

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: April 26, 2013; Ruling No. 2013-3581; Agency: Virginia Commonwealth University; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of Virginia Commonwealth University
Ruling No. 2013-3581
April 26, 2013

The grievant has requested a compliance ruling related to his March 14, 2013 grievance with Virginia Commonwealth University (the agency). The agency asserts that the grievant failed to initiate his grievance in a timely manner. For the reasons set forth below, EDR determines that the grievance is timely.

FACTS

In his March 14, 2013 grievance, the grievant alleges that he was not paid for 24/7 on-call duty from July 2006 until March 15, 2013. The grievant asserts that he waited until he obtained a new job before he initiated a grievance about this particular issue because he “did not want to work [in] a hostile work environment.” Moreover, the grievant alleges that he did not know he was eligible for on-call pay until 2010. Because more than 30 days had elapsed since the alleged issue arose in 2006, the agency administratively closed the grievance, alleging 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 However, EDR has traditionally viewed most pay claims differently from other types of claims, following the paycheck accrual rule when applicable.³ This rule provides that every payday for which an employee receives compensation reduced by the alleged impropriety constitutes a separate accrual, or “trigger date,” for statute of limitations purposes; thus, with the issuance of each paycheck that is alleged to be improperly lower, a new

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

² *Id.*

³ See, e.g., EDR Ruling No. 2010-2441; EDR Ruling No. 2005-991; EDR Ruling No. 2003-508; EDR Ruling No. 2002-103.

statute of limitations period begins to run.⁴ Accordingly, when applicable, each paycheck starts a new 30 calendar day grievance filing deadline.

Here, the grievant initiated his grievance while still employed by the agency and receiving semi-monthly paychecks reduced due to the agency's allegedly improper compensation decision.⁵ Because his grievance was filed within 30 calendar days of one such reduced paycheck, his grievance is timely to challenge the pay action grieved. It should be noted that even if this grievance is qualified for a hearing, and the hearing officer rules in favor of the grievant, the hearing officer would only be able to award back pay for the 30 calendar day period immediately preceding the initiation of the grievance.⁶

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 agency must schedule the second resolution step meeting. EDR's rulings on matters of compliance are final and nonappealable.⁷



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Director
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⁴ See EDR Ruling No. 2010-2441.

⁵ Nothing in this ruling is meant to indicate that the grievant was properly or improperly denied any compensation for his on-call time. This substantive issue is not controlling of the procedural question of whether the grievance was initiated timely.

⁶ *Rules for Conducting Grievance Hearings* § VI(C)(1). Whether the grievant may have some other legal or equitable remedy available for this claim is not a subject for this ruling.

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