

Issue: Compliance/ 30-day time frame; Ruling Date: October 10, 2003; Ruling #2003-118; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievant out of compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Mental Health, Mental Retardation, and  
Substance Abuse Services  
Ruling Number 2003-118  
October 10, 2003

The grievant has requested a compliance ruling in his June 1, 2003 grievance with the Department of Mental Health, Mental Retardation, and Substance Abuse Services (agency). 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 Medical Aide. On May 1, 2003, he was issued a Counseling Memorandum in conjunction with an investigation into alleged sexual harassment. On June 1, 2003, he initiated the present grievance challenging the counseling memorandum.

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, it is undisputed that the grievant knew about the counseling memorandum on May 1, 2003. Thus, the grievant had thirty calendar days from that date to challenge the counseling memorandum through the grievance process. It is undisputed that the grievant did not initiate his grievance until June 1, 2003, more than 30 calendar days from when he became aware that he had been issued the counseling memorandum. Consequently, the sole question remaining is whether there was just cause for the grievant's delay.

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

To support his claim of just cause, the grievant contends that the 30<sup>th</sup> calendar day fell on a weekend. Accordingly, he waited until the following Monday to initiate his grievance. This Department has consistently strictly applied the 30-day rule. An erroneous belief that the 30-day period cannot expire on a weekend does not constitute just cause. This Department has long held that it is incumbent upon each employee to know his rights and obligations under the grievance procedure<sup>2</sup> and that lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to initiate a grievance in a timely manner.<sup>3</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>4</sup>

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Claudia T. Farr  
Director

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William G. Anderson, Jr.  
EDR Consultant, Sr.

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<sup>2</sup> EDR Rulings 2000-010; 2000-097; 2000-139; 2001-024; 2001-085; 2001-212; 2002-057.

<sup>3</sup> EDR Rulings 2000-139; 2001-212; 2002-057. The grievant also claims that he tried to present his grievance on both the Friday and Saturday before expiration of the 30-day deadline but the first step respondent was not at the workplace on those days. (The grievant did not leave the grievance in his supervisor's office or with anyone else at the facility.) The grievant explains that the reason for his delay in initiating his grievance was that he was gathering facts to support his grievance. This Department has long held that awaiting additional supporting documentation or information does not constitute just cause for failure to initiate a grievance in a timely manner. EDR Ruling 2002-126.

<sup>4</sup> Va. Code § 2.2-1001 (5).