

Issue: Compliance/30-day rule; Ruling Date; October 30, 2003; Ruling #2003-166;
Agency: Department of Transportation; 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 Transportation
Ruling Number 2003 -166
October 30, 2003

The grievant has requested a compliance ruling in his September 12, 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 Survey Manager. By letter dated July 22, 2003, VDOT informed the grievant that it had established a Land Surveyor licensure requirement for selected positions engaged in the practice of land surveying, and that his position was among those affected. On July 23, 2003, the grievant confirmed that he had read and understood the notice. On September 4, 2003, he initiated the present grievance challenging the establishment of a licensing requirement as a contingency of employment without additional compensation. On September 5, 2003, the first step respondent asserted that the grievance was untimely and would be closed administratively due to noncompliance.

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 this case, the event that forms the basis of the grievance is the grievant's receipt of the notice that his position was among those determined to require a Land Surveyor

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

license as a condition of employment. The grievant acknowledged receipt of the notice on July 23, 2003; therefore, he should have initiated his grievance within thirty days of July 23. The grievant did not initiate his grievance until September 4, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The reason given by the grievant for his delay is that he was waiting for a supervisor to initiate a grievance on his behalf and that of another employee similarly affected. It was not until September 3 that the supervisor informed the grievant that the grievance procedure precludes the initiation of grievances by third parties.² Thus, the grievant and the other employee were obliged to initiate their own individual grievances. However, as noted above, the actual event that formed the basis of the grievance was the notice that his position was among those determined to require a Land Surveyor license as a condition of employment, which he learned of more than thirty days prior to the initiation of his grievance. A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to initiate a grievance in a timely manner.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

June M. Foy
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² *Grievance Procedure Manual* § 2.4 (1), page 6 states that an employee's grievance must pertain directly and personally to the employee's own employment.

³ EDR Rulings 2000-139; 2001-212; 2002-057.

⁴ Va. Code § 2.2-1001 (5).