

Issue: Compliance/30-day rule; Ruling Date: October 18, 2002; Ruling #2002-165;  
Agency: Virginia Department of Health; Outcome: grievant out of compliance.



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

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Health/ No. 2002-165  
October 18, 2002

The grievant has requested a compliance ruling in his August 9, 2002 grievance with the Virginia Department of Health (VDH). The agency administratively closed the grievance, claiming that the grievant did not initiate his grievance within the 30 calendar day time period required by the grievance procedure.<sup>1</sup>

FACTS

The grievant is employed as an Environmental Health Specialist Senior with VDH. On June 24, 2002, the grievant received a Group II Written Notice for failure to perform required work and to follow a supervisor's instructions. The agency alleged that the grievant was not turning in his "daily sheets" in a timely manner. The grievant claims that this Written Notice does not comply with a mediated agreement, which requires that VDH treat the grievant as it treats other employees.<sup>2</sup> He requested a meeting with management to discuss the Written Notice, hoping that the matter could be resolved informally.

The grievant initiated his grievance on August 9, after receiving no response from VDH after a July 9 meeting. The grievance alleges that "the offense alleged, by definition, does not rise to the level of a Group II offense" and requests that the discipline be either removed or reduced.

DISCUSSION

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

<sup>2</sup> The grievant alleges that other employees are up to six months behind in their work, yet are not disciplined.

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>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. 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.

In this case, VDH presented the Group II Written Notice to the grievant on June 24, 2002. The Notice correctly advised that if he wished to appeal the Group II, he could do so under the provisions of the Employee Grievance Procedure within 30 calendar days of his receipt of the Written Notice, and that he could call this Department for further information. Thus, the grievant should have initiated his challenge to the Written Notice by July 24, the thirtieth calendar day following the disciplinary action. The grievant did not initiate his grievance until August 9, beyond the 30 calendar day requirement. Therefore, the only remaining issue is whether there was just cause for the delay.

The grievant contends that he attempted to resolve his dispute with VDH by meeting with management on July 9. The grievant had hoped that both he and the agency could come back into compliance with their mediation agreement and thus avoid the grievance procedure. After hearing nothing from management, he initiated the grievance on August 9, believing that to be the thirtieth day.<sup>4</sup>

However, even when discussions with management to resolve the dispute are ongoing, “the written grievance must be initiated within 30 calendar days,” a requirement that may be extended only if the parties agree.<sup>5</sup> Here, the grievant claims that he informed the agency that he wished to reserve his right to file a grievance later if all other methods of resolution failed. However, there is no evidence that the agency agreed to extend the 30 calendar day deadline.<sup>6</sup> Accordingly, the grievant’s decision to await a response from the agency following the July 9 meeting does not constitute just cause for his untimely filing.

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

<sup>4</sup> The grievant incorrectly calculated July 9, 2002 as the trigger date for the 30 calendar day deadline for filing his grievance. However, even if July 9 was the appropriate trigger date, this grievance would still be untimely. Because the month of July has 31 days, the 30<sup>th</sup> calendar day from the date of the meeting would have been August 8.

<sup>5</sup> *Grievance Procedure Manual* § 2.2, page 5.

<sup>6</sup> See, e.g., *Grievance Procedure Manual* § 1.2, page 3 (“[w]here the parties have entered into an agreement to mediate, the time requirements of the grievance procedure may be extended by mutual agreement”).

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.<sup>7</sup>

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<sup>7</sup> See Va. Code § 2.2-1001(5).