

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 3, 2014; Ruling No. 2015-4017; 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 2015-4017
November 3, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) on whether his September 24, 2014 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 timely initiated. For the reasons set forth below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as a Correctional Captain with the agency. After having applied and been interviewed for a position of Correctional Major, he received notification via email on August 14, 2014, and again on August 19, 2014, that he had not been selected for this position. The grievant completed a Grievance Form A in which he challenged the selection and presented the grievance to his facility's Human Resources Department on September 24, 2014. After allowing the grievance to proceed to a resolution step meeting with the facility's warden, the agency declined to further process the grievance on the basis that it was purportedly untimely. In response, the grievant argues that 1) the grievance was timely filed, as the date of the selected candidate's hire, August 25, 2014, constituted the event forming the basis of his grievance, and 2) the agency effectively waived its right to challenge the issue of timeliness by commencing the resolution step process.

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 grievant's receipt on August 14, 2014, of an email indicating that he had not been selected for the Correctional Major

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

position.² Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than September 13, 2014. The date stamp on the grievance indicates that it was not initiated until September 24, 2014. Because the grievant initiated his grievance more than 30 calendar days beyond the date on which he learned he was not selected for the position, the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant presents no facts that would constitute evidence of just cause for a delay of eleven days in initiating his grievance. 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. Thus, we conclude that the grievant has failed to demonstrate just cause for his delay.

The grievant also argues that the agency, by commencing the resolution step process, waived its right to challenge the timeliness of the grievance. We do not agree with this contention. Pursuant to the *Grievance Procedure Manual*, the agency "may raise the issue of timeliness at any point through the agency head's qualification decision."⁴ Here, no evidence was presented to indicate that this grievance had reached the qualification step. Thus, it was appropriate for the agency to challenge the timeliness of the grievance, even after holding a resolution step meeting with the grievant.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no just cause for the delay. The grievance will be marked as concluded due to noncompliance and EDR will close its file. EDR's rulings on matters of compliance are final and nonappealable.⁵



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² See EDR Ruling No. 2012-3081 (finding that the 30-day period for initiating a grievance is triggered by the employee's receipt of a notification that he/she was not selected for the position); EDR Ruling No. 2008-1785 (same).

³ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

⁴ *Grievance Procedure Manual* § 2.2.

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