

Issue: Compliance/30-day rule; Ruling Date: March 12, 2004; Ruling #2004-582;
Agency: Department of Motor Vehicles; Outcome: grievant out of compliance –
grievance administratively closed.l



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling Number 2004-582
March 12, 2004

The grievant has requested a compliance ruling in her January 9, 2004 grievance with the Department of Motor Vehicles (DMV). The agency asserts that the grievant did not initiate her 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 Human Resources Consultant. On December 9, 2003, the grievant was presented a Group II Written Notice for misuse of state property (excessive telephone usage) and abuse of state time. On January 9, 2004, the grievant initiated a grievance to challenge the disciplinary action, by both email and hard copy Form A, which was forwarded by mail on the same date. On January 15, 2004, 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 she 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 Group II Written Notice. The grievant acknowledged receipt of the Written Notice on December 9, 2003; therefore, she should have initiated her grievance within thirty

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

days of that date. The grievant did not initiate her grievance until January 9, 2004, which was untimely by one day. Thus, the only remaining issue is whether there was just cause for the delay.

The reason given by the grievant for her delay was awaiting the outcome of another employee's grievance hearing. She contends that evidence surfaced during that proceeding that was important to her grievance. The evidence would allegedly show that another employee in her agency had also been involved in excessive telephone usage, but had not been similarly disciplined. The grievant believed that this evidence would help support her claim of an unfair or misapplication of policies, procedures, rules, and regulations. The grievant further claims that she was precluded from including this evidence in a grievance because she had been instructed by the hearing officer, during her appearance as a witness in that case, not to discuss the case.²

However, as noted above, the actual event that formed the basis of the grievance was the receipt of the Written Notice, which she received more than thirty days prior to the initiation of her grievance. While the grievant may not have possessed all of the information she believed she needed to support her grievance, she was aware that an adverse action had been taken against her upon receipt of the Written Notice on December 9, 2003. Waiting for the outcome of the other employee's grievance hearing or the availability of evidentiary documents does not constitute just cause for the delay in initiating a grievance to challenge the disciplinary action.

The grievant also requests an exception to the 30-day requirement based upon the merits of her grievance and alleged policy and procedural violations by the agency.³ However, under the grievance procedure, only the agency has the authority to grant an exception to the 30 calendar day requirement.⁴ Further, only a hearing officer has the authority to determine the merits of a grievance after receiving probative evidence and making findings of fact as to the material issues in a case.⁵

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

² During the investigation of this matter, the hearing officer confirmed that his instructions to the grievant were limited to not discussing her testimony with others at the hearing and in no way inferred that she could not exercise her right to initiate a grievance.

³ Specifically, (1) excessive delay by the agency in issuing the disciplinary action; (2) taking the disciplinary action solely to support the actions of another agency in taking disciplinary action against one of its employees; (3) disparate treatment in the administration of discipline; (4) inconsistent application of the agency's Telephone Policy; (5) mitigating circumstances not being considered in determining the level of disciplinary action; and (6) inaccuracy of the agency's investigation of the alleged offenses.

⁴ *Grievance Procedure Manual* § 2.4, page 7.

⁵ Va. Code § 2.2-3005 C (5)(6) and (D).

administratively close this grievance. compliance are final and nonappealable.⁶

This Department's rulings on matters of

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⁶ Va. Code § 2.2-1001 (5).