

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 20, 2013; Ruling No. 2014-3766; 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 2014-3766  
November 21, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his June 24, 2013 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure. For the reasons set forth below, EDR determines that the grievance may be administratively closed.

FACTS

On June 24, 2013, the grievant initiated a grievance challenging alleged pre-selection for two positions—a food service position for which the grievant did not apply and a position as major for which the grievant unsuccessfully applied in 2011. The agency has administratively closed the grievance as untimely and as not challenging an action directly pertaining to the grievant’s employment. 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 knew or should have known of the event or action that is the basis of the grievance.<sup>1</sup> 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. Also, a grievance must pertain directly and personally to the employee’s own employment.<sup>2</sup>

Reading these procedural requirements together, the timeliness issue to be decided here is whether the grievant’s own employment was directly and personally affected by an “event or action” during the 30 calendar days immediately preceding the initiation of his grievance. In this case, the grievant challenges a 2013 selection procedure for a position for which he did not apply, and a 2011 selection procedure in which he was unsuccessful. As the grievant did not apply for the 2013 food service position, that selection procedure cannot be said to directly and

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

<sup>2</sup> *Grievance Procedure Manual* § 2.4.

personally affect his employment. While the grievant had unsuccessfully applied for the major's position involved in the 2011 selection procedure, his June 24, 2013 challenge to that selection procedure falls well outside the 30 calendar day period for initiating a grievance.

Moreover, the grievant has not demonstrated just cause for his failure to initiate his grievance within the 30-calendar day period. The grievant appears to argue that the alleged 2013 pre-selection for the food service position demonstrates that his non-selection for the major's position in 2011 was also pre-selection. The grievant also argues that at some point following his non-selection for the major's position, he learned of the apparent pre-selection for that position. However, EDR has held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's employment, not by the grievant's knowledge of the alleged impropriety of that "event or action."<sup>3</sup> In this case, the events directly and personally affecting the grievant's employment occurred when the agency did not award the position of major to the grievant, not when the grievant discovered the alleged pre-selection. We therefore find that the grievant initiated his grievance beyond the 30 calendar day period without just cause.<sup>4</sup>

#### 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.<sup>5</sup>



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<sup>3</sup> See, e.g., EDR Ruling No. 2012-3238.

<sup>4</sup> In his ruling request, the grievant also raises objections to the agency's handling of the grievance during the management resolution steps. As the grievant failed to raise these challenges through the compliance process set forth in Section 6.3 of the *Grievance Procedure Manual*, they will not be addressed in this ruling.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).