

Summary: Compliance-30-day rule, Grievability; Ruling Date: May 3, 2002; Ruling #2002-053; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: Grievant in Compliance.



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Mental Health, Mental Retardation,  
and Substance Abuse Services  
Ruling Number 2002-053  
May 3, 2002

The grievant has requested a compliance ruling in the November 26, 2001 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (agency). The third-step respondent replied that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure. He also asserts that even if the grievance was timely, the content of personnel, procedures, and policy is not grievable.

**FACTS**

The grievant was employed as a Licensed Practical Nurse. On July 26, 1994, the grievant suffered an on-the-job back injury. On August 5, 1994, she underwent surgery. The grievant worked intermittently until July 3, 2001, when her doctor removed her from work. She was placed on leave without pay for approximately three months, and on October 31, 2001 the agency terminated her employment.<sup>1</sup>

**DISCUSSION**

*Grievability*

The agency objects to the grievance because it contends that the contents of personnel policy and procedures are "not grievable." Under the grievance procedure, while only certain issues may be qualified for a hearing, *any* issue may be addressed via the management steps. The grievance procedure states that claims that relate solely to the contents of personnel policies, procedures, rules, and regulations do not qualify for hearing.<sup>2</sup> While a grievance that relates solely to personnel policy and procedure cannot be qualified for hearing, it nevertheless must be permitted to advance through the

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<sup>1</sup> Correspondence dated October 30, 2001, from agency to grievant states that "your last day of FMLA leave and your last day of employment . . . is October 31, 2001."

<sup>2</sup> *Grievance Procedure Manual* § 4.1(c), page 11.

management resolution steps if timely initiated and otherwise in compliance with the grievance procedure.

*The 30-Day Rule*

The grievance procedure provides that an employee must initiate a written grievance within 30-calendar days of the date the employee knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

The grievant initiated her grievance challenging her termination on November 26, 2001, well prior to the 30<sup>th</sup> day following her October 31, 2001 discharge from employment. Accordingly, the grievance was filed within the required 30-calendar day period and is thus timely.

For the reasons set forth above, this grievance is in compliance with the grievance process and the grievant and the agency are advised that the grievant has 5 workdays from receipt of this letter to either conclude the grievance or request that the agency head qualify the grievance for hearing. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

<sup>4</sup> Va. Code § 2.2-1001(5).