

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: January 13, 2015; Ruling No. 2015-4082; 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 & Developmental Services
Ruling Number 2015-4082
January 13, 2015

The Department of Behavioral Health & Developmental Services (the agency) seeks a compliance ruling concerning the grievant's filing of a dismissal grievance. The agency asserts that the grievant did not initiate his grievance within the 30 calendar day time period required by the grievance procedure. For the reasons set forth below, this grievance is untimely and may be administratively closed.

FACTS

The grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR) on January 5, 2015, the date the package was sent to EDR via certified mail. According to the Grievance Form A, the grievant's dismissal date was December 4, 2014. The agency confirms that December 4, 2014 was the date that the grievant received actual notice of the termination, through two Written Notices, signed and delivered that day. The Written Notice forms reflect that the grievant signed them as received on December 4, 2014.

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.

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 receipt on December 4, 2014, of the Written Notices indicating that he was terminated effective that day. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than January 3, 2015. The date stamp on the envelope in which EDR received the grievance indicates that it was not initiated until January 5, 2015. Because the grievant initiated his grievance more than 30 calendar days beyond the date on which he learned he was terminated, 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 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.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 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.⁵



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