

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 11, 2014; Ruling No. 2014-3842; Agency: Department of Corrections; Outcome: Grievant 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 2014-3842
April 11, 2014

The grievant has requested a ruling on whether his March 4, 2014 grievance with the Department of Corrections (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure's time requirements for filing a grievance. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management determines that the grievance has been filed prematurely and will remain administratively closed.

FACTS

The grievant was administratively suspended from employment due to pending criminal charges against him, for a period of time not to exceed ninety days, effective June 27, 2013. During this time, the grievant was permitted to utilize his existing leave in order to reduce the amount of time he would be on leave without pay pursuant to the suspension. After ninety days, the grievant was brought back to work in a different capacity, as the charges were still unresolved. Eventually, the grievant was cleared of all charges against him but one, which remains unresolved as of the date of this ruling. He was subsequently brought back to his regular duty on or about February 25, 2014. The grievant submitted his grievance on March 4, 2014 in order to challenge his use of leave and wages lost during the time he was administratively suspended.¹

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.² 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.

In this case, EDR determines that the grievant has filed his grievance prematurely, as the agency indicates that it has made no final determination regarding whether the grievant's leave

¹ To the extent that the grievance could be read as challenging the suspension itself, the grievant should have initiated that grievance within 30 days of June 27, 2013.

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

and wages used during his suspension will be returned to him. The agency has advised EDR that the outcome of the remaining criminal charge is essential to this determination, and it awaits a resolution of this matter. Thus, the event that would form the basis of this grievance, namely, the agency's determination of whether the grievant is entitled to the return of his leave and lost wages, has not yet occurred.³ Once the agency renders this determination, the grievant will then have thirty days in which to file a grievance should he disagree with the decision.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was prematurely initiated and may accordingly be closed. The grievant is free to file a subsequent grievance on this issue once the agency has taken action and rendered its determination.

EDR's rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ Further, to the extent the grievant is challenging the agency's failure to reinstate any leave and/or pay allegedly due at this point under policy, we agree that the outstanding charge makes such a determination premature for assessment at this time.

⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).