

Issue: Compliance-30-day rule; Ruling Date: August 29, 2002; Ruling #2002-126;
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 the Department of Corrections
No. 2002-126
August 29, 2002

The grievant has requested a compliance ruling in her May 29, 2002 grievance with the Department of Corrections (DOC or the agency). The agency contends that the grievant did not initiate her grievance within the 30 calendar day time period required by the grievance procedure.¹

FACTS

The grievant is employed as a Water Treatment Operator for the Department of Corrections. On April 24, 2002, the grievant's supervisor questioned her about an alleged DUI charge she had failed to report to him as required by DOC policy. When the grievant admitted that she had been charged, the grievant's supervisor met with her on April 26, 2002 and issued to her that same day a Group II Written Notice for failure to follow DOC policy, along with a suspension pending court action.

On May 1, 2002, at the grievant's request, the supervisor sent the grievant a memo detailing the events of the April 26, 2002 meeting. The grievant claims she received this memo on May 2, 2002. The memo states that the grievant was told she would have to use annual or compensatory leave until her May 10, 2002 court date, and if the charge were completely dropped, she would receive her leave time back; however, if she were convicted, further disciplinary action could be taken. Later, the grievant was sent an update to this memo informing her that she could return to work on May 1, 2002, and that she need not use any of her annual or compensatory leave for April 24, 2002 to May 1, 2002. These terms were later revised by another memo, dated May 20, 2002, which stated that the grievant would need to use annual or compensatory leave for April 29 and 30, 2002 and May 1, 2002. On May 3, 2002, the grievant was placed on extended sick leave until May 9, 2002, which was later extended to May 17, 2002. The May 17, 2002 date was subsequently extended as well.

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

The grievant initiated her grievance on May 29, 2002. The grievance alleges “administering arbitrary and multiple disciplinary actions for the same offense prior to the resolution by judicial system” and a hostile work environment.

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.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 procedure, and may be administratively closed. Further, this Department has long held that in a grievance challenging a disciplinary action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.

I. Group II Written Notice and Suspension Pending Court Action

In the present case, the grievant was issued the Group II Written Notice on April 26th, and on the same day, management informed her that she would be placed on suspension pending her court action.³ Thus, the grievant had thirty calendar days, or until May 26, 2002, to file a grievance based on the Written Notice and suspension. It is undisputed that the grievant did not initiate her grievance until May 29, 2002. Consequently, the sole question remaining is whether there was just cause for the grievant’s delay in challenging the Written Notice and suspension.

To support her claim of just cause, the grievant maintains that she did not receive written documentation detailing the substance of the April 26, 2002 meeting with her supervisor until May 2, 2002, and that therefore, her 30 days did not begin to run until she received this documentation. However, awaiting additional supporting documentation for a Group Notice and suspension does not constitute just cause for failure to initiate a grievance in a timely manner. Further, management’s revision of the length of the suspension does not change the fact that she knew or should have known on April 26th that she had received the Group Notice and a suspension pending court action. Accordingly, this Department cannot find that there was just cause for the grievant’s delay in initiating a grievance challenging the Group II Written Notice and suspension. As such, these issues cannot be advanced as claims for which relief may be granted.

II. Hostile Work Environment

The grievant asserts that her supervisor’s actions created a hostile work environment. To support this claim, the grievant cites alleged hostile actions by her

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

³ Because Section VIII(B)(2) of the Standards of Conduct says a written notice of suspension pending an investigation or court action should be given (but is not mandated to be given), a verbal notice of suspension is appropriate. (Emphasis added.)

supervisor occurring from April 29th through May 29th, the day she initiated her grievance.

Because the alleged hostile actions occurred within the 30 calendar days preceding the May 29th filing of her grievance, her grievance is timely with respect to those alleged actions (those occurring on or after April 29, 2002, relating to her claim of a hostile work environment). However, any alleged actions related to grievant's hostile work environment claim that occurred prior to April 29, 2002 may be considered as background evidence only, and not as separate claims for which relief may be granted.

CONCLUSION

For the reasons discussed above, this Department has determined that grievant's challenge to the Group II Written Notice and suspension is untimely. However, her hostile work environment claim is timely, because it is based on alleged actions occurring within the 30 calendar days preceding the filing of her May 29 grievance. By copy of this ruling, the grievant and the agency are advised that the grievant have five workdays from receipt of this letter to either conclude her grievance or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable,⁴ and have no bearing on the underlying merits of a grievance.

Claudia T. Farr
Director

Jennifer S.C. Alger
Employment Relations Consultant

⁴ Va. Code § 2.2-1001(5).