

Issue: Compliance/30-day rule; Ruling date: June 12, 2003; Ruling #2003-087; Agency: Virginia Employment Commission; Outcome: grievance is untimely



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Employment Commission
Ruling Number 2003 -087
June 12, 2003

The grievant has requested a compliance ruling in his April 16, 2003 grievance with the Virginia Employment Commission (VEC). 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 discussed below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as a Workforce Services Representative. In November 2002, the grievant applied for a supervisory position with VEC. On February 13, 2003, he was notified that he was not the successful candidate. The grievant expressed his concern to management about his non-selection and was referred to the human resources office for assistance. After conferring telephonically with a human resource representative that same day, the grievant forwarded an e-mail request for a copy of the interview results from the selection action. The grievant asserts that he received the requested documents no earlier than March 17, 2003. On April 16, 2003, the grievant initiated the present grievance claiming a misapplication of selection policy.

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

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

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 this case, the event that forms the basis of the grievance is the grievant's non-selection for the supervisor position. The grievant first learned that he was not selected for the position of supervisor on February 13, 2003; therefore, he should have initiated his grievance within thirty days of February 13. The grievant did not initiate his grievance until April 16, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

Here, the grievant asserts that when he was informed of his non-selection, he was told to contact the agency's Human Resources Office. He did so, but contends that he was told that it would be impossible to determine whether policy had been misapplied until all administrative processing had been completed. Furthermore, the documents relating to the interview process were not delivered to him until approximately one month after his February 13 request, thus contributing to his delay.

The grievant appears to have been diligent in his attempts to gain information that could potentially shed light on the propriety of the agency's actions regarding his non-selection. However, because the grievant neither initiated a grievance within thirty calendar days of the date he first learned of his non-selection nor entered into an express agreement to extend the 30-day deadline for initiating a grievance, he failed to preserve his right to contest his non-selection through the grievance process. This Department has long held that even when discussions with management (including the Human Resources Department) are ongoing, "the written grievance must be initiated within 30 calendar days," a requirement that may be extended only if the parties agree.² Thus, there was no just cause in this case for the grievant's delay in initiating his grievance.

The grievant might argue that only after he was provided the documents relating to his non-selection could he deduce that the selection was improper. In other words, it was not until he received the requested documents that he knew or should have known of any impropriety in the selection process. However, as noted above, the actual event that formed the basis of the grievance was his non-selection, which he learned of more than thirty days prior to the initiation of his grievance. While the 30-day rule may have required the grievant to initiate his grievance before receiving the requested documents, there was nothing that precluded the grievant from requesting an extension to the 30-day deadline in order to gather pertinent information and documentation.³ Furthermore, the

² See, *Grievance Procedure Manual* § 2.2, page 5.

³ *Grievance Procedure Manual* § 2.2, page 5, expressly states the 30-day requirement may be extended. See also *Grievance Procedure Manual* §8.4, page 22, which states that "[u]pon mutual agreement, parties to a grievance may extend all pre-qualification time limits including, but not limited to, the 30 calendar day grievance initiation requirement."

grievance procedure's requirement that parties to a grievance share with the opposing party relevant documents does not apply until *after* a grievance has been initiated.⁴

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.⁵

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⁴ See Va. Code § 2.2-3003(E) and *Grievance Procedure Manual*, § 8.2, p.21, both of which state that absent just cause, all documents relating to the actions grieved shall be made available, upon request from a party to a grievance, by the opposing party.

⁵ Va. Code § 2.2-1001 (5).