

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 29, 2013; Ruling No. 2013-3515; Agency: Virginia Employment Commission; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Employment Commission
Ruling Number 2013-3515
January 29, 2013

The grievant has requested a compliance ruling in his December 12, 2012 grievance with the Virginia Employment Commission (the agency). 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 discussed below, the grievance is timely.

FACTS

The grievant received his annual performance evaluation on or about October 16, 2012. The grievant timely submitted an appeal to the reviewer on or about October 17, 2012. The grievant states he did not receive a response to his appeal until November 14, 2012. Thereafter, the grievant initiated this grievance to challenge the October 16, 2012 performance evaluation on or about December 12, 2012. The agency has administratively closed the grievance, asserting that it was not initiated timely. The grievant now appeals that determination to the Office of Employment Dispute Resolution (EDR).

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he 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.²

In grievances challenging annual performance evaluations, the 30-day period generally begins with the date that the employee receives his written evaluation. However, where the employee has initiated a timely appeal of his evaluation under agency policy,³ that appeal essentially renders the initial evaluation a preliminary rather than final decision. Thus, when an

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

² *Grievance Procedure Manual* § 2.2.

³ See DHRM Policy 1.40, *Performance Planning and Evaluation*.

employee timely appeals his evaluation under agency policy, the 30-day period to initiate a grievance is extended until the agency has taken final action on the appeal.⁴

Based on the foregoing, the grievant's appeal rendered his October 16, 2012 evaluation as preliminary rather than final. Accordingly, because the grievant initiated his grievance on or about December 12, 2012, within 30 calendar days of receiving the response to the appeal, his grievance is timely.

CONCLUSION

For the reasons discussed above, EDR has determined that this grievance was timely filed within the 30 calendar-day period. By copy of this ruling, the parties are advised that within five workdays of the receipt of this ruling, the first step-respondent must respond to the grievance. EDR's rulings on matters of compliance are final and nonappealable.⁵



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⁴ See, e.g., EDR Ruling No. 2004-920.

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