

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 29, 2014; Ruling No. 2014-3887; Agency: Virginia Department of Transportation; 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 Virginia Department of Transportation
Ruling Number 2014-3887
May 29, 2014

The Virginia Department of Transportation (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 appropriately initiate his 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

The grievant emailed the Office of Employment Dispute Resolution (EDR) on Friday, May 9, 2014, at 6:21 p.m., regarding the termination of his employment from the agency and requesting a review of that dismissal. The grievant had been terminated April 10, 2014. On Monday, May 12, the grievant emailed to EDR a completed Grievance Form A – Dismissal Grievance.

The agency has taken the position that the grievant did not initiate his 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.

¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

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

In this case, the event that forms the basis of this grievance is the grievant's termination on April 10, 2014. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than May 10, 2014. The agency alleges that because May 10, 2014 was a Saturday, the grievance should have been submitted by Friday, May 9, prior to the close of business. Pursuant to the *Grievance Procedure Manual*, this statement is incorrect. A grievance must be initiated within thirty **calendar** days, regardless of whether those days are actual workdays, in order to be considered timely.⁴ Thus, a grievance submitted via email on a Saturday by midnight, if it was the 30th calendar day, would still be considered timely.⁵ There is no requirement in the grievance procedure indicating that a grievance must be submitted by the end of the business day in order to be considered timely initiated.

The agency also argues that the email sent to EDR on Friday, May 9, does not constitute the initiation of a grievance, as it was lacking a fully completed grievance form. We agree. Pursuant to the *Grievance Procedure Manual*, an employee "must initiate a grievance on a fully completed 'Grievance Form A.'"⁶ In this case, EDR did not receive the fully completed Form A until Monday, May 12, 2014. Because the grievant should have initiated his grievance no later than May 10, 2014, the grievance is untimely. Thus, the only remaining issue 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 two days in initiating his grievance. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁷ 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 his delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no just cause for the delay. 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.⁸



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⁴ See *Grievance Procedure Manual* § 2.2.

⁵ See EDR Ruling No. 2012-3141.

⁶ *Grievance Procedure Manual* § 2.4.

⁷ See, e.g., EDR Ruling No. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁸ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).