

Issue: Compliance/30-day rule; Ruling Date: January 2, 2003; Ruling #2002-103;
Agency: Department of State Police; Outcome: grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2002-103
January 2, 2003

The grievant has requested a compliance ruling in his March 22, 2002 grievance with the Department of State Police. The agency asserts 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, this grievance is ruled to be timely filed.

FACTS

The grievant is employed as a State Police Special Agent. On January 7, 2000, the grievant submitted a request for transfer from a State Police Sergeant Position (with an annual salary of \$63,083) to a State Police Special Agent position (with an annual salary of \$57,706). On May 26, 2000, the request was approved with an effective date of June 25, 2000, resulting in a one-grade demotion and reduction in salary. In early 2002, the grievant learned that his salary as a Special Agent was substantially less than that of another Special Agent employee with similar background and experience, whom the grievant asserts is similarly situated to him.

On February 14, 2002, the grievant requested a meeting with the agency head to discuss his concerns. His request was forwarded to a lower level manager who responded on March 11, 2002 that the matter was being researched prior to forwarding to the agency head for a response. On March 22, 2002, the grievant initiated his grievance alleging that policy had been misapplied or unfairly applied, resulting in his pay being less than similarly situated employees.

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.¹ 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.

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

The agency asserts that the accrual or “trigger date” for the 30-day rule was June 25, 2000, the effective date of the grievant’s transfer and demotion. However, the subject of the grievance is not the transfer and demotion, but rather the alleged misapplication or unfair application of policy that the grievant claims has resulted in his pay being less than that of another similarly situated employee. While the exact date that the grievant learned of the other Special Agent’s salary is unclear, it is undisputed that the grievant had learned about his disparate pay by February 14, 2002 when he wrote the agency head regarding his salary concerns. Assuming that the grievant first become aware of the pay disparity on February 14th, it could appear that the grievant was bound to initiate his grievance by March 16th, thirty calendar days later, which he failed to do. However, this Department recognizes that courts treat disparate compensation claims differently from other types of claims in terms of *when* the claim accrues.

For example, in analogous discriminatory pay cases, courts have reasoned that “a claim of discriminatory pay . . . involves a series of discrete, individual wrongs rather than a single and indivisible course of wrongful action.”² Thus, courts have concluded that every payday that an employee receives less compensation than an alleged similarly situated employee constitutes a separate accrual, or “trigger date,” for statute of limitations purposes.³ Accordingly, courts have ruled that with the issuance of each paycheck that is alleged to be improperly lower than that of a similarly situated employee, a new statute of limitations period begins to run.

The courts’ analysis regarding the statute of limitations in discrimination-based unequal pay claims is appropriate here with grievant’s policy-based unequal pay claim: the grievant’s claim of improper disparate pay involves a series of discrete, individual alleged wrongs, i.e., the issuance of each bi-monthly paycheck, after which a new statute of limitations (a new 30 calendar day period) begins to run. Because the grievant initiated his grievance within 30-calendar days of receiving an allegedly disparate paycheck, this Department finds that the grievance was timely initiated. However, if qualified for hearing, any relief from a hearing officer could extend no further back than the thirty calendar day period prior to the filing of this grievance.⁴

² Pollis v. New School for Soc. Research, 132 F.3d 115, 119 (2d Cir. 1997); *accord*, Cardenas v. Massey, 269 F.3d 251, 257 (3d Cir. 2001); Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 347 (4th Cir. 1994); Wagner v. NutraSweet Co., 95 F.3d 527, 534 (7th Cir. 1996); Ashley v. Boyle’s Famous Corned Beef Co., 66 F.3d 164, 168 (8th Cir. 1995) (en banc); Goodwin v. General Motors Corp., 275 F.3d 1005, 1010 (10th Cir. 2002); Calloway v. Partners Nat’l Health Plans, 986 F.2d 446, 448-49 (11th Cir. 1993).

³ Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 350 (4th Cir. 1994).

⁴ In discrimination-based Equal Pay Act claims where each pay check is viewed as a separate wrong, courts have held that back pay relief is available only for the designated two-year statute of limitations period immediately preceding the filing of such a claim. See Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 351 (4th Cir. 1994). In the context of a grievance, the designated statute of limitations period for filing is thirty calendar days. See Va. Code § 2.2-3003(C). Thus, by analogy, this Department has long ruled that in continuing violation claims that any relief under the grievance procedure, including any back pay, extends no further back than the thirty day period prior to the filing of the grievance.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30-calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this ruling to advance or conclude his grievance. This Department's rulings on matters of compliance are final and nonappealable.⁵ Further, this ruling only recognizes that this grievance was timely filed, and in no way reflects the substantive merits of the grievant's claim.

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⁵ Va. Code § 2.2-1001(5).