

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 5, 2019; Ruling No. 2019-4845; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2019-4845
February 5, 2019

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management on whether the grievant’s January 22, 2019 dismissal grievance was timely initiated. For the reasons set forth below, this grievance is untimely and will be administratively closed.

The grievance procedure provides that an employee must initiate a written grievance within thirty 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.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. EEDR has long held that in a grievance challenging a disciplinary action, the thirty calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.²

In this case, the event that forms the basis of the grievance is the grievant’s termination via the issuance of a Group III Written Notice on December 14, 2018. The grievant initiated a dismissal grievance with EEDR challenging the disciplinary action and his termination on January 22, 2019. Because the grievant received the Written Notice on December 14, 2018, he should have initiated the grievance within thirty days, i.e., no later than January 13, 2019. He did not initiate the grievance until January 22, 2019, and has presented no evidence of just cause for his late filing.

Accordingly, EEDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EEDR’s rulings on matters of compliance are final and nonappealable.³

A handwritten signature in black ink, appearing to read "Chris M. Grab", written over a horizontal line.

Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

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

² E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147. In addition, the *Grievance Procedure Manual* provides that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.” *Grievance Procedure Manual* § 2.2 n.2.

³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).