

Issue: Compliance/30-day rule; Ruling Date: October 30, 2003; Ruling #2003-160;
Agency: Department of Corrections; Outcome: grievance untimely and may be
administratively closed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2003-160
October 30, 2003

The grievant has requested a compliance ruling in his August 13, 2003 grievance with the Department of Corrections (DOC or the agency). The agency asserts that the grievant did not initiate one issue of 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, at the discretion of the agency.

FACTS

The grievant was hired as a Clinical Social Worker (CSW) for DOC in 1997. In 1999, the grievant was hired for a Clinical Social Worker Supervisor (CSWS) position with DOC. On November 20, 2001, the grievant was given notice that his present position required that he obtain specific certifications within twelve months of the date of the letter and that failure to obtain such certifications could result in termination. The grievant claims that he is the only employee that received such a letter.

On June 6, 2003, the grievant was notified that effective June 10, 2003 he was being transferred from his CSWS position to a CSW position due to his failure to meet agency standards required of Clinical Social Worker Supervisors. The grievant's transfer to another facility and demotion to a CSW position necessitated that he work alongside employees he had previously supervised. On July 23, 2003, the grievant became aware that another CSWS that had been likewise transferred and demoted to a CSW position was offered a CSW position that would not require her to work with those she had previously supervised.

The grievant's August 13, 2003 grievance alleges that (1) he "was not offered a comparable position like two other CSWS's" when transferred; and (2) unlike other similarly situated employees, he was issued a letter giving him a time limit to be certified or face possible termination. In response, the first step-respondent found the grievant was challenging his June 10, 2003 transfer and had failed to do so within the 30 calendar day time period. Instead of requesting a compliance ruling from this Department regarding whether he had initiated his grievance within 30 calendar days, the grievant advanced his grievance to the second resolution step. The second step-respondent found

that the grievance presented two issues: (1) the grievant's transfer and change of title that occurred on June 10, 2003; and (2) the treatment of the grievant and another similarly situated employee of whom the grievant allegedly became aware on July 23, 2003. The second step-respondent ruled the first issue out of compliance with the 30 calendar day requirement of the grievance procedure, but stated that he would allow the second issue to proceed.

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 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 addition, any grievance that does not pertain directly and personally to the grievant's own employment may be closed for noncompliance.²

Reading these procedural requirements together, the timeliness issue to be decided here is whether the grievant's own employment was directly and personally affected by an "event or action" during the 30-calendar days immediately preceding the initiation of his grievance.³ In this case, it was not. Grievant's own employment was directly and personally affected by the November 20, 2001 letter and his June 10, 2003 transfer to a position in which he is required to work alongside employees he previously supervised.⁴ Although he knew that his employment had been directly and personally affected on November 20, 2001 and June 10, 2003, his grievance was not filed within 30 calendar days of either of those events.

Moreover, the grievant has not demonstrated just cause for his failure to initiate his grievance within the 30-calendar day period. The grievant claims that he did not have reason to believe that the transfer directly affecting his employment was unfair until he found out on July 23, 2003 that a similarly situated employee transferred for the same reasons as the grievant was not required to work alongside employees she previously supervised. Moreover, although the grievant could not give specific dates, the grievant claims that he found out over time that other employees were not issued a letter similar to the November 20, 2001 letter that he received. This Department has previously held, however, that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's employment, not by the grievant's

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

² *Grievance Procedure Manual* § 2.4(3), page 6.

³ Compare *Brinkley-Obu v. Hughes Training*, 36 F.3d 336, 351 (4th Cir. 1994)(for an Equal Pay Act claim to be timely, the employer's alleged wrongful conduct must have *affected the plaintiff* during the statute of limitations period).

⁴ Although the grievant claims he is not challenging the transfer itself, rather the alleged differential treatment between himself and another similarly situated employee also transferred, this Department concludes that the grievant's argument is, in essence, a challenge to the conditions of his transfer which he became aware of on June 10, 2003.

knowledge of the alleged *impropriety* of that “event or action.”⁵ In this case, the events directly and personally affecting the grievant’s employment occurred on November 20, 2001 and June 10, 2003, not when the grievant allegedly found out that other employees allegedly may have been treated more favorably in the certification or transfer process.

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.⁶ By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance at its discretion. This Department’s rulings on matters of compliance are final and nonappealable.⁷

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⁵ See, e.g., EDR Ruling No. 2003-126; compare *Hamilton v. 1st Source Bank*, 928 F. 2d 86, 88-89 (4th Cir. 1990) (court noting that the statutory trigger date in Title VII discriminatory discharge cases is the date of the employee’s notice of the employer’s “act” (the discharge), not the employee’s notice of the employer’s discriminatory motivation behind the act).

⁶ It should be noted that the agency appears to be willing to let the grievant proceed on one of the issues presented, namely his treatment during the transfer versus that of a similarly situated employee, which as stated above, this Department has characterized as a grievance of the transfer. [TAB 2] Under the grievance procedure, management may allow a grievance to proceed through the management resolution steps and beyond, even if the grievance does not comply with the 30 calendar day requirement; however as this ruling points out, DOC is under no obligation to do so. See *Grievance Procedure Manual* § 2.4, page 7.

⁷ Va. Code § 2.2-1001 (5).