

Issue: Compliance/30-day rule; Ruling Date: November 19, 2003; Ruling #2003-422; Agency: Virginia Department of Transportation; Outcome: grievance untimely and administratively closed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2003-422
November 19, 2003

The grievant has requested a compliance ruling in his October 3, 2003 grievance with the Virginia Department of Transportation (VDOT or the agency).¹ 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 an Engineering Technician III. On July 7, 2003, the agency issued the grievant a Group III Written Notice and a 30-day suspension for "theft or unauthorized removal of state property." The grievant did not challenge the disciplinary action.

On or about September 5, 2003 the grievant alleged that he observed another state employee remove state property from state premises. The agency contends that this employee had permission to remove the property, which was scrap material designated to be destroyed. On October 3, 2003, the grievant initiated the grievance that is the subject of this ruling, alleging that the agency has unfairly applied policy.²

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 When an employee initiates a grievance beyond the 30-calendar day period without

¹ The agency erroneously characterized the grievant's ruling request as a qualification request; the grievant erroneously requested an access ruling. From the grievance record, however, it is evident that the agency has challenged the grievance on the basis of timeliness, a compliance issue.

² The grievant alleges that the agency violated DHRM Policy 2.05, the states Equal Employment Opportunity Policy. However, both the grievant and the other employee who allegedly removed state material from state property are Caucasian males. The grievant's concerns do not appear to be related to any alleged civil rights based discrimination or protected status. Rather, he seems to argue that he was treated differently from a similarly situated employee.

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

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.⁴

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.⁵ In this case, it was not. Grievant's own employment was directly and personally affected by the July 7, 2003 Written Notice. Although he knew that his employment had been directly and personally affected on July 7, 2003, his grievance was not filed within 30 calendar days of either of that event.

Moreover, the grievant has not demonstrated just cause for his failure to initiate his grievance within the 30-calendar day period. The grievant may argue that he did not have reason to believe that he was treated unfairly until he found out on September 5, 2003 that another employee who allegedly committed a similar offense had not been disciplined. 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 knowledge of the alleged *impropriety* of that "event or action."⁶ In this case, the events directly and personally affecting the grievant's employment occurred on July 7, 2003, not when the grievant discovered that another employee may have been treated more favorably in an allegedly similar situation.

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 at its discretion. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant

⁴ *Grievance Procedure Manual* § 2.4(3), page 6.

⁵ *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).

⁶ *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).

⁷ Va. Code § 2.2-1001 (5).

November 19, 2003
Ruling #2003-422
Page 4