

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 5, 2014;
Ruling No. 2014-3878; Agency: Department of Corrections; Outcome: Grievant Not
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 2014-3878
May 5, 2014

The Department of Corrections (the agency) seeks a compliance ruling concerning the grievant's filing of a dismissal grievance. The agency asserts that the grievant did not initiate her 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 will be administratively closed.

FACTS

On April 28, 2014, the grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR). The following day, EDR forwarded the grievance to the agency. The agency noted that it appeared the grievant did not initiate her grievance within the 30 calendar-day time period required by the grievance procedure. Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.¹ Because dismissal grievances are initiated directly with EDR,² an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

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.³ 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, the event that forms the basis of this grievance is the grievant's receipt of the hand-delivered letter terminating her employment on March 17, 2014. Therefore, she should have initiated her grievance within 30 days, i.e., no later than April 16, 2014. The date stamp on the email received by this Office indicates that the grievance was not initiated until April 28, 2014. Because the grievant initiated her grievance

¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

more than 30 calendar days beyond the receipt of the termination letter, the grievance is untimely. The only remaining question is whether there was just cause for the delay.

The grievant presents no facts that would constitute evidence of just cause for a delay of twelve days in initiating her grievance. The documentation provided indicates that the grievant was incarcerated on March 17, 2014 when she was terminated, but was released the following day. Even if just cause may have existed on March 17 for the grievant's inability to file a grievance, as of March 18, that just cause would no longer have existed. Further, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ 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. Thus, we conclude that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated. Accordingly, the parties are advised that the grievance will be marked as concluded due to noncompliance and EDR will close its file. EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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