

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: December 21, 2015; Ruling No. 2016-4276, 2016-4277; Agency: Division of Capitol Police; 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 Division of Capitol Police
Ruling Number 2016-4276, 2016-4277
December 21, 2015

The Division of Capitol Police (“the agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s November 17, 2015 grievances were timely initiated.

FACTS

The grievant is employed by the agency as a Senior Police Officer. On October 15, 2015, the grievant was issued a Group II and a Group III Written Notice, both of which he signed and dated the same day. The grievant asserts that he was not provided with the original Written Notices, nor a copy of either. The agency disputes the grievant’s assertion and affirmatively states that it provided the grievant with originals of each Written Notice on October 15 at the time of issuance, retaining in its files only the copied versions.

On November 17, 2015, the grievant initiated two grievances with the agency to challenge the Group II and Group III Written Notices. Each grievance indicated that the grievant believed he had been issued the Written Notices on October 19, 2015. The agency responded on each Grievance Form A that it would administratively close each grievance due to untimely filing and advised the grievant that he could appeal this determination to EDR. In response, the grievant alleges that just cause for his late filing exists, or, in the alternative, that the grievances are not untimely, and requests that EDR determine that both grievances should be allowed to proceed through the grievance procedure.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he 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.

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

In this case, consistent with its decisions in past rulings, EDR finds that the event that forms the basis of the grievances is the date of delivery of each Written Notice to the grievant on October 15, 2015.² It was on October 15 that the grievant had actual knowledge of both disciplinary actions taken against him, as indicated by his signature on both Written Notices. Therefore, the grievant should have initiated his grievances within 30 days, i.e., no later than November 14, 2015. However, pursuant to the newly updated *Grievance Procedure Manual*, if the 30th calendar day by which a grievance must be initiated falls on a Saturday, Sunday, or legal holiday, the grievance may be filed on the next business day.³ In this case, November 14, 2015 was a Saturday. Thus, the grievances should have been initiated by Monday, November 16, 2015. The grievant did not initiate the grievances until November 17, 2015, which would appear to make his filings untimely, absent considerations of just cause.

Here, the grievant argues that the agency's alleged failure to provide him with the original Written Notices at issue constitutes just cause for his untimely filing. Even taking as true the grievant's assertion that he was never given the original of either Written Notice to keep in his possession, we do not agree that, in this instance, just cause would exist to excuse the late filing of his grievances. It is undisputed that the grievant was made aware of the two disciplinary actions against him on October 15, 2015. EDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.⁴ 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. Further, there is evidence in this case that the agency advised the grievant of his rights under the grievance procedure, including the requirement to initiate a grievance within thirty calendar days. Thus, we conclude that the grievant has failed to demonstrate just cause for his delay.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievances were not initiated timely and there is no just cause for the delay. The grievances 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



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² See EDR Ruling No. 2016-4189; EDR Ruling Nos. 2014-3878, 2014-3882.

³ See *Grievance Procedure Manual* § 2.2.

⁴ See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

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