

Issue: Compliance/30-day rule; Ruling Date: May 4, 2004; Ruling #2004-608; Agency: Department of Motor Vehicles; Outcome: grievance is timely and may proceed through the grievance process



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles/ No. 2004-608
May 4, 2004

The grievant has requested a compliance ruling in his grievance dated January 9, 2004 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 set forth below, the grievance is timely and may proceed through the grievance process.

FACTS

The grievant is a Program Manager with DMV. In her grievance dated January 9, 2004, she claims that her supervisor creates a hostile work environment, most recently on December 12, 2003, when her supervisor embarrassed her in a staff meeting. The Grievance Form A states that “the most recent incident of December 12 is just a continuation of intimidating, hostile, and belittling behavior from [grievant’s supervisor].”

The grievant completed her Grievance Form A on January 9, 2004 and claims that she mailed it to the agency on that same day via U.S. mail. The postmark date on the envelope reads January 10, 2004.¹ On January 21, 2004, the agency administratively closed the grievance at the first resolution step for non-compliance with the procedural requirements of the grievance procedure, claiming that it received the grievance on January 12, 2004, after the 30 calendar day time frame.

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.² It is incumbent upon the grievant to initiate a grievance in a manner that would allow for verification of the date of initiation –

¹ This Department’s copy of that envelop is illegible. However, DMV confirmed during this Department’s investigation that the Form A envelope was postmarked on January 10, 2004.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4, page 6.

for example, by obtaining a date-stamp, postmark, or mailing receipt.³ Further, this agency has long held that the date of mailing constitutes the date of initiation. 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 the present case, the grievant knew or should have known about her supervisor's alleged hostile and intimidating behavior on December 12, 2003, the date of the staff meeting. Thus, the grievant had thirty calendar days, or until January 11, 2004, to file a grievance. As stated previously, grievant initiated her grievance on January 10, 2004 (the date of the postmark) and as such, did so timely.

CONCLUSION

The grievant's grievance dated January 9, 2004, claiming a hostile work environment, was filed within the 30 calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this ruling to either conclude the grievance or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

Leigh A. Brabrand
EDR Consultant

³ See EDR Rulings 2002-118 and 2003-147.

⁴ See Va. Code § 2.2-1001(5).