

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 6, 2014;
Ruling No. 2014-3879; Agency: Department of Behavioral Health and Developmental
Services; 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 Behavioral Health and Developmental Services
Ruling Number 2014-3879
May 6, 2014

The Department of Behavioral Health and Developmental Services (the agency) seeks a compliance ruling concerning the matter of 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 may be administratively closed.

FACTS

On April 29, 2014, the Office of Employment Dispute Resolution (EDR) received the grievant's dismissal grievance filing. The postmark on the envelope indicated it had been mailed on April 25, 2014. The agency has taken the position that the grievant did not initiate her grievance within the 30 calendar day time period required by the grievance procedure. 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 Written Notice terminating her employment on March 20, 2014. Therefore, she should have initiated her grievance within 30 days, i.e., no later than April 19, 2014. While the grievant dated her Grievance Form A as April 11, 2014, the postmark on the envelope received by this Office indicates that the grievance was not actually initiated

¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

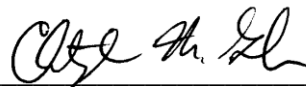
³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

until April 25, 2014. Because the grievant initiated her grievance 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 ten days in initiating her grievance. 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 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.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ See, e.g., EDR Ruling No. 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).