

Issue: Compliance/30 day rule; Ruling Date: July 3, 2003; Ruling #2003-101; 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 Department of Corrections  
Ruling Number 2003 -101  
July 3, 2003

The grievant has requested a compliance ruling in his May 9, 2003 grievance with the Department of Corrections. The agency asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure.

FACTS

The grievant is employed as a Corrections Warden Senior. On November 26, 2002, he was issued a Group I Written Notice for failure to follow agency policy. On May 9, 2003, he initiated the present grievance challenging the disciplinary action.

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.<sup>1</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.

In the present case, the grievant knew about the disciplinary action on November 26, 2002. Thus, the grievant had thirty calendar days from that date to file a grievance. It is undisputed that the grievant did not initiate his grievance until May 9, 2003, well over 30 calendar days from when he became aware that he had been issued a Written Notice. Consequently, the sole question remaining is whether there was just cause for the grievant's delay.

To support his claim of just cause, the grievant contends that he delayed initiation of his grievance in order to review a copy of the internal investigation report, which he did not receive until May 2003. While the grievant may not have known all of the facts uncovered during the internal investigation, he was aware that an adverse action had been

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

taken against him upon receipt of the Written Notice on November 26, 2002. Waiting to receive a copy of the investigation report for review does not constitute just cause for the delay in initiating a grievance to challenge the disciplinary action. Furthermore, the 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.<sup>2</sup>

### CONCLUSION

For the reasons discussed above, the grievant is out of compliance with the grievance procedure. The parties are advised that the agency may mark the grievance as concluded due to noncompliance, and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr  
Director

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June M. Foy  
EDR Consultant, Sr.

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<sup>2</sup> See Va. Code § 2.2-3003(E) and *Grievance Procedure Manual*, § 8.2, page 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.

<sup>3</sup> Va. Code § 2.2-1001 (5).