

Issue: Compliance/30-day rule; Ruling Date: October 23, 2003; Ruling #2003-154 and 2003-155; Agency: Virginia Polytechnic Institute and State University; Outcome: grievances untimely, there was just cause for delay, grievances allowed to move forward.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Numbers 2003-154 and 2003-155
October 23, 2003

The grievant has requested a compliance ruling in two June 25, 2003 grievances with the Virginia Polytechnic Institute and State University (Virginia Tech or the agency).¹ The agency asserts that the grievant did not initiate his two grievances within the 30-calendar day time period required by the grievance procedure.

FACTS

The grievant is employed with Virginia Tech. On May 13, 2003, the grievant received a Group I Written Notice for being involved in an automobile accident in a state vehicle and subsequently failing to report the accident to either the on-site supervisor or the project director. The May 13, 2003 Group I Written Notice is the subject of the grievant's first June 25, 2003 grievance (Grievance #1). Also on May 13, 2003, the grievant received a Group II Written Notice for driving a state vehicle between work and home without authorization from the on-site supervisor or project director. The May 13, 2003 Group II Written Notice is the subject of the grievant's second June 25, 2003 grievance (Grievance #2).

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

¹ The grievant actually initiated three grievances on June 25, 2003, all of which the agency asserted were noncompliant with the grievance procedure. This ruling addresses only two of those three grievances. The third June 25, 2003 grievance is the subject of EDR Ruling # 2003-147.

² This agency has long held that the date of mailing constitutes the date of initiation. See EDR Ruling #2002-118.

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.³ 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 action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.

In this case, the events that form the basis of both Grievance #1 and #2 occurred on May 13, 2003, the date that the grievant received both the Group I and Group II Written Notices. Therefore, he should have initiated his grievances within thirty days of May 13 (by June 12, 2003). The grievant did not initiate his grievances until July 12, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant claims that he suffers from a physical and/or mental impairment that prevented him from timely initiating both Grievance #1 and Grievance #2. Under the grievance procedure, an illness or impairment does not automatically constitute just cause for failure to meet procedural requirements. To the contrary, in most cases it will not. Illness may constitute just cause for delay only where there is evidence indicating that the physical or mental impairment was so debilitating that compliance with the grievance procedure was virtually impossible.⁴ For instance, this Department has held that while stress and ‘feeling blue’ are not enough for just cause,⁵ severe depression requiring clinical treatment could warrant a just cause finding.⁶ However, to establish illness as just cause for not meeting the grievance procedure’s time requirement, the grievant should in virtually all cases be required to provide supporting evidence from a health care provider. The grievant has presented such evidence in this case. As such, this Department concludes that the grievant had just cause for failing to initiate his June 25, 2003 grievances within 30 calendar days.

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

⁴ Cf. Va. Code § 63.1-55.2 which defines “incapacitated person” as “any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.” Va. Code § 63.1-55.2 (2000) (emphasis added). See also Va. Code § 8.01-229 (2000) (providing that the time period for filing a civil action may be tolled where the plaintiff suffers from an incapacitating disability); *Dickerson v. Henderson*, 2001 U.S. Dist. LEXIS 5560 (S.D. Ind. 2001)(mental illness tolls a statute of limitations if it prevents the sufferer from managing his affairs and understanding his legal rights and acting upon them).

⁵ See EDR Ruling # 2001-110, July 16, 2001.

⁶ See EDR Ruling # 2001-073, August 24, 2001.

The grievant has advanced several alternative just cause theories for his failure to initiate his grievances in a timely manner. Because this Department has concluded that the grievant's physical and/or mental impairment constitutes just cause, there is no reason to address the grievant's remaining just cause arguments.

CONCLUSION

For the reasons discussed above, this Department has determined that there was just cause for the grievant's delay in initiating Grievances #1 and #2 in a timely manner. 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 grievances or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.⁷

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⁷ Va. Code § 2.2-1001(5).