

Issue: Compliance-30-day rule; Ruling Date: March 19, 2002; Ruling #2001-189;
Agency: Department of Motor Vehicles; Outcome: Grievant in compliance,
Reconsideration of Ruling #2001-163- ruling will stand.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR
In the matter of the Department of Motor Vehicles

Response to Agency's Request for Reconsideration of Ruling #2001-163
EDR Ruling #2001-189
March 19, 2002

The Department of Motor Vehicles has requested reconsideration of this Department's September 21, 2001 Compliance Ruling #2001-163. That ruling concludes that the grievance, which alleges that the agency violated an agreement to return the grievant to his original post, was timely filed. For the reasons discussed below, the September 21, 2001 ruling will stand.

DISCUSSION

Absent just cause, a grievance must be filed within 30 calendar days of the date that the employee knew or should have known of the event that forms the basis of the grievance.¹ In this case, it is undisputed that the agency notified the grievant on January 28, 2000 that he would be transferred to Richmond on February 1, 2000.² However, the grievant claims that the agency entered into an agreement with him that he would remain in Richmond for eighteen months of training, and then be returned to his original post. The agency denies the existence of any such agreement. On July 30, 2001, some eighteen months after his arrival in Richmond, the grievant filed his grievance asserting that the agency refused to return him to his original post following an eighteen month time period, as allegedly agreed. We held that the grievance was timely because it had been filed within 30 calendar days of the agency's alleged failure to return the grievant to his original post after he had worked eighteen months in Richmond. While allowing the grievant to proceed with his claim, at least through the management steps, our ruling expressly recognized that it in no way reflected the merits of his claim.

In its request for reconsideration, the agency expresses concern that this Department has allowed the grievant to advance his grievance based solely on his allegation that the agency agreed to return him to his original position after he completed eighteen months of training.

¹ *Grievance Procedure Manual* § 2.4, page 6.

² Ruling #2001-163 erroneously cited February 1, 2001 (instead of the correct date, February 1, 2000) as the date that the grievant was originally transferred. The date error, however, had no bearing on the outcome of that ruling.

It is true that in most compliance disputes regarding timeliness, this Department has ruled that a party *must* provide more than just his or her word that a disputed event occurred. For instance, if the parties disagree as to the date that a grievance was filed, this Department generally requires the grievant to produce evidence corroborating the filing date he claims. The dispute in this case, however, is distinguishable because requiring corroborating evidence would prematurely involve this Department in determining the merits of the grievance itself: whether the agency had agreed to return the grievant to his original job after eighteen months, but failed to do so. In circumstances like this, *where the disputed event forms the basis of the grievance*, this Department avoids engaging in fact-finding on the merits of the grievance before the agency and the grievant have had the opportunity to review the grievance during the management resolution steps. This practice preserves a grievant's right to take his case on the merits through the resolution steps, and does not prejudice the agency's case on the merits. Should the grievant later request a qualification ruling from this Department, however, he will be required to show that the facts, taken as a whole, could support his allegations and the qualification of his grievance for hearing. Likewise, the agency will have the opportunity to refute the merits of grievant's claims and argue against qualification.

Therefore, as previously directed in Ruling #2001-163, the parties are advised that the grievance can move forward, and may refer to that ruling for specific guidance.

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