

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: April 25, 2016; Ruling No. 2016-4334; 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 2016-4334  
April 25, 2016

The Department of Corrections (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 will be administratively closed.

FACTS

The grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR) on Friday, April 1, 2016, the date an e-mail message was sent to EDR by the grievant with the Dismissal Grievance Form A as an attachment. According to the Dismissal Grievance Form A, the grievant's dismissal date was February 26, 2016, which the agency confirms. As such, the agency asserts that the grievance was initiated untimely.

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 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.

In this case, the event that forms the basis of this grievance is the grievant's termination on February 26, 2016. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than March 28, 2016 (the first business day following the 30<sup>th</sup> calendar day,

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

<sup>2</sup> *Id.* § 2.5.

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

which in this instance fell on a Sunday).<sup>4</sup> The date upon which EDR received the grievance indicates that it was not initiated until April 1, 2016. Because the grievant initiated his grievance more than 30 calendar days beyond the date on which he was terminated, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant has presented some evidence in support of his argument that “just cause” for the delay exists.<sup>5</sup> He asserts that he was informed by two agency employees that he had thirty business days in which to initiate a grievance. To this, the agency responds that the employees mentioned by the grievant are not representatives of management or human resources. While it is unfortunate that the grievant may have received misinformation from other employees, EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>6</sup> 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.

The grievant further argues that he was waiting to receive paperwork such as investigation reports, documentation from his hearing, and witness statements from the agency. However, 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,<sup>7</sup> in this instance, the grievant’s termination on February 26, 2016. Nothing in the *Grievance Procedure Manual* allows for an automatic extension of this time in order to receive supporting documentation for the grievance. The grievant’s decision to wait until further information was received cannot be considered just cause for a late filing.<sup>8</sup> 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.<sup>9</sup>



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<sup>4</sup> See *Grievance Procedure Manual* § 2.2 (“If the 30<sup>th</sup> calendar day by which a grievance must be filed falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the grievance is to be filed is closed during normal business hours, the grievance may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed.” (citation omitted)).

<sup>5</sup> “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

<sup>6</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>7</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

<sup>8</sup> While a grievant and an agency can agree to extend the 30 calendar-day deadline, there is no indication that such an agreement was in place here. Further, there is no evidence of agency management or human resources acting to delay the grievant so he would miss the grievance deadline.

<sup>9</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).