

Summary: Compliance-30-day rule; Ruling Date: May 7, 2002; Ruling #2001-211;
Agency: Department of Social Services; Outcome: Grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling Number 2001-211
May 7, 2002

ISSUE:

Did the grievant initiate the grievance in a timely manner?

RULING:

The grievance was filed within the 30 calendar day period and is therefore timely. The parties are advised to schedule a second-step meeting within five workdays of receipt of this ruling. This Department's rulings on matters of compliance are final and nonappealable.¹

EXPLANATION:

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the event or action that is the basis of the grievance.² The 30-day time frame begins when an employee knew or should have known about the management action that the employee is challenging.

In this case, management prepared a Group III Written Notice dated September 7, 2001 and terminated the grievant's employment, effective on that date. The Written Notice form and an explanatory letter (dated September 6th) were mailed to the grievant, because she had been placed on pre-disciplinary suspension since August 22, 2001. This Department generally believes that it is reasonable to use a "three day rule" to determine the likely date of a party's receipt of mail. Using this rule, the grievant could be expected to have received the Group III Written Notice no earlier than September 10, 2001, which would be the date she "knew or should have known" of the management disciplinary action she later grieved.³

¹ Va. Code § 2.2-1001(5).

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §2.4(1), page 6.

³ The grievant asserts that she actually received the mail terminating her later than September 10th. In support of this, the grievant has presented documentation that she had moved to a new address by the relevant dates and had submitted a forwarding order to the post office, thus requiring several additional days for delivery. Also, the grievant has submitted a postmarked envelope from the agency that she

The grievant decided to challenge the termination and she faxed her Form A initiating her grievance to the Human Resources Department no later than October 10, 2001, within thirty calendar days of September 10, 2001.

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