

Issue: Compliance/30-day rule; Ruling date: July 31, 2003; Ruling #2003-126; Agency: Virginia Department of Transportation; Outcome: grievant out of compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2003 -126
July 31, 2003

The grievant has requested a compliance ruling in his June 17, 2003 grievance with the Department of Transportation (VDOT). 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 Transportation Contract Administrator. In November 2002, the grievant applied for a position as Transportation Assistant Resident Engineer (ARE). The grievant participated in a first interview conducted on December 5, 2002, and also a second interview conducted on March 19, 2003. On April 22, 2003, he was notified that he was not the successful candidate. At that time, the grievant expressed no concern to management about his non-selection or that the selection process did not conform to policy.

On May 6, 2003, the grievant verbally requested that Human Resources provide a copy of his interview summary in order to help identify possible weaknesses in his qualifications and performance. The grievant contends that he received no response to this initial and subsequent follow-up requests on May 20 and June 5, 2003. Finally on June 6, 2002, he met with a human resources representative and was allowed to review interview summaries from both the first and second interview. Based upon his review, the grievant concluded that the outcome of the selection action was predetermined. On June 17, 2003, the grievant initiated the present grievance asserting that the selection process was capricious and arbitrary.

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 ARE position. The grievant first learned that he was not selected for the position of supervisor on April 22, 2003; therefore, he should have initiated his grievance within thirty days of April 22. The grievant did not initiate his grievance until June 17, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant argues that only after he was allowed to review the documents relating to his non-selection could he deduce that the selection was improper. In other words, it was not until he reviewed 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.² 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.³

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.⁴

Claudia T. Farr
Director

² *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."

³ *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.

⁴ Va. Code § 2.2-1001 (5).

July 31, 2003
Ruling #2003-126
Page 4

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