

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: July 9, 2014;
Ruling No. 2015-3929; Agency: Virginia Community College System; 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 Community College System
Ruling Number 2015-3929
July 9, 2014

The Virginia Community College System (the agency) seeks a compliance ruling concerning the grievant's filing of a dismissal grievance. The agency asserts that the grievant did not initiate her grievance within the 30 calendar day time period required by the grievance procedure. For the reasons discussed below, EDR determines that the grievance is timely and will be allowed to proceed.

FACTS

On June 12, 2014, the grievant initiated a dismissal grievance directly with the Office of Employment Dispute Resolution (EDR). While the grievant noted May 12, 2014 as the date of dismissal on the Grievance Form A, she also indicated in the attached email that she did not actually learn of her dismissal until May 13, 2014. In response, the agency asserts that the grievant attended a meeting on May 9, 2014, regarding the disciplinary issue leading to the dismissal and knew that a subsequent due process meeting was scheduled for May 12, 2014. However, the grievant did not attend the May 12 meeting, nor did she go to work on that day. The agency argues that the grievant knew of the discipline that was to be issued on May 12, and thus should have initiated a grievance within 30 calendar days of that date, i.e., by June 11, 2014, in order to be timely. As support for its position, it provides the Written Notice and letter of termination, mailed to the grievant on May 12, 2014.

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.¹ Because dismissal grievances are initiated directly with EDR,² an agency is essentially unable to follow this process as outlined. Accordingly, it has requested a ruling from this Office regarding the issue of alleged noncompliance.

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

¹ *Grievance Procedure Manual* § 2.4.

² *Grievance Procedure Manual* § 2.5.

that is the basis of the grievance.³ 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.

This Office 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, regardless of the employee's advance notification that such a disciplinary action may be issued.⁴ Here, the agency dated and issued the Written Notice on May 12, 2014. However, it does not appear from the information provided to EDR that the grievant received actual notice on that date.⁵ We do not find that the grievant's having notice of a due process meeting on May 12 is the equivalent of knowing that a Written Notice with termination was to be issued on that date. It does not appear to be disputed that the grievant received actual notice of the disciplinary action on May 13, 2014, as indicated by her May 13, 2014 signature on the agency's copy of the termination documents. Therefore, we find that the event that forms the basis of the grievance is the grievant's receipt of the Written Notice on May 13, 2014. Accordingly, the grievant should have initiated her grievance within 30 days, i.e., no later than June 12, 2014. The date stamp on the email received by EDR indicates that the grievance was initiated on June 12, 2014. Thus, the grievance was timely filed.

CONCLUSION

For the reasons set forth above, the grievant's June 12, 2014 grievance will not be closed as untimely and is qualified for hearing in full. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer using the Grievance Form B. EDR's rulings on matters of compliance are final and nonappealable.⁶



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Director
Office of Employment Dispute Resolution

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

⁴ *E.g.*, EDR Ruling No. 2011-2908; EDR Ruling No. 2003-147; EDR Ruling 2002-118.

⁵ The Written Notice and accompanying letter were sent to the grievant via certified mail on May 12, 2014 but no documentation was provided to indicate that this mailing was actually delivered on that day.

⁶ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).