

Issue: Compliance/30 day rule; Ruling Date: July 17, 2003; Ruling #2003-106; Agency: Department of Corrections; Outcome: grievance untimely-administratively closed.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2003-106  
July 17, 2003

The grievant has requested a compliance ruling in his May 13, 2003 grievance with the Department of Corrections (DOC). 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 Corrections Officer. On February 27, 2003, the grievant notified his supervisor that he could not report to work as scheduled due to extreme weather conditions. His supervisor informed him that if he failed to report, his pay would be docked. On March 3, 2003, written notification was forwarded to the grievant that his pay would be docked for 11.5 hours on February 27, 2003, for his failure to report to work as scheduled. The docked amount was withheld from the grievant's paycheck on March 14, 2003. On May 13, 2003, he initiated the present grievance claiming an unfair and inconsistent application of 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.<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.

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

In this case, the event that forms the basis of the grievance was March 14, 2003, the date that the docked amount was withheld from the grievant's paycheck.<sup>2</sup> Therefore, he should have initiated his grievance within thirty days of March 14 (by April 13, 2003). The grievant did not initiate his grievance until May 13, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

To support his claim of just cause, grievant contends that he delayed initiating his grievance because he was attempting to resolve his complaint with management, and that management's response to his request for an internal investigation of the issues was not provided until April 15, 2003. This Department has long held, however, that even when discussions with management are ongoing, "the written grievance must be initiated within 30 calendar days," a requirement that may be extended only if both parties agree, which was not the case here.<sup>3</sup>

### 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.<sup>4</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> Although the grievant received written notice on March 3, 2003 that his pay *would be* docked, he did not have notice until March 14, 2003 when he received his paycheck that his pay *had been* docked. The event that forms the basis of this grievance is the actual docking of the pay, not the March 3<sup>rd</sup> letter indicating that the agency planned to dock his pay.

<sup>3</sup> See *Grievance Procedure Manual* § 2.2, page 5.

<sup>4</sup> Va. Code § 2.2-1001 (5).