

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: August 1, 2013; Ruling No. 2014-3665; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2014-3665
August 1, 2013

The Virginia Department of Transportation (the agency) challenges the timeliness of the grievant's dismissal grievance and seeks a compliance ruling from the Office of Employment Dispute Resolution (EDR).

FACTS

On July 17, 2013, EDR received a Dismissal Grievance Form A challenging the grievant's separation from employment. The Form A was enclosed in an envelope sent by counsel for the grievant and stamped with a postmark date of June 28, 2013. The grievance notes the dismissal date as June 3, 2013. As EDR did not receive the grievance until July 17, 2013, the agency challenges the timeliness of the grievance and seeks a compliance ruling allowing it to administratively close the grievance.

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.¹ 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 the grievance is the date of the grievant's termination, June 3, 2013. EDR 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.² Thus, the grievant should have initiated this grievance within 30 days, i.e., no later than July 3, 2013. Whether the grievance was timely depends not on when it was received, but when it was initiated.

Under the grievance procedure, timely initiation of a grievance is not necessarily predicated upon timely delivery of the grievance to management. For example, a grievance is

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

² E.g., EDR Ruling No. 2010-2626; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147.

considered timely if it is mailed, faxed, or even placed in a supervisor's inbox within the 30-day timeline, regardless of the fact the grievance may not be received or reviewed until after the deadline passes.³ Although it is the grievant's burden to establish the timely initiation of a grievance, the grievant has met this burden here. We are convinced that a postmark on an envelope mailed by grievant's counsel indicates with sufficient certainty that this grievance was initiated on June 28, 2013. Though the envelope did not reach this Office until July 17, 2013, the grievance was, nevertheless, initiated within the 30 calendar-day period following the grievant's dismissal.

CONCLUSION

For the reasons discussed above, EDR concludes that this grievance was filed timely within the 30 calendar-day period. EDR's rulings on matters of compliance are final and nonappealable.⁴ The dismissal grievance will proceed to hearing. A hearing officer will be appointed in a forthcoming correspondence.



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ See *Grievance Procedure Manual* § 2.2 (“[F]or purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.”).

⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).