

Issue: Compliance: 30-day rule; Ruling Date: August 5, 2002; Ruling #2002-099;  
Agency: Department of Motor Vehicles; Outcome: Partial compliance on part of  
grievant.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Motor Vehicles  
Ruling Number 2002-099  
August 5, 2002

The grievant has requested a compliance ruling in the April 19, 2002 grievance that he filed with the Department of Motor Vehicles (DMV). The agency replied that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, the grievance will be allowed to advance. However, only two of the three issues listed in the grievance were timely raised and must be addressed by the agency.

FACTS

The grievant is employed as a Senior Special Agent at DMV. On or about October 30, 2001, the grievant was presented with his annual performance evaluation. The grievant raised concerns regarding the evaluation with the Department Head (reviewer), and was subsequently presented with an amended evaluation. The grievant alleges that his supervisor added additional comments to the amended evaluation on or about January 10, 2002, after the grievant had signed the amended evaluation.

On April 19, 2002, the grievant initiated a grievance alleging that: (1) his supervisor placed additional comments on his amended performance evaluation after the grievant signed it; (2) management placed and maintained a copy of the original performance evaluation that did not include the amendment in a supervisory file; and (3) management failed to forward the amended evaluation to the department head for review after the grievant and his supervisor signed it.

DISCUSSION

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.<sup>1</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.

---

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

As to the first issue raised by the grievant, the grievant knew that his supervisor had placed additional comments on the evaluation on January 10, 2002. Both the grievant and supervisor signed the evaluation on January 10<sup>th</sup> and, during the signing, the grievant observed the supervisor adding comments to the amended evaluation. The grievant thus had until February 9, 2002 to initiate a grievance regarding this matter. Accordingly, the April 19<sup>th</sup> grievance is therefore untimely as to the issue of the January 10<sup>th</sup> additional comments.

The second issue, the maintenance of an unrevised performance evaluation in a supervisory file, was timely raised. The grievant's current supervisor concedes that he had a meeting with the grievant approximately a week prior to the initiation of the grievance. The supervisor states that it was during this meeting that he disclosed the existence of a copy of the grievant's evaluation in the supervisory file that he received from his predecessor. The grievant was allowed to review the file and discovered that the performance evaluation inside was the original unrevised version. Because the grievance was initiated within 30 calendar days of the grievant's discovery of the unrevised evaluation, this issue was timely initiated.

The final issue, the agency's alleged failure to forward the amended grievance to the reviewer, will also be considered as timely. As stated above, 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. Here, the grievant alleges that the reviewer never reviewed or signed the amended evaluation.

State policy provides that a reviewer should respond in writing to a request for review of the evaluation.<sup>2</sup> Policy further states that the reviewer should indicate that: (1) the reviewer agrees with the evaluation; (2) the supervisor will revise the evaluation; (3) the supervisor will complete a new evaluation; (4) the reviewer will revise the evaluation; or (5) the reviewer will complete a new evaluation. However, neither state nor agency policy nor the agency's salary administration plan expressly provide when or even if the reviewer *must* review or sign an amended evaluation.<sup>3</sup> Because there is no express guidance as to if and/or when an amended evaluation must be reviewed and/or signed by the reviewer, this Department is reluctant hold that this issue was raised more than 30 days beyond the date that the grievant knew or should have known that the reviewer had not reviewed and/or signed the amended evaluation. Accordingly, this issue will be considered timely raised.

---

<sup>2</sup> DHRM Policy 1.40. The "should" language makes a 5-workday written response desirable but not mandatory.

<sup>3</sup> The agency's salary administration plan merely states that if an employee disagrees with the performance evaluation and cannot resolve it with the immediate supervisor, the employee may appeal the evaluation to the reviewer in accordance with DHRM Policy 1.40. Policy 1.40 primarily directs agencies to develop an appeals process that provides that any appeal must be initiated within 10 workdays of the initial performance meeting.

CONCLUSION

For the reasons discussed above, this Department has determined that two of three issues raised in this grievance were filed within the 30 calendar day period and are therefore timely. By copy of this ruling, 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 to advance it to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable, and have no bearing on the substantive merits of the grievance.<sup>4</sup>

---

Claudia T. Farr  
Director

---

William G. Anderson, Jr.  
Senior Employment Relations Consultant

---

<sup>4</sup> Va. Code § 2.2-1001(5).