

Issue: Compliance/30-day rule; Ruling Date: August 5, 2002, Ruling #2002-037;
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 2002-037
August 5, 2002

ISSUE:

Did the grievant initiate the grievance in a timely manner?

RULING:

No. The grievance was filed beyond the 30 calendar day period without just cause and is therefore untimely. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.¹

EXPLANATION:

On April 30, 2001, the grievant received a Group II Written Notice with 40 hours suspension. On January 27, 2002, the grievant discovered that another employee had received only a Letter of Counseling as a result of an incident similar to that for which the grievant had received the April 30, 2001 Written Notice and suspension. The grievant filed a grievance on February 4, 2002, citing unfair application of policy and asking that the Group II Written Notice be removed and replaced with a Letter of Counseling, as well as reimbursement for the 40 hours of suspension. The first step respondent ruled that his grievance would be administratively closed due to non-compliance because the 30-day time limit had expired for filing a grievance on the April 30, 2001 discipline.

Under the grievance procedure, 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.² When an employee initiates a grievance beyond the 30 calendar day period without just cause, the grievance is not in compliance with the grievance

¹ See Va. Code § 2.2-1001(5).

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

procedure, and may be administratively closed. In addition, any grievance that does not pertain directly and personally to the grievant's own employment may be closed for noncompliance.³

Reading these procedural requirements together, the timeliness issue to be decided here is whether grievant's own employment was directly and personally affected during the 30 calendar days immediately preceding the initiation of his grievance.⁴ We have determined that this grievance is untimely because the grievant's own employment was not directly and personally affected during the required period (from January 5, 2002 to February 4, 2002). Instead, the action that directly and personally affected grievant's employment was management's issuance of a Group II Written Notice with 40 hours of suspension back in 2001. The grievant could have grieved that discipline within 30 calendar days of its receipt, but he did not.

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³ *Grievance Procedure Manual*, §2.4 (3), page 6.

⁴ *Compare* Brinkley-Obu v. Hughes Training, 36 F.3d 336, 351 (4th Cir. 1994)(for an Equal Pay Act claim to be timely, the employer's alleged wrongful conduct must have *affected the plaintiff* during the statute of limitations period).