

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 5, 2013; Ruling No.2014-3695; 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 Department of Corrections
Ruling Number 2014-3695
September 5, 2013

The grievant has requested a ruling on whether her August 5, 2013 grievance with the Department of Corrections (the agency) is in compliance with the grievance procedure. The agency asserts that the grievant did not initiate the grievance timely. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management determines that the grievance is timely and shall be permitted to proceed.

FACTS

In the grievant's August 5, 2013 grievance, she appears to challenge ongoing issues related to her employment and relationship with management at the facility and seeks a transfer. Because the grievant listed March 2013 and June 19, 2013 as the dates the grievance occurred, the agency has taken the position that the grievance was not initiated timely. The grievant now appeals that determination.

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.

The agency asserts that the grievant failed to initiate the grievance timely because the grievant listed dates greater than 30 days ago as the dates the grievance occurred on her Grievance Form A. Undoubtedly, the grievance was initiated more than 30 calendar days after some of the events referenced in the grievance attachment. However, the time period(s) listed in the box for "date grievance occurred" on the Grievance Form A is not the sole determining factor of what issues are challenged in a grievance. In this case, a review of the grievance paperwork in

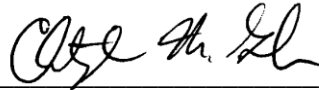
¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

its entirety indicates that the grievant is challenging an ongoing series of conduct and treatment in the workplace beginning at least on or around those times and extending to the present.²

A claim regarding workplace conduct that is ongoing, such as that alleged here, is raised in a timely manner if some agency action alleged to be part of the harassing or intimidating conduct occurred within the 30 calendar days preceding the initiation of the grievance.³ While it is apparent that the grievance raises issues regarding her relationship with management that continue to exist (and thus are timely to challenge), her grievance also specifically cites occurrences within the 30 calendar days preceding the filing of the grievance: 1) a July 19 alleged denial of a transfer, and 2) the discovery on July 29 that she was “on probation.” Therefore, based on the foregoing, the August 5, 2013 grievance was timely initiated.

CONCLUSION

For the reasons discussed above, EDR has determined that the grievance initiated on August 5, 2013 is compliant with Section 2.2 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be returned to the first step-respondent, who must respond to the grievance within five workdays of receipt. EDR’s rulings on matters of compliance are final and nonappealable.⁴



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² Some of the workplace issues alleged by the grievant occurred more than 30 days prior to the initiation of the grievance. As such, the grievance is untimely to challenge and receive relief regarding those specific acts. However, the allegations can still be considered as background evidence for the grievant’s timely claim of discrimination/intimidation/harassment. *See, e.g.*, EDR Ruling No. 2013-3500; EDR Ruling No. 2008-1984; EDR Ruling No. 2003-098 & 2003-112.

³ *See Nat’l R.R. Pass. Corp. v. Morgan*, 536 U.S. 101, 115-18 (2002) (holding same in a Title VII hostile work environment harassment case); *see also Graham v. Gonzales*, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at *23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); *Shorter v. Memphis Light, Gas & Water Co.*, 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003) (same).

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