

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 20, 2014; Ruling No. 2014-3885; 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 2014-3885
May 20, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his April 23, 2014 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure. For the reasons set forth below, EDR determines that the grievance may be administratively closed.

FACTS

On or about April 23, 2014,¹ the grievant initiated a grievance challenging a Group II Written Notice issued on August 7, 2013. The agency has administratively closed the grievance as untimely. The grievant now appeals that determination.

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.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, the event that forms the basis of this grievance is the disciplinary action issued to the grievant on August 7, 2013. Therefore, he should have initiated her grievance within 30 days, i.e., no later than September 6, 2013. Because the grievant did not initiate his grievance until April 23, 2014, the challenge to the disciplinary action is untimely. The only remaining issue is whether there was just cause for the delay.³

¹ The grievant dated his grievance form on April 23, 2014, but it apparently not received by the agency’s Human Resource office until April 25, 2014. The grievant has also initiated a second grievance, dated the same, to challenge a Group II Written Notice he received on or about March 31, 2014. That other grievance is not affected by this ruling.

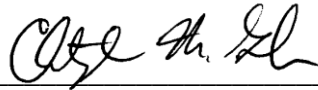
² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

³ See *Grievance Procedure Manual* § 9 (defining “just cause” as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”)

In support of his claim that just cause exists, the grievant states that he was unaware he had not received “the required ‘[d]ue [p]rocess’” prior to receiving a due process notification for a second Group II Written Notice on March 31, 2014. This lack of knowledge of an alleged procedural defect in the August 7, 2013 Written Notice does not excuse the grievant’s failure to timely initiate his grievance. Further, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ Thus, we conclude that the grievant has failed to demonstrate just cause for his delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no evidence of just cause for the delay. 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).