

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 11, 2016; Ruling No. 2016-4348; Agency: Department of Corrections; 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 Corrections
Ruling Number 2016-4348
May 11, 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 his grievance dated April 20, 2016 with the Department of Corrections (the “agency”) was timely initiated. For the reasons discussed below, the grievance is timely.

FACTS

On April 20, 2016, the grievant initiated a grievance challenging his nonselection for a managerial position. The grievance stated that the “[d]ate [the g]rievance [o]ccurred” was March 21, 2016, when the grievant apparently became aware of an email from the Commonwealth’s recruitment management system advising him that he was not selected for the position.¹ The agency initially accepted the grievance as timely, but later determined that the grievance was initiated outside the 30 calendar-day period. The agency based this determination on a March 9, 2016 email to the grievant from a co-worker, which was included as an exhibit with the grievance. In that March 9 email, the co-worker advised the grievant that the successful candidate for the position, whom the grievant alleges was pre-selected, was already “in the system” and appeared to be working in the position. The agency apparently asserts that the grievant knew or should have known of his nonselection on March 9 based on the information contained in this email.

On April 25, 2016, the agency advised the grievant that it was administratively closing his grievance as noncompliant. The grievant now appeals the agency’s determination that his grievance was untimely.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is

¹ The email was sent to the grievant at his work email address on Monday, March 14, 2016, but as the grievant was on vacation that week, he did not review the email until March 21, 2016.


the basis of the grievance.² 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.

In this case, the event that forms the basis for the grievant is the grievant's nonselection for the managerial position. The grievant received notification that he was not selected for the position on March 21, 2016, when he returned from vacation. Prior to that date, the grievant had not been officially advised by agency management and/or the recruitment management system that the selection process was complete and he had not received the position. Any knowledge of the selection that the grievant may have had prior to March 21, 2016 is best characterized as workplace gossip or hearsay, which the grievant could rightfully have understood as not necessarily being correct or final. As such, the date on which the grievant "knew or should have known" of the nonselection decision is March 21, 2016. As the grievant challenged the selection decision within 30 calendar days of this date, his grievance was timely.

CONCLUSION

For the reasons set forth above, we conclude that the grievant's claim was timely initiated and may be allowed to proceed. This ruling does not address the merits of this claim and only decides that the claim was timely initiated. The grievance must be returned to the second step-respondent to be addressed at that level and proceed through the grievance process.

EDR's rulings on matters of compliance are final and nonappealable.³



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

³ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).