

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 8, 2016; Ruling No. 2016-4296; Agency: Department of Corrections; Outcome: Grievant in Compliance (in part), Grievant Not in Compliance (in part).



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 2016-4296
February 8, 2016

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her January 11, 2016 grievance with the Department of Corrections (the “agency”) was timely initiated. For the reasons discussed below, the grievance is untimely in part, but was timely filed with respect to certain issues and may proceed.

FACTS

The grievant is employed by the agency as an Administrative and Office Specialist II. On or about July 1, 2015, a manager at the grievant’s facility submitted a request to the facility’s warden that she receive a 15% salary increase. The grievant was subsequently notified by agency management on or about November 6, 2015, that a 3% salary increase had been approved for her, effective November 10. On or about January 11, 2016, the grievant filed a grievance stating that she “was denied a 15% raise,” disputing the decision to approve a 3% salary increase instead of the requested 15%, and arguing that other, allegedly less-experienced, employees who work in the same Role are paid more than the grievant. The agency notified the grievant that her grievance had been administratively closed due to initiation noncompliance on January 20. The grievant now appeals that determination to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.¹ When an employee initiates a grievance beyond the thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

It is difficult to ascertain the precise event that forms the basis of the grievance in this case. In an attachment to the Grievance Form A, the grievant states that the issue challenged by the grievance is the agency’s decision not to approve a 15% salary increase on November 6,

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

2015. The grievant has further explained to EDR that the July 1, 2015 request for a 15% salary increase “was denied” and that she disagrees with the agency’s decision to approve “only a 3% [increase]” instead. However, the grievant listed December 21, 2015 on the Grievance Form A as the date on which the grievance occurred. She also makes reference in the grievance to other agency employees working in her Role who are allegedly less experienced, but who receive greater salaries than she does. It appears the grievant became aware of a potential disparity in her salary as compared with other similarly situated employees on the December 21 date listed on the Grievance Form A. Fairly read, the grievance disputes both the agency’s decision with respect to the salary increase request, as well as alleged inconsistent compensation practices among employees who work in the grievant’s Role.

Challenge to Salary Increase

The grievant states that she “was denied a 15% raise on November 6, 2015.” The 3% salary increase was effective as of November 10. On December 1, the grievant was paid for the pay period of November 10 through November 25.² Counting thirty calendar days from the date the grievant states she was denied a 15% raise (November 6), the effective date of the 3% increase (November 10), or the date she received her paycheck for the period when the salary increase took effect (December 1), the grievance should have been filed no later than December 31, 2015, in order to be timely with respect to this issue. Because the grievant did not initiate the grievance until January 11, 2016, the grievance is untimely to challenge the agency’s decision to approve a 3% salary increase instead of the requested 15% increase.³

Claims Regarding Inconsistent Compensation

A fair reading of the grievance also indicates that the grievant appears to argue the agency’s compensation practices are inconsistent with state and/or agency policy, as demonstrated by an alleged disparity between the grievant’s salary and the salaries of other similarly situated employees. EDR applies the paycheck rule where it is applicable in such cases.⁴ The paycheck rule provides that every payday for which an employee receives compensation reduced by the alleged impropriety constitutes a separate accrual, or “trigger date,” for timeliness purposes; thus, with the issuance of each paycheck that is alleged to be improperly lower, a new 30 calendar day period begins to run.⁵

Applying that reasoning to the facts of this case, the grievance is timely to dispute the alleged improper compensation practices raised in the grievance for the thirty calendar days

² Commonwealth employees are paid bimonthly, on the first and sixteenth days of the month. The December 1 payday for the grievant included her salary for November 10 through November 24. The December 16 payday included her salary for November 25 through December 9.

³ To the extent the circumstances surrounding the grievant’s July 2015 request for a salary increase, and the agency’s subsequent decision as to what type of increase would be appropriate, are relevant to the grievant’s arguments regarding inconsistent pay practices, that information could be discussed as background evidence. However, the agency’s action in approving the 3% salary increase and implicitly denying the 15% increase is not subject to relief through the grievance process.

⁴ *E.g.*, EDR Ruling No. 2013-3581; EDR Ruling No. 2010-2441; EDR Ruling No. 2005-991.

⁵ *See* EDR Ruling No. 2010-2441 (and authorities cited therein).

preceding the January 11, 2016 date on which it was initiated. It should be noted, however, that even if such a grievance were to qualify for an administrative hearing, a hearing officer may only order an agency to grant an increase in compensation if required by policy, and such an increase would “commenc[e] at the beginning of the 30 calendar day period preceding the initiation of the grievance.”⁶

CONCLUSION

For the reasons set forth above, EDR concludes that the grievant’s claim regarding the agency’s decision to approve a lesser salary increase than she requested is untimely and may not proceed. However, the grievant’s assertion that her compensation is inconsistent with that of other similarly situated employees must be allowed to proceed as discussed above. EDR’s rulings on matters of compliance are final and nonappealable.⁷



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⁶ *Rules for Conducting Grievance Hearings* § VI(C)(1).

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).