

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 21, 2015; Ruling No. 2015-4085; Agency: Department of Veterans Services; Outcome: Grievant in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of the Department of Veterans Services  
Ruling Number 2015-4085  
January 21, 2015

The Department of Veterans 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 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 timely and will be allowed to proceed.

FACTS

On January 9, 2015, the grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR). The grievant noted December 12, 2014 as the date of dismissal on the Grievance Form A. In response, the agency indicates that the grievant was given a due process memorandum providing her with notice of the alleged offense and the proposed disciplinary action on December 3, 2014. Thus, the agency argues that the grievant knew of the discipline that was to be issued on December 3, and accordingly should have initiated a grievance within 30 calendar days of that date, i.e., by January 2, 2015, in order to be timely. As support for its position, it provides the due process memorandum, dated for December 3, 2014, and marked as "reviewed via phone 12/3/14 at 9:45 a.m.," signed by the grievant's supervisor and a witness.

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.<sup>1</sup> Because dismissal grievances are initiated directly with EDR,<sup>2</sup> 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

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> *Grievance Procedure Manual* § 2.5.

that is the basis of the grievance.<sup>3</sup> 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.

This Office has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee, regardless of the employee's advance notification that such a disciplinary action may be issued.<sup>4</sup> Here, the agency provided the grievant with a memorandum of proposed disciplinary action on December 3, 2014, inviting her to provide a written response by December 5, 2014. The memorandum stated that if no response was received by that date, a decision regarding the proposed discipline would be subsequently made. A plain reading of this document would indicate that the agency was still considering the appropriate disciplinary action as of December 3, 2014.

After receiving no response from the grievant, despite its attempts to contact her, the agency issued the Written Notice, dated December 12, 2014. Therefore, we find that the event that forms the basis of the grievance is the issuance of the Written Notice on December 12, 2014. Accordingly, the grievant should have initiated her grievance within 30 days, i.e., no later than January 11, 2014. EDR received this grievance via facsimile on January 9, 2015. Thus, the grievance was timely filed.

#### CONCLUSION

For the reasons set forth above, the grievant's January 9, 2015 grievance will not be closed as untimely and is qualified for hearing in full. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer using the Grievance Form B. EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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Director  
Office of Employment Dispute Resolution

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

<sup>4</sup> *E.g.*, EDR Ruling No. 2011-2908; EDR Ruling No. 2003-147; EDR Ruling 2002-118.

<sup>5</sup> *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).