

Issue: Compliance/30-day rule; Ruling Date: October 21, 2002; Ruling #2002-172;
Agency: Department of Corrections; Outcome: grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Corrections
No. 2002-172
October 21, 2002

The grievant has requested a compliance ruling for his grievance initiated with the Department of Corrections (the agency) on August 14, 2002, challenging the agency's application of the layoff policy. The agency contends that the grievant did not initiate his grievance within the 30 calendar day time period required by the grievance procedure.¹

FACTS

The grievant is employed as a Correctional Officer Senior at Staunton Correctional Center. In April 2002, a budget reduction plan proposed the closure of Staunton Correctional Center in June 2003. On April 25, 2002, employees at Staunton Correctional Center were notified of the agency's authorization for the recruitment and filling of corrections officer positions at Augusta and Fluvanna Correctional Centers.² According to the grievant, he did not apply for one of the positions because, based on information from agency management, he believed that Staunton Correctional Center might not close. In June 2002, twenty-five corrections officers from Staunton Correctional Center were notified of their selection and approval to transfer to Augusta Correctional Center; however, they were advised that their release date would be contingent upon the needs of Staunton Correctional Center.

On August 13 and 14, 2002, employees were notified that Staunton Correctional Center was being placed in layoff status in anticipation of a revised December 2002 closure date, and that the future placement of employees would be governed by the layoff policy, with the exception that those employees previously approved for transfer to other facilities would be exempt from the layoff process. Subsequently, nine of those selected for transfer were moved to Augusta Correctional Center. The remaining corrections officers approved for transfer remain at Staunton Correctional Center. Grievant claims that because he is more senior than certain of those selected for transfer, the agency has misapplied the layoff policy's seniority provisions.

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

² According to the agency, critical staffing shortages at Augusta and Fluvanna Correctional Centers prompted the recruitment of these positions, not the proposed closure of Staunton Correctional Center.

The agency contends that because the grievant knew in June 2002 of the approval of transfers to Augusta, his grievance challenging the application of the layoff policy is untimely. The grievant asserts, however, that employees were not notified until August 13, 2002 that Staunton had been placed on layoff status, and that he was not notified by the agency until August 14, 2002 that those approved for transfer would be excluded from the layoff process.

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.³ 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.

In his grievance, the grievant maintains that the agency has violated the layoff policy by excluding from its provisions those Staunton employees pre-approved for transfer, (but not yet moved), ahead of more senior Staunton employees, like himself. Staunton employees first received notification that the Staunton facility had been placed on layoff status on August 13, 2002, and on August 14, that the pre-approved transferees would not be subject to layoff. Therefore, the grievant knew or should have known of this alleged violation of the layoff policy on August 14, 2002. Accordingly, the grievant had thirty calendar days, or until September 13, 2002 to file a grievance. Thus his August 14, 2002 grievance is timely.

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 5 workdays from receipt of this ruling to either conclude the grievance or request to advance 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 a grievance.⁴

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

⁴ Va. Code § 2.2-1001(5).