

Issue: Compliance/30-day rule; Ruling date: October 30, 2003; Ruling #2003-162; Virginia Polytechnic Institute and State University; Outcome: grievant not in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Number 2003-162
October 30, 2003

The grievant has requested a compliance ruling in his June 23, 2003 grievance 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.

FACTS

Prior to his termination on June 13, 2003, the grievant was employed as a Natural Resource Specialist I with Virginia Tech.¹ On August 1, 2002 the grievant received a Notice of Improvement Needed Unsatisfactory Performance.² The grievant challenged the Notice of Improvement Needed Unsatisfactory Performance on June 23, 2003. The agency returned the grievance on July 1, 2003 for non-compliance with the procedural requirements of the grievance procedure claiming that it received the grievance on June 27, 2003 well after the 30-calendar day time frame. On September 8, 2003, this Department received a compliance ruling request from the grievant regarding his June 23, 2003 grievance.

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. Moreover, when an agency determines a grievance out of compliance with the 30-calendar day requirement, the grievant has 5 workdays from his receipt of notice that the

¹ The grievant has initiated a separate grievance to challenge his termination.

² The Notice of Improvement Needed Unsatisfactory Performance was signed and dated May 31, 2002 by the grievant's supervisor. The grievant, however, did not sign the document until August 1, 2002.

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

grievance will be administratively closed to challenge the closing of his grievance by requesting a compliance ruling from this Department.⁴

It appears that the agency was correct in administratively closing the June 23, 2003 grievance for noncompliance with the 30-calendar day requirement. In this case, the event that forms the basis of the June 23, 2003 grievance is the grievant's receipt in August 2002 of a Notice of Improvement Needed Unsatisfactory Performance. The grievant knew or should have known about that Notice on August 1, 2002, the date he signed it. Thus, the grievant had thirty calendar days, or until August 31, 2002 to file a grievance. As stated previously, the grievant initiated his grievance in June 2003 and as such, was untimely. Additionally, it appears that the grievant did not have just cause for the delay in initiation of his June 23, 2003 grievance.⁵

CONCLUSION

For the reasons discussed above, this Department has determined that the grievant's June 23, 2003 grievance was untimely filed without just cause and may remain administratively closed. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

Jennifer S.C. Alger
EDR Consultant

⁴ See *Grievance Procedure Manual* § 6.2, page 17.

⁵ The grievant claims that he did not initiate his grievance until June 23, 2003 because he did not have evidence to support his claim that the Notice of Improvement Needed Unsatisfactory Performance was unwarranted until approximately one year after the Notice of Improvement Needed Unsatisfactory Performance was prepared. Failing to have adequate evidence in support of a grievance does not constitute just cause to delay initiation of the grievance. While the grievant may not have had all the information needed to support his grievance, he should have initiated his challenge to the Notice of Improvement Needed Unsatisfactory Performance within 30 calendar days of receipt.

⁶ Va. Code § 2.2-1001 (5).