

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: September 12, 2014; Ruling No. 2015-3993; Agency: Department of Behavioral Health and Developmental Services; 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 Behavioral Health and Developmental Services
Ruling Number 2015-3993
September 12, 2014

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s September 3, 2014 dismissal grievance was timely initiated.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date 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 thirty 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 agency’s issuance of the Written Notice. EDR has long held that in a grievance challenging a disciplinary action, the thirty calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.²

In this case, the grievant received a Group III Written Notice with termination on July 18, 2014. Because the grievant received the Written Notice on July 18, she should have initiated the grievance within thirty days, i.e., no later than August 17, 2014.³ The grievant claims she mailed a dismissal grievance to EDR on or before August 17.⁴ EDR did not receive such a grievance from the grievant in any such mailing. Upon learning that EDR had not received the mailed copy of her grievance, she submitted a second dismissal grievance to EDR on September 3, 2014.

The grievance procedure provides that “[t]he employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using certified mail or requesting a date-stamped photocopy

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

² E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

³ On her dismissal grievance, the grievant listed her dismissal date as July 11, 2014. The date of issuance on the Written Notice, however, is July 18. We will address the question of whether the grievant was filed timely based on a termination date of July 18, as that was the date the grievant’s employment with the agency ended.

⁴ The grievance procedure provides that, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” *Grievance Procedure Manual* § 2.2.

of the Grievance Form A.”⁵ The grievant did not send her original grievance by certified mail. She has not provided EDR with any documentation that would demonstrate that it was mailed or even drafted within thirty calendar days of the issuance of the Written Notice. In the absence of any such evidence, the grievant has not carried her burden to demonstrate that the grievance was timely initiated. Thus, EDR must conclude that the grievant did not initiate the grievance until September 3 and that she has not presented any evidence of just cause for her late filing.

Accordingly, EDR concludes that the grievance was not timely initiated and that there was no 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.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁵ *Grievance Procedure Manual* § 2.2.

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