

Issue: Compliance – Grievance Procedure (30-day rule); Ruling Date: November 18, 2013; Ruling No. 2014-3759; 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 2014-3759
November 18, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her October 20, 2013 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not initiated timely. For the reasons set forth below, EDR determines that the grievance is untimely and may be administratively closed.

FACTS

On September 20, 2013, the grievant was issued a Group I Written Notice for failing to report to work without proper notice. The grievant submitted a grievance challenging the disciplinary action on October 21, 2013. The agency has administratively closed the grievance as untimely, and 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.

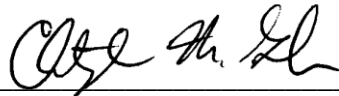
In this case, the event that forms the basis of this grievance is the disciplinary action issued to the grievant on September 20, 2013. Therefore, she should have initiated her grievance within 30 days, i.e., no later than October 20, 2013. Because the grievant did not initiate her grievance until October 21, 2013, the challenge to the disciplinary action is untimely. The only remaining issue is whether there was just cause for the delay.

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

In support of her claim that just cause exists, the grievant states that she was unable to turn in her grievance to the human resources office on October 20, as that was a Sunday and the office was closed. She also states that she attempted to turn in her grievance to the human resources office on Friday, October 18, but that the office was closed for the day when she arrived. In addition, the grievant apparently believed that she had 31 days to initiate her grievance. These reasons offered by the grievant do not constitute just cause under the grievance procedure. The grievant could have timely initiated her grievance through having the grievance postmarked on October 19, or she could have submitted the grievance through fax or e-mail on October 20.² EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.³ 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. Therefore, EDR concludes that the grievant has failed to demonstrate just cause for her delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no evidence of 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. EDR's rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² We also note that the grievant was not required to turn the grievance into the human resources office: to the contrary, it should have been initiated with her immediate supervisor or the manager issuing the discipline (if different from her immediate supervisor). See *Grievance Procedure Manual* § 2.4.

³ See, e.g., EDR Ruling No. 2009-2079; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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