

Issue: Compliance,30-day rule; Ruling Date January 10, 2002; Ruling #2001-230;
Agency: Department of Corrections; Outcome: Grievant out of compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2001-230
January 10, 2002

ISSUE:

Did the grievant initiate the grievance in a timely manner?

RULING:

Yes. The parties are advised that the grievant has five workdays from receipt of this ruling to advance this grievance to the next resolution step. 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 date he knew or should have known of the event or action that is the basis of the grievance, unless there is just cause for the delay.² Further, this Department has consistently held that a grievance initiated in a timely manner but with the wrong management representative generally will not bar a grievance for noncompliance. In addition, it is generally incumbent upon the grievant to initiate a grievance in a manner that would allow verification of the date of delivery – for example, by obtaining a date-stamp, postmark, or mailing receipt. However, when the facts are in question concerning compliance with the 30 day rule, and there is some other evidence to corroborate the employee's position, it has long been the general policy of this Department to allow the employee to pursue the complaint through the grievance process.

In this case, the 30 calendar day period began on September 26, 2001 the date of the event challenged by the grievance, and ended on October 26, 2001. The grievant asserts

¹ See Va. Code § 2.2-1001(5).

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

that on October 25, 2001, acting on instructions from his new Lieutenant, he filed his grievance with his former Lieutenant by placing his Form A in the facility's mail slot, as he works the evening shift and the facility's internal mailroom was closed.³ The new Lieutenant confirmed that he instructed grievant to give the Form A to his former Lieutenant. The former Lieutenant confirmed that he received the Form A via interoffice mail, that he was out on leave until October 29, 2001, and did not respond until that date.⁴

In light of all the above, we conclude that the grievance was timely filed on October 25, 2001. While the new Lieutenant, not the former Lieutenant, would have been the correct management respondent, the former Lieutenant is the management representative to whom the grievant was instructed by the new Lieutenant to provide his grievance. Placing the Form A in the mail slot on October 25, 2001 to be delivered to the former Lieutenant constituted timely notice to agency management of the grievance.

The parties should note that this ruling recognizes only that the grievant may proceed with his claim, and in no way reflects the merits of his grievance.

Neil A.G. McPhie, Esquire
Director

Deborah M. Amatulli
Employment Relations Consultant

³ Grievant was moved to a different part of the facility grounds after the event of September 26, 2001 resulting in his having a new supervisor.

⁴ During this investigation, the mailroom was contacted and confirmed that the procedure of placing mail through the facility's mail slot after hours is normal for evening shift personnel and that the facility has no logging process in place for internal mail to verify when something is received or delivered.