

Issue: Compliance/30-day rule; Ruling date: October 3, 2003; Ruling #2003-147; Agency: Virginia Polytechnic Institute and State University; Outcome: grievance is timely



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Virginia Polytechnic Institute and State University  
Ruling Number 2003-147  
October 3, 2003

The grievant has requested a compliance ruling in his grievance dated June 25, 2003 with the Virginia Polytechnic Institute and State University (Virginia Tech or the agency). 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 set forth below, the grievance is timely and may proceed through the grievance process.

FACTS

Prior to his termination on June 13, 2003, the grievant was employed as a Natural Resource Specialist I with Virginia Tech. On June 13, 2003, the grievant received a Group II Written Notice with removal for driving a state vehicle home without permission.<sup>1</sup>

The grievant initiated his grievance on July 12, 2003, via certified mail, which is the postmark date on the U.S. Postal Service certified mail receipt.<sup>2</sup> The agency returned the grievance on July 29, 2003 for non-compliance with the procedural requirements of the grievance procedure, claiming that it received the grievance on July 17, 2003 well after the 30 calendar day time frame.

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>3</sup> It is incumbent upon the grievant to initiate a grievance in a manner that would allow for verification of the date of initiation – for example, by obtaining a date-stamp, postmark, or mailing receipt. 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. Further, this Department has long held that in a grievance challenging a disciplinary

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<sup>1</sup> The grievant's termination was based upon the accumulation of Written Notices.

<sup>2</sup> This agency has long held that the date of mailing constitutes the date of initiation. See EDR Rulings #2001-230 and #2002-118.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4, page 6.

action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.

In the present case, the grievant knew or should have known about his Group II Written Notice with termination on June 13, 2003, the date he received it. Thus, the grievant had thirty calendar days, or until July 13, 2003 to file a grievance. As stated previously, grievant initiated his grievance on July 12, 2003 and as such, did so timely.

#### CONCLUSION

The grievant's June 25, 2003 grievance relating to the June 13, 2003 Group II Written Notice and termination was filed within the 30 calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this ruling to either conclude the grievance or request to advance to the next resolution step. 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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Jennifer S.C. Alger  
EDR Consultant

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<sup>4</sup> See Va. Code § 2.2-1001(5).