the requirement for filing within 30 days; however, he does not definitively state the day upon which he submitted the grievance.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she 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. The grievance procedure also states that "[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy of the Grievance Form A."²

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

² *Grievance Procedure Manual* § 2.2.

In this case, the event that forms the basis of this grievance is the grievant's receipt of the performance evaluation on October 12, 2012. Therefore, he should have initiated his grievance within 30 days, i.e., no later than Sunday, October 11, 2012. The grievant has the burden to show that it is more likely than not that his grievance was timely initiated.³ While it is possible that the grievance was presented to the Human Resource office within 30 days of the grievant's receipt of his performance evaluation, it is also possible that it was not. Further, the agency has challenged the timeliness of the grievance. Beyond his assertion that the grievance was timely initiated, the grievant has not provided any evidence to support his claim that it was initiated within the 30-day window. As noted above, the grievant bears the burden of showing that it is more likely than not that his grievance was timely initiated. Without any credible corroborating evidence of a timely filing, the grievant does not meet that burden.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievant has not established that his grievance was timely initiated. Accordingly, the parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁴



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³ *See id.*

⁴ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).