

Issue: Compliance/30-day rule; Ruling Date: February 20, 2003; Ruling #2003-016;
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. 2003-016
February 20, 2003

The grievant has requested a compliance ruling regarding her December 30, 2002 grievance with the Department of Corrections (DOC or agency) which challenges the removal of a Northern Virginia (NOVA) pay differential from her December 16, 2002 paycheck. The agency contends that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure.¹ For the reasons set forth below, the grievance is ruled to be timely.

FACTS

The grievant was employed as a Correctional Officer at a NOVA DOC facility. In March 2002, a budget reduction plan proposed the closure of that facility in May 2003. During this ruling investigation, the agency stated that although employees were not given written notice regarding their options, those options were explained to employees on April 9-11, 2002, and transfer offers were made to employees on April 19, 2002. The grievant does not dispute that she was notified, upon acceptance of her transfer to a facility outside the NOVA region, that her NOVA differential would continue for only six months after which her pay would be reduced. The grievant asserts that she verbally raised an objection to the removal of the NOVA differential at the time of notification. However, the grievant nevertheless accepted the offer to move to another facility outside the NOVA region on May 25, 2002.² The grievant initiated her grievance on December 30, 2002, after she received her December 16, 2002 paycheck, which indicated that the NOVA differential had indeed been removed. In her grievance, the grievant maintains that her loss of the NOVA differential "wasn't fair even if we were notified."³ The agency stated the grievance was out of compliance with the 30-day rule and would be administratively closed.⁴

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the

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

² See PMIS record faxed to this Department upon request.

³ See Expedited Grievance form dated December 16, 2002.

⁴ *Id.*

event or action that is the basis of the grievance.⁵ 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 the present case, it appears that the grievant was aware on May 25, 2002, more than 30 days prior to the initiation of her grievance, that upon her transfer to a new facility outside the NOVA region, management intended to freeze her NOVA differential for six months and then remove it. However, the grievant's pay was not reduced until December 16, 2003, the date that the removal of the NOVA differential was noted on her paycheck. Significantly, it is this reduced paycheck that is the "event" being grieved.⁶ Because she initiated her grievance within 30 calendar days of the actual reduction in pay, her December 30, 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.⁷

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⁵ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

⁶ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6, states that "[a]n employee's grievance must be presented to management within 30 calendar days of the date the employee knew or should have known of the event that forms the basis of grievance." (Emphasis added). The event that forms the basis of the grievance here is the reduction of pay, not the notice six months earlier that her pay would be reduced.

⁷ Va. Code § 2.2-1001(5).